

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM YORK COUNTY

John C. Hayes, III, Circuit Court Judge

SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

TROY TERRELL BAXTER,

APPELLANT

APPELLATE CASE NO. 2011-187486

RECORD ON APPEAL

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2 COUNTY OF YORK ) COURT OF GENERAL SESSIONS

3  
4 STATE OF SOUTH CAROLINA, ) TRANSCRIPT  
5 PLAINTIFF, ) OF  
6 vs. ) RECORD  
7 TROY TERRELL BAXTER and )  
8 LARICK PIERRE BURRIS, ) 2008-GS-42-5309  
9 DEFENDANTS )

10 February 28<sup>th</sup> - March 1<sup>st</sup>, 2011  
11 York, South Carolina

12 B E F O R E:

13 THE HONORABLE JOHN C. HAYES, III, Judge.

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24 Transcribed by Pamela E. Green, Circuit Court Reporter

25

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## P R O C E E D I N G S

(WHEREUPON, the following takes place within the presence of the entire jury panel.)

THE COURT: We're going to start the first trial in this courtroom. We're not actually gonna start into the meat of the trial until in the morning, but we will go ahead and draw the jury. Due to the lateness of the hour, we're not going to actually start the trial.

I'm gonna ask the solicitor to tell us about this case.

SOLICITOR WEAVER: Your Honor, State calls the case of 2010-GS-46-01312, the State versus Troy Terrell Baxter charged with possession with intent to distribute marijuana.

Also, State's calling Case Number 2010-GS-46-01319, the State versus Larick Burris also charged with possession with intent to distribute marijuana.

THE COURT: All right. The solicitor is Ms. Teasa Weaver.

Introduce yourself. Not introduce yourself, but stand up.

(Solicitor complies.)

THE COURT: Now, which one is Mr. Baxter?

MS. ANDERSON: Your Honor, this is Mr. Baxter.

THE COURT: Mr. Baxter's represented by Ms. Anderson and Mr. McKinnon.

1 THE COURT: You may be seated.

2 No, no one stands.

3 Anything further from the State?

4 SOLICITOR WEAVER: Nothing further from the State.

5 THE COURT: Anything further from the defense, Ms.  
6 Anderson?

7 MS. ANDERSON: Nothing from Mr. Baxter.

8 THE COURT: Mr. Reeves.

9 MR. REEVES: No, Your Honor. Thank you.

10 THE COURT: All right. I've already asked you, but  
11 I'll ask it again because this is what I usually end with,  
12 do any of you know of any reason why you could not or should  
13 not serve as a fair and impartial juror in this case, if so,  
14 please stand.

15 (No response.)

16 THE COURT: No one stands.

17 Now, the way we draw juries in this court is as  
18 follows:

19 Name at random by the clerk. If you hear your name  
20 called, please come forward and stand.

21 (WHEREUPON, the jury panel was selected at this time.)

22 THE COURT: Anything from the State involving  
23 impaneling of the jury from the State?

24 SOLICITOR WEAVER: Nothing from the State, Your Honor.

25 THE COURT: Anything from Mr. Baxter?

1 MS. ANDERSON: Nothing from Mr. Baxter.

2 THE COURT: Anything from Mr. Burris?

3 MR. REEVES: Nothing, Your Honor.

4 (Pause.)

5 THE COURT: All right. Those of you who were chosen,  
6 I'm -- we're not going to swear you in or start the trial  
7 this afternoon. I'm gonna, after I give you a few remarks,  
8 I'm going to let you go. When I do that, the bailiff will  
9 take you out and show you how to ingress and egress the  
10 building while you're serving as a juror. You will not  
11 be -- he, he will show you where the jury room is and where  
12 you are to collect in the morning and how to get out in the  
13 evening and at lunch.

14 Now, even though you hadn't been sworn, you are a  
15 member of this jury panel. So, you are not to try to make  
16 up your own mind or discuss the case with anyone until I  
17 instruct you to jointly deliberate and return a unanimous  
18 verdict. Prior to that time you do not have all the tools  
19 you need to make a fair and reasoned decision.

20 If anyone outside the courtroom tries to discuss the  
21 case with you, tell them you are not as you are serving as a  
22 juror. Report back to me if anyone tries to discuss the  
23 case hopefully giving me their identification so that I can  
24 take action against someone trying to talk to a seated  
25 juror.

1       Don't let yourself be exposed to any news coverage if  
2 there is any. Don't read about this case, watch anything,  
3 or listen to anything. In fact, don't watch, listen, or  
4 read about anything that could remotely deal with this  
5 trial. Do not do any independent research. We now have to  
6 tell jurors this because of the vast knowledge of, through  
7 the networks and those types of things. We've, we've had  
8 some cases set aside because jurors have gone on line or  
9 tweeted, tweeted, done certain things to, involving the  
10 trial.

11       As -- you've got to, as you remember my questions, base  
12 your verdict solely on the law and the evidence as you hear  
13 it and as it's developed here in the trial. So, it would be  
14 improper for you to go on-line or to go anywhere to seek any  
15 information about the charges, about the attorneys, about  
16 the defendants, about court procedure, about evidence, about  
17 me, about anything that deals with this trial. So, just,  
18 just do not do that.

19       Anything further before I excuse the jurors for the  
20 day?

21       SOLICITOR WEAVER: Nothing from the State, Your Honor.

22       MS. ANDERSON: Nothing from Mr. Baxter, Your Honor.

23       MR. REEVES: No, Your Honor.

24       THE COURT: All right. Well, you---

25       JUROR: May I ask a question?

1 THE COURT: All right. Motion to preclude any  
2 testimony regarding currency seized on the grounds that it  
3 would be irrelevant and overly prejudicial.

4 SOLICITOR WEAVER: Your Honor, the only currency  
5 mentioned that was seized was from Mr. Burris.

6 THE COURT: All right.

7 SOLICITOR WEAVER: So, there's no currency as to  
8 Mr. Baxter. I don't, I don't know if that's Mr. Baxter  
9 asking that any currency---

10 THE COURT: It, it is.

11 Are you asking that any currency from either defendant  
12 to be excluded?

13 MS. ANDERSON: Yes, Your Honor. I think if, under a  
14 situation with a co-defendant where presumably the state  
15 will request a charge under the hand of one hand of all. I  
16 think prejudice as to currency would, would also be as to  
17 Mr. Baxter if he is implicated or any allegation of  
18 conspiracy. So, I would argue for moving to exclude all  
19 that evidence.

20 THE COURT: Mr. Reeves.

21 MR. REEVES: Your Honor, this is an unusual situation.  
22 There was an amount of cash taken. However, my client has  
23 produced original records to account for that cash.

24 THE COURT: All right. It was cash.

25 How much cash was---

1 SOLICITOR WEAVER: \$1075, Your Honor.

2 MR. REEVES: My client, Your Honor, just received money  
3 in the form of a check from the University of Phoenix and he  
4 also went to Ace Cash Express on Cherry Road where he cashed  
5 that check. So, he can actually account for it.

6 THE COURT: All right. Well, we might need to have a,  
7 some testimony or at least a proffer on that because I --  
8 this isn't a forfeiture action. We're kind of getting into  
9 it---

10 SOLICITOR WEAVER: Right.

11 THE COURT: ---where -- I find it analogous that if  
12 something that's -- that if there's -- I know that large  
13 sums of money are somewhat indicative of cases of drug  
14 transactions. But I've not had one come up quite like this.  
15 I certainly had cases where the individual testified they  
16 got money from other places, but I never had it documented.  
17 So, I'll take a look at that in just a minute. We'll come  
18 back to that one.

19 Motion to suppress narcotics as a result of the stop.

20 Ms. Anderson.

21 MS. ANDERSON: Your Honor, I think that we skipped  
22 number nine. The number nine motion was to restrict any  
23 testimony identifying an item as marijuana prior to the  
24 chemical testimony.

25 THE COURT: Okay. I got you. Okay. I did skip that.

1       Ms. Weaver, I believe proffered testimony from  
2 officers, I can't tell them what to testify to because I  
3 don't know, but just based on past experience, but they can  
4 describe the substance, but not identified.

5       All right. Now motion to suppress.

6       MS. ANDERSON: And, Your Honor, it may -- this may also  
7 go in with Number 11 as well. I basically put it -- it's  
8 two grounds. I do not know if the State wishes to proffer  
9 testimony, but both of them would be linked to the traffic  
10 stop just basically two grounds if Your Honor wants us to  
11 address them together.

12       THE COURT: All right. Motion to suppress the drugs  
13 received through the traffic stop and I'll allow you to  
14 present your evidence under that at this time. We'll have a  
15 hearing on the suppression motion.

16       SOLICITOR WEAVER: Your Honor, the State---

17       THE COURT: I'm going to ask Mr. Reeves if you can hand  
18 that up. I can, I can be looking at those.

19       Have you seen, have you seen the documents involved?

20       SOLICITOR WEAVER: No, Your Honor, I have not.

21       THE COURT: Okay. Why don't you let her look at it and  
22 I can be kind of glancing at that while I can use my eyes on  
23 that and my ears on the testimony.

24                       LONNIE VINESETT, JR., being first  
25 duly sworn, testified as follows:

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 DIRECT EXAMINATION

2 BY SOLICITOR WEAVER:

3 Q Officer Vinesett, you work with the York County  
4 Sheriff's Department?

5 A Yes, ma'am.

6 Q How long have you been with York County?

7 A Since September of '99.

8 Q And you've been a police officer during all that time?

9 A Yes, ma'am.

10 Q Were you on duty on September 11<sup>th</sup>, 2009?

11 A Yes, ma'am.

12 Q And did you come in contact with the defendants, Mr.  
13 Baxter and Mr. Burris?

14 A Yes, ma'am.

15 Q Can you explain to the Court how you came in contact  
16 with them?

17 A I was traveling 77 northbound and got in behind the  
18 vehicle that Mr. Baxter was driving. I stopped the vehicle  
19 for speeding just north of Highway 160 in Fort Mill, which  
20 is in the County of York. Through that traffic stop is how  
21 I was introduced to Mr. Burris and Baxter.

22 Q And you said that you paced the vehicle?

23 A Yes, I paced the vehicle for a short while north, while  
24 we were traveling north at 66, 67 miles an hour before I  
25 stopped.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 Q What was the speed limit in that zone?

2 A Sixty.

3 Q And, so, you conducted a traffic stop at that time?

4 A Yes, ma'am.

5 Q And when you pulled over the vehicle, who was the  
6 driver, who was the passenger?

7 A Mr. Baxter was the driver and Mr. Burris was the  
8 passenger?

9 Q And when you got out, out of your vehicle after both  
10 vehicles stopped, what side did you approach?

11 A I approached on the passenger side.

12 Q And, so, that would be the side that Mr. Burris was  
13 sitting in?

14 A Yes, ma'am.

15 Q And when you walked up to the passenger side, what,  
16 what happened?

17 A Whenever I walk up to the passenger side, I introduced  
18 myself, who I was, and I asked the driver for his driver  
19 license and vehicle registration. At that point, while  
20 Mr. Baxter was getting those items, I noticed what appeared  
21 to be marijuana on Mr. Burris' shirt. I got the information  
22 from Mr. Baxter and asked him to step to the rear of the  
23 vehicle.

24 Q And what information did Mr. Baxter give you regarding  
25 the vehicle?

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 A He gave me a rental agreement. The vehicle was a  
2 rental that he had rented.

3 Q And did you have a conversation at that time with  
4 Mr. Baxter?

5 A Yes, ma'am, I asked him basically questions about where  
6 he was coming from, where he was headed to.

7 Q And according to the rental agreement that Mr. Baxter  
8 handed you, who did it indicate rented the vehicle?

9 A He did.

10 Q Mr. Baxter?

11 A Mr. Baxter, yes, ma'am.

12 Q You said you had a conversation with Mr. Baxter about  
13 where he came from?

14 A Yes.

15 Q Do you remember what he said?

16 A He said he was coming from Rock Hill. He had said  
17 something about I believe it was his grandmother was sick  
18 and had to be taken to the hospital, and I'm not sure  
19 exactly how I asked him, but I asked him if that's the,  
20 where he was coming from then, but he had mentioned that he  
21 was also coming from the Shrimp Boat. He had ate at the  
22 Shrimp Boat and was going back to Charlotte.

23 Q Did Mr. Baxter present you with a North Carolina or a  
24 South Carolina driver's license?

25 A I believe it was a South Carolina.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 Q And after you had that conversation with Mr. Baxter,  
2 what did you do?

3 A I spoke with Mr. Baxter. Then I went up to the  
4 passenger side of the vehicle to ask the passenger for his  
5 identification. And while he was retrieving that I asked  
6 him basically where he was coming from, where he was headed  
7 to.

8 Q Now, the second time you approached the vehicle to  
9 speak with Mr. Burris about his identification, did you  
10 notice those green particles?

11 A No, ma'am.

12 THE COURT REPORTER: Did you notice what?

13 SOLICITOR WEAVER: The green particles.

14 THE COURT REPORTER: I'm sorry. I didn't hear.

15 Thanks.

16 Q So, when you walked back up, you did not see the green  
17 particles that you noticed earlier that you believed to be  
18 marijuana?

19 A No, ma'am.

20 Q And did you get an identification from Mr. Burris?

21 A Yes.

22 Q And after you got that identification from Mr. Burris,  
23 did you call dispatch to run your information?

24 A Yes, sir, I, I called dispatch on the radio and had  
25 them check both of their informations, status of Mr.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 Baxter's license, and any wants or warrants on either one of  
2 them.

3 Q Now, before this, had you already called another  
4 officer to come to the scene?

5 A Yes, ma'am.

6 Q What officer did you call to come to the scene?

7 A Deputy Gibson.

8 Q Can you explain to the Court why you called the other  
9 officer to the scene?

10 A As -- like I stated, as soon as I walked up to the  
11 vehicle, I thought I saw what appeared to be marijuana on  
12 his shirt, and as soon as I asked Mr. Baxter out, as we were  
13 both walking back, I radioed for Deputy Gibson to meet me  
14 there.

15 Q Did Officer Gibson respond?

16 A Yes, ma'am.

17 Q And when Officer Gibson arrived, did you have a  
18 conversation with him?

19 A Yes.

20 Q What did you -- what do you remember telling Officer  
21 Gibson?

22 A Basically that, that -- I told him that when the driver  
23 handed me his license he was shaking pretty bad, nervous,  
24 that I had received conflicting stories, and that the  
25 passenger had what appeared to be marijuana on his shirt

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 whenever I initially went up there to talk to him.

2 Q And you said that they had conflicting stories,  
3 where -- what did Mr. Burris tell you?

4 A Mr. Burris said that he was coming from the court. To  
5 me, I took basketball court because it looked like he was  
6 wearing basketball attire, like he had just came from  
7 playing basketball.

8 Q And you stated that Mr. Baxter said they had come from  
9 his grandmother's?

10 A His grandmother's and I can't remember the exact -- if  
11 the Shrimp Boat was before or after grandmother's, but  
12 Shrimp Boat and from seeing the grandmother.

13 Q Do you remember what Mr. Baxter said as far, regarding  
14 him getting Mr. Burris?

15 A I don't, I don't understand.

16 Q Like when he picked him up or how Mr. Burris came to be  
17 in the vehicle.

18 A Mr., Mr. Baxter stated to me that, I believe I asked  
19 him who was in the vehicle and he said it was his little  
20 cousin, and I asked him if he traveled down with him, and he  
21 said no, he had, he had picked him up. I don't recall  
22 exactly where he told me he picked him up or if he even said  
23 where he picked him up. I'm not sure.

24 Q Now, after telling Officer Gibson that you saw what you  
25 believed to be pieces of marijuana on Mr. Burris' shirt, did

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 you ask him to do anything?

2 A I asked him to go up there and speak with him to see if  
3 he could see the marijuana and he walked up there and talked  
4 to Mr. Burris.

5 Q And after Officer Gibson walked up and talked with Mr.  
6 Burris, did he come back and speak with you?

7 A Yeah, he came back and spoke with me and said that the  
8 only thing he noticed was cigarette ashes because he had  
9 recently lit up a cigarette.

10 Q And had you seen Mr. Burris light up a cigarette?

11 A Yeah.

12 Q Do you remember about what, when during the course of  
13 this incident he lit up a cigarette?

14 A I believe it was at, at the very beginning of the  
15 traffic stop.

16 Q So, after Officer Gibson told you that he did not see  
17 anything that would indicate that there was pieces of  
18 marijuana on Mr. Burris' shirt, what did you do at that  
19 point?

20 A At that point I asked him if he would ask Mr. Baxter  
21 permission to search the vehicle, and, if not, if he could  
22 run his drug K-9 on the vehicle.

23 Q Do you remember if you were still checking with  
24 dispatch about both of their informations too?

25 A I was.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 Q And did you observe Officer Gibson walk the dog around  
2 the vehicle?

3 A Yes, ma'am.

4 Q And after Officer Gibson walked the dog around the  
5 vehicle, what did he tell you?

6 A He told me that his dog did not alert to the vehicle.

7 Q That the dog did not alert?

8 A Yes, ma'am.

9 Q And after he told that the dog did not alert, did he  
10 mention anything about talking with Mr. Baxter about consent  
11 to search the vehicle?

12 A After he, after he ran the dog on the vehicle, what we  
13 talked about after?

14 Q Do you remember, at any time, did Officer Gibson talk  
15 to you about trying to get consent to search from Mr.  
16 Baxter?

17 A Yeah, he, he asked him if could search the vehicle and  
18 it was something to the effect of I don't see why you need  
19 to, there's nothing in there, and he basically took that as  
20 a no.

21 Q And, so, after Officer Gibson told you that Mr. Baxter  
22 did not give consent to search and the drug dog did not  
23 alert to the vehicle, what did you do?

24 A I exited the vehicle and I believe I had my flashlight  
25 with me and I was looking in the passenger door of the

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 vehicle to see where it may of been brushed off of him in  
2 the floor or something in the vehicle.

3 Q And did you see anything when you looked in?

4 A Yes, I saw a piece of marijuana on -- I believe it was  
5 on the floor and on the side of the seat near the door.

6 Q And did you retrieve any of those pieces of marijuana?

7 A Yes, ma'am.

8 Q And place it in evidence?

9 A Yes, ma'am.

10 Q And after you retrieved those pieces of marijuana, did  
11 you say it was between the passenger seat and the passenger  
12 side door?

13 A Yes, ma'am.

14 Q After you retrieved those pieces of marijuana, what  
15 else did you find in the vehicle?

16 A I found a Mason jar underneath the passenger seat that  
17 was wrapped in like a wet or a soiled t-shirt. Then inside  
18 the Mason jar was marijuana.

19 Q Were there multiple bags of marijuana in the Mason jar?

20 A Yes, ma'am.

21 Q And did you conduct a further search of the vehicle?

22 A Yes.

23 Q Did you find any other evidence of marijuana in the  
24 vehicle?

25 A I would have to check my evidence log, but I believe I

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 found some on the driver's side floorboard, and also in like  
2 a little coin holder, which would be over near where you  
3 would turn the lights on and off on most vehicles on the  
4 dash.

5 Q Officer Vinesett, during this traffic stop, did you  
6 have a video recording?

7 A Yes, ma'am.

8 Q And did it record from the time that you pulled the  
9 vehicle over until the end of this incident?

10 A Yes, I believe I actually turned it on a little bit  
11 before I stopped the vehicle.

12 (WHEREUPON, the videotape was marked as State's Exhibit  
13 No. 1 for identification purposes only at this time.)

14 Q Officer Vinesett, I'm showing you what's been marked as  
15 State's Exhibit No. 1.

16 Do you recognize that DVD?

17 A Yes, ma'am.

18 Q What is contained on that DVD?

19 A The video of the stop that was made that day.

20 Q The video of the stop from September 11<sup>th</sup>, 2009?

21 A Yes, ma'am.

22 Q Is it a fair and accurate recording of what happened  
23 during that traffic stop?

24 A Yes, ma'am.

25 SOLICITOR WEAVER: Your Honor, at this time I'd like to

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 enter it just for the purposes of this hearing at this time  
2 and move to publish it for the Court.

3 THE COURT: I'll allow it to be published.

4 (WHEREUPON, State's Exhibit No. 1 was published for the  
5 Court at this time and the following questions were asked  
6 during the playing of the videotape.)

7 Q Officer Vinesett, had you already noticed what you  
8 believed to be marijuana on Mr. Burris' t-shirt at this  
9 point?

10 A Yes, ma'am, that's what I'm doing here, reaching up,  
11 and grabbing my mic to call for Deputy Gibson.

12 Q Officer Vinesett, do you remember what you showed  
13 Mr. Baxter just then?

14 A That was a warning book that I was writing in.

15 Q So, you were in the process of writing a warning ticket  
16 at that time?

17 A Yes, ma'am.

18 Q Officer Vinesett, when you walked back up just now to  
19 Mr. Burris, is this where you did not see the green  
20 particles?

21 A Yes, ma'am.

22 Q But you had seen them earlier?

23 A Yes.

24 Q Officer Vinesett, did you hear what you just told  
25 officer Gibson?

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 A Yes.

2 Q What did you tell Officer Gibson?

3 A I believe it was there's a ton of marijuana residue  
4 right here.

5 Q And did you see that marijuana residue before you  
6 opened the door?

7 A Yes, ma'am.

8 Q And you had carried a flashlight up with you?

9 A Yes, ma'am.

10 Q And at this time you still hadn't received word back  
11 from dispatch about Mr. Burris' warrant information?

12 A That's correct.

13 Q Officer Vinesett, that's the Mason jar you found in the  
14 vehicle?

15 A Yes, ma'am.

16 Q Where did you find that Mason jar?

17 A Underneath the passenger's seat.

18 Q And, again, Officer Vinesett, when you first, first  
19 approached the vehicle on the passenger side, you saw little  
20 green particles you believed to be marijuana at that time?

21 A Yes, ma'am.

22 Q And that's when you called for Officer Gibson?

23 A Yes, ma'am.

24 Q And even at this time we still haven't gotten Mr.  
25 Burris' warrant information back?

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 A That's correct.

2 SOLICITOR WEAVER: I have no further questions, Your  
3 Honor.

4 CROSS-EXAMINATION

5 BY MS. ANDERSON:

6 Q Officer Vinesett, was your vehicle a marked vehicle or  
7 was this just a vehicle with blue lights?

8 A Marked.

9 Q Marked vehicle.

10 And you were in some manner of uniform at the time?

11 A Yes. Normally I'm in an unmarked. I can't recall why  
12 I was in a marked unit that day, but, yes, it's a marked  
13 vehicle.

14 Q And you did activate the blue lights?

15 A Yes, ma'am.

16 Q And you were in uniform?

17 A Yes, ma'am.

18 Q And were -- did you have your weapon with you that day?

19 A Yes, ma'am.

20 Q And you indicated that the basis for the stop was  
21 speeding in a 67, 66 to 67 miles per hour in a 60 mile per  
22 hour zone?

23 A Yeah, also, like I noted be, before, I threw the blue  
24 lights on, he was weaving a good bit, but, yes, the basis of  
25 the stop was for, for speeding.

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 Q And you indicated you approached the passenger side and  
2 got the driver's license and registration?

3 A Yes, ma'am.

4 Q And Mr. Baxter, the driver, did provide you with a  
5 license and registration?

6 A Yes, ma'am.

7 Q And then you had him exit the vehicle?

8 A Yes, ma'am.

9 Q And you testified, on direct, that you believed you saw  
10 what looked to be like marijuana on Mr. Burris' clothing?

11 A Correct.

12 Q Okay. And you did not have Mr. Burris exit the vehicle  
13 at this time?

14 A No, ma'am.

15 Q And there's no comments on the tape we just heard about  
16 what is that on your shirt or anything on your shirt?

17 A No, ma'am.

18 Q And you didn't, at that point, search the vehicle?

19 A No, ma'am.

20 Q Didn't, at that point, recover any of the items,  
21 residue that you said you saw on Mr. Burris' shirt?

22 A No, ma'am.

23 Q And just Mr. Baxter exited the vehicle at that point?

24 A Yes.

25 Q And you indicated you had him go out to the rear of the

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 vehicle in front of your vehicle and he provided you the  
2 rental agreement?

3 A Yes.

4 Q You indicated, at that point, you had a conversation  
5 with him about where he was coming from, and you indicated,  
6 I believe, that you were, from what we see on the video, on  
7 the video when you were standing with Mr. Baxter in front of  
8 the vehicle and you're writing, you're writing a warning  
9 ticket?

10 A Yes, ma'am.

11 Q And I believe, by the timing on the tape, that was  
12 approximately about three minutes, somewhere around the  
13 three minute mark of when, from the time the vehicle stopped  
14 to that point in time?

15 A From the time the vehicle stopped until I got my  
16 warning book?

17 Q Yes.

18 A I didn't think it appeared to be that long, but --.

19 Q Less than three minutes?

20 A Yes.

21 Q Okay. And you had not run the driver's license and  
22 registration at this point?

23 A No, ma'am.

24 Q But you had determined that you were just going to  
25 write a warning ticket for the speeding?

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 A Yes.

2 Q And you did not actually hand that ticket to Mr. Baxter  
3 at that time?

4 A No, ma'am.

5 Q And you -- then you indicated you had called Officer  
6 Gibson already when you were walking to the rear of the  
7 vehicle?

8 A Yes, ma'am.

9 Q And then you then got into your vehicle and asked  
10 dispatch to check the driver's license at that point?

11 A Yes, ma'am.

12 Q And in your conversation on the tape with Officer  
13 Gibson, it indicates you indicate to him I could of sworn I  
14 saw little green something on the shirt, and you asked  
15 Officer Gibson to go check?

16 A Yes.

17 Q And Officer Gibson does, in fact, go to the passenger  
18 window?

19 A Yes.

20 Q The passenger window is rolled down at this point in  
21 time?

22 A Yes.

23 Q And just cause -- obviously on the tape it is daylight  
24 at this point?

25 A Yes, ma'am.

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 Q You did not have a flashlight when you first approached  
2 the vehicle?

3 A No, ma'am.

4 Q And you were not using any of the headlights on your  
5 police vehicle to illuminate the area?

6 A No.

7 Q Had no problems seeing though when you were up at  
8 the---

9 A No, ma'am.

10 Q And Officer Gibson returns to you and tells you he  
11 doesn't see anything green?

12 A Yes.

13 Q Indicates that there, Mr. Burris is smoking a  
14 cigarette, it looks like ashes to him?

15 A Yes.

16 Q And you also indicate that Mr. Burris had lit the  
17 cigarette when you were up at the vehicle?

18 A Yes.

19 Q And Officer Gibson tells you I can't say it's  
20 marijuana?

21 A Yes, ma'am.

22 Q And at that point you direct Officer Gibson to go back  
23 and attempt to get consent to search?

24 A Yes.

25 Q And you are calling in the driver's license information

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 to dispatch at that point?

2 A Yes, ma'am.

3 Q And Mr. Burris, excuse me, Mr. Baxter is still out of  
4 the vehicle?

5 A Yes, ma'am.

6 Q And you obviously still have his driver's license?

7 A Yes, ma'am.

8 Q And he's obviously -- he's not free to leave at this  
9 point?

10 A That's correct.

11 Q And you've not given him the warning tickets at this  
12 point?

13 A Yes, ma'am.

14 Q And Officer Gibson or there's a conversation again  
15 about bringing the, the dog, the drug sniffing dog out as  
16 well?

17 A Yes, ma'am, which he has.

18 Q Was the dog, dog with Officer Gibson or did he---

19 A Yes, ma'am.

20 Q Okay. And Officer Gibson, we see on the tape, gets Mr.  
21 Burris to step out of the vehicle, correct?

22 A Yes, ma'am.

23 Q And at that point no where on the tape or no where does  
24 Officer Gibson indicate to you that he sees any particles of  
25 marijuana at this point?

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 A That's correct.

2 Q No comments on the tape and nothing relayed to Officer  
3 Gibson of something just fell off of his shirt?

4 A Yes, ma'am.

5 Q Or Officer Gibson indicating, when he opens the door  
6 when Mr. Burris is exiting, indicates he sees any marijuana?

7 A That's correct.

8 Q And it appears on the tape that Officer Gibson does a  
9 pat down of Mr. Burris --

10 A Yes, ma'am.

11 Q -- it looks like on there and nothing is found in that  
12 pat down?

13 A No, ma'am.

14 Q And neither -- and Mr. Burris does not consent to any  
15 further search, correct?

16 A I'm not sure if he was asked.

17 Q Okay. Did -- Mr. Baxter never consented to any search  
18 of the vehicle, correct?

19 A That's correct.

20 Q Or any search of his person?

21 A I'm not sure.

22 Q You're not certain.

23 Okay. And then at that point we see that the drug dog  
24 is brought and basically does, begins at the passenger side,  
25 goes around to the other side, returns back around, and is

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 actually stood up in the passenger window?

2 A Uh-huh. (Affirmative).

3 Q And that passenger window is still rolled down?

4 A Yes.

5 Q And Officer Gibson indicates that the drug dog does not  
6 hit at this point?

7 A Does not alert.

8 Q And you have received, at this point, the information  
9 from dispatch that Mr. Baxter has no pending, no active  
10 warrants?

11 A Yes, ma'am.

12 Q And as well as his driver license is clear?

13 A Yes, ma'am.

14 Q And I think it was a North Carolina driver's license as  
15 it indicated on the tape?

16 A Yes, ma'am.

17 Q And you indicated, at that point in time, that you were  
18 or that I believe Officer Gibson, you're going to get in and  
19 look out, look in there real good to see if you can find any  
20 shake?

21 A So, your intention, with exiting the vehicle, was to go  
22 back and look in the vehicle?

23 A While I was checking Mr. Burris' information.

24 Q And you exited the vehicle at that time rather than  
25 waiting, correct?

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

- 1 A Yes, ma'am.
- 2 Q So, you exited before hearing back from dispatch?
- 3 A That's correct.
- 4 Q And when you exit the vehicle, at this point, you bring
- 5 a flashlight with you?
- 6 A Correct.
- 7 Q And you do not have a flashlight previously?
- 8 A I didn't have it in my hand. Most of the time I carry
- 9 it on my jacket, but I'm not sure where it was.
- 10 Q And Officer Gibson, again, indicates to you on the
- 11 tape, when you get out, that all I could see were ashes?
- 12 A Yes, ma'am.
- 13 Q And at that point you are using a flashlight to look
- 14 down into the vehicle?
- 15 A Yes, sir.
- 16 Q And that's when you testified that you indicated you
- 17 can see a small amount of marijuana?
- 18 A Yes.
- 19 Q And is it that point that you then open the car door
- 20 and you began searching?
- 21 A Yes, ma'am.
- 22 Q And the only reason the vehicle was stopped was the
- 23 traffic violations, correct?
- 24 A Yes, sir.
- 25 Q No prior information on Mr., the vehicle being involved

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 in a criminal activity?

2 A No, ma'am.

3 Q No other reports or no other suspicions with Mr. Baxter  
4 and Mr. Burris for anything?

5 A No, ma'am.

6 Q And at the point in time that you get out of your  
7 vehicle and return to the vehicle with a flashlight I  
8 believe is approximately over 15 minutes since the vehicle  
9 stopped?

10 A I would, I would have to look. It didn't seem that  
11 long, but I would have to look at the times.

12 Q And at the point in time that you returned you've not  
13 issued the, you've not handed him the warning ticket, have  
14 you?

15 A No, ma'am.

16 SOLICITOR WEAVER: Beg the Court's indulgence. Beg the  
17 Court's indulgence.

18 (Pause.)

19 Q The reason you were -- Mr. Burris' identification card  
20 was just a warrant check?

21 A Yes, ma'am.

22 Q Is that correct?

23 You had no other sort of citation you were going to  
24 issue to him prior to that?

25 A No, ma'am.

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 SOLICITOR WEAVER: Nothing further, Your Honor.

2 MR. REEVES: Very briefly.

3 CROSS-EXAMINATION

4 BY MR. REEVES:

5 Q Deputy, do you routinely turn on your video camera in  
6 your car for routine traffic stops?

7 A Yes, sir.

8 Q Do you routinely ask for identification from passengers  
9 in the car for speeding?

10 A Yes, ma'am.

11 Q And why is that?

12 A Question one, turn on my vehicle, I mean my video  
13 before hand to evidence basically to either---

14 Q For what---

15 A ---either seeing the vehicle following too close or  
16 pacing the vehicle as it's speeding, as it's weaving, and  
17 second question, to check the passenger, yes, I normally,  
18 normally check if they appear to be an adult or have some  
19 type of ID or something. I normally check warrants on them.

20 Q And the only reason you stopped this vehicle was  
21 speeding?

22 A Yes, sir.

23 Q And you said something about weaving, but you did not  
24 suspect drunk driving or anything like that?

25 A Not once I walked up to the vehicle and spoke with

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 Mr. Baxter.

2 Q Okay. And I think I wrote this down correctly, but I  
3 believe about 1605 on the, on the video you indicated to  
4 your colleague that you saw a ton of marijuana residue or  
5 did I write that down wrong?

6 A You said 1605.

7 Q 1605 approximately.

8 That's 16 minutes into the video when you---

9 A Oh, okay, 16 minutes into the video. Yes, sir.

10 A Okay. What thought I heard was that you saw a ton of  
11 marijuana residue.

12 A Yes, sir.

13 Q You used that phrase, a ton of marijuana residue?

14 A Yes, sir.

15 Q Indicating a significant amount?

16 A That I seen a large amount of -- what I, what I said  
17 was shake.

18 Q Okay. And---

19 A A lot of shake, a lot of shake is a little bit of  
20 marijuana.

21 Q Okay. And a ton of shake is, is, would be---

22 A 2000 pounds.

23 Q Okay. And what did you see?

24 A Some particles of marijuana.

25 Q And you saw it in the passenger side floorboard next to

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 the door?

2 A Right on the, the door crack, yes, sir.

3 Q Okay. And, again, I just want to get the terminology,  
4 but I'm learning this, a ton of shake, is that a significant  
5 amount or a small amount?

6 A To me, if I walk up to the vehicle and see marijuana  
7 residue, that's, that's a, that's a lot.

8 Q Okay.

9 A I'm not gonna see a couple of pounds shook up and  
10 spread all over, all around the vehicle, but---

11 Q Now, when you went back to the vehicle with your  
12 flashlight this time at the ready, where did you see shake  
13 in the car?

14 A On the passenger side door and I believe there was some  
15 in the floorboard. I would have to look at the evidence  
16 notes to verify that.

17 Q But you, you actually eliminated the floorboard  
18 passenger area next to the door?

19 A Yes, sir.

20 Q And that's where you saw the residue --

21 A Yes, sir.

22 Q -- the shake.

23 Okay. Okay. And the, the green particles I think you  
24 described it that you saw on Mr. Burris' shirt when you  
25 first walked up, you cannot conclusively say that was

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 marijuana at that point?

2 A No, sir.

3 Q Okay. And your colleague came and you sent him up to  
4 look, to look and he did not see green particles?

5 A Yes.

6 Q He saw what appeared to be cigarette ash?

7 A Yes, sir.

8 Q Okay. And you did observe my client lighting a  
9 cigarette shortly after you stopped him?

10 A That's correct.

11 Q Okay. And it was windy that day?

12 A Yes, sir.

13 Q Okay. And the windows were down?

14 A Yes, sir.

15 Q So, wind was blowing through the cockpit of the car?

16 A I'm sure it was.

17 Q Okay, sir. And the dog, the drug sniffing dog, he  
18 actually sniffed around that passenger door on at least two  
19 occasions.

20 Did you see that as well?

21 A Yes, sir.

22 Q And the dog did not alert?

23 A That's correct.

24 Q Okay. Thank you, sir.

25 Thank you.

Lonnie Vinesett - Redirect examination  
by Solicitor Weaver

1 MS. ANDERSON: No questions, Your Honor.

2 SOLICITOR WEAVER: Just a few, Your Honor, on redirect.

3 REDIRECT EXAMINATION

4 BY SOLICITOR WEAVER:

5 Q Mr. Reeves asked you could you conclusively say it was  
6 marijuana on Mr. Burris' shirt.

7 A I can't, I can't. Well, I don't, I don't test it.  
8 I've never been able -- I've never actually tested  
9 marijuana, but, to me, it was marijuana on his shirt.

10 Q So, in your training and experience, you believed it to  
11 be marijuana?

12 A Yes, ma'am.

13 Q And after seeing what appeared to you to be marijuana,  
14 you called Officer Gibson to the scene?

15 A Yes, ma'am.

16 Q Can you explain to the Court why you did that?

17 A I was, I was only one officer that day. So, I, I  
18 was -- once I seen that marijuana residue on his shirt, I  
19 had all intentions of searching the vehicle. We're not  
20 allowed to search alone. That's why I radioed for him to  
21 back me up. That's it.

22 Q And can you explain to the Court, once Officer Gibson  
23 arrived, why you didn't search the vehicle at that time?

24 A I -- basically to get his opinion to see if he can see  
25 it. To get the dog just basically to, to verify what I,

Lonnie Vinesett - Recross examination  
by Mr. Reeves

1 what I had saw.

2 SOLICITOR WEAVER: Nothing further, Your Honor.

3 MS. ANDERSON: Nothing further, Your Honor.

4 MR. REEVES: Just a couple, Your Honor.

5 RECROSS EXAMINATION

6 BY MR. REEVES:

7 Q Officer, you said that did, before you radioed your  
8 colleague you intended to search that vehicle?

9 A Because I saw what I believes to be marijuana on Mr.  
10 Burris' shirt.

11 Q And after your colleague arrived he said he did not see  
12 the green particles?

13 A That's correct.

14 Q And the drug sniffing dog did not alert on that car?

15 A That's correct.

16 Q Thank you, sir.

17 THE COURT: You can step down. Thank you.

18 Call your next witness.

19 SOLICITOR WEAVER: That's -- no further witnesses, Your  
20 Honor.

21 THE COURT: No witnesses for the defense?

22 MS. ANDERSON: No, Your Honor.

23 MR. REEVES: No, thank you.

24 THE COURT: Ms. Anderson.

25 MS. ANDERSON: May it please the Court, Your Honor.

1        My argument in this case is, is an argument for a  
2 motion to suppress essentially based on, sort of taking it  
3 in chronology of this traffic stop that was extended  
4 unlawfully. Pointing in particular to the case of State  
5 versus Tindall, which is one in the line of the case law  
6 going back to the Williams case regarding extensions in  
7 traffic stops.

8        A lot of these cases, Your Honor, deal with traffic  
9 stops sort of becoming a consensual encounter. This is a  
10 situation where the testimony has been clear it was not  
11 based on a consent search. Therefore, Your Honor, under the  
12 State versus Ricardo case, I also have a copy of, that talks  
13 about that lengthening a detention beyond the initial stop  
14 is permissible in two circumstances. First, if there's an  
15 objectively reasonable and articulable suspicion illegal  
16 activity has occurred or is occurring or if it becomes a  
17 consensual encounter.

18        Your Honor, given the testimony, I think we're dealing  
19 with a situation where the first prong of the Ricardo case  
20 with whether there's an objective or reasonably articulable  
21 suspicion that criminal activity is occurring. Even in the  
22 Tindall case, which actually came down in August of 2010,  
23 that uses the language of a reasonable and articulable  
24 suspicion of a serious crime at the time.

25        Your Honor, to highlight some of the testimony, Your

1 Honor's seen the video as well, this is a traffic stop for  
2 speeding. There was no other suspicion of this vehicle or  
3 at the time of the stop the individuals in the vehicle being  
4 suspected of any other criminal activity. The officer gets  
5 Mr. Baxter out of the vehicle and within a matter of  
6 minutes, my calculation was somewhere around three minutes,  
7 though it does seem shorter than that, was in the process of  
8 issuing a warning ticket. This is prior to him running the  
9 driver's license, but at that point, within a matter of one,  
10 two, or three minutes, the officers determined that the  
11 traffic stop would be resolved with a warning ticket for  
12 speeding in this case.

13 Your Honor, that warning ticket's never issued, but  
14 that is the officer's decision and you see on the tape he's  
15 in the process of writing that. The officer does have the  
16 driver's license and registration. Mr. Baxter has been  
17 removed from the vehicle and the officer's testimony on  
18 direct was that Mr. Baxter was not free to leave at this  
19 time and would certainly argue, under the line of case law,  
20 at this point there is a seizure with a traffic stop.

21 Your Honor, then from the situation whereby that the  
22 officer has testified on direct several times about seeing  
23 what he believed to be green particles on the passenger  
24 shirt. However, Your Honor, the officer does not have Mr.  
25 Burris step from the vehicle at that time, does not make any

1 comment on the video about seeing what it is, does not  
2 search the vehicle at that time. And, instead, when the  
3 second officers arrives, asked that officer to see what he  
4 thinks, which, my opinion, in my opinion, Your Honor, would  
5 indicate some sort of uncertainty or wanting another opinion  
6 as to whether or not that was actually what he saw.

7 There's been no testimony that any odor of marijuana.  
8 No testimony of seeing any other marijuana or any sort of  
9 indicia of any sort of implements, use in the smoking of the  
10 marijuana, and there's no testimony regarding any other  
11 suspicion of marijuana.

12 Your Honor, it's clear from the tape, and then as well  
13 as the officer's testimony, that Officer Gibson, who comes  
14 up to see it, indicates that it does not look like green  
15 particles to him, it does not look like marijuana to him,  
16 and it looks like ashes. At that point we have this  
17 officer, a second officer, who's sent there specifically to  
18 look at that, saying I don't believe it's marijuana. As  
19 Your Honor sees, it is daylight. There's no need for  
20 illumination. This officer apparently was able to clearly  
21 see that.

22 At that point, Your Honor, I think the reasonableness  
23 of officer Vinesett's testimony is saying he believed it  
24 initially was marijuana is somewhat in question when the  
25 officer looks at it and says no.

1       That's further extended, Your Honor, with the fact that  
2 the drug dog comes with, is, is taken at least twice around  
3 the vehicle, at one point standing on his hind legs looking  
4 in the passenger side window, which is the area which  
5 officer Vinesett indicated he may have seen green particles  
6 with the window rolled down. That dog, drug dog does not  
7 alert. At this point, we have Officer Gibson and the drug  
8 dog saying they do not detect marijuana in this vehicle, and  
9 at this point the vehicle is not been searched based on  
10 officer Vinesett's initial claim of thinking he saw  
11 marijuana.

12       Your Honor, Mr. Baxter's license is clear. He has no  
13 warrants. I understand that officer Vinesett says he's  
14 still waiting on the dispatch to check Mr. Burris for  
15 warrants, but he exits the vehicle where presumably he would  
16 be waiting in the vehicle to hear from dispatch in order to  
17 go back and essentially search the vehicle.

18       At that point, Your Honor, by my calculations, the  
19 traffic stop for speeding, which is the warning ticket, is  
20 already physically been written out, is over 15 minutes  
21 long. No one is given any consent to search. There's been  
22 no testimony about any odor of marijuana, any other  
23 indication, or any other indication of any other criminal  
24 activity that the officers could reasonably and articulably  
25 suspect at this point in time.

1       At that point, Your Honor, as you heard on testimony,  
2 you have Officer Vinesett exiting with a flashlight, which  
3 he didn't originally use, and it's in the daylight,  
4 essentially looking down into the vehicle. I don't think  
5 this is a circumstance where it's couched under a plain view  
6 exception because I believe testimony was not seeing it  
7 without looking down in the side of the vehicle.

8       Again, Your Honor, we have the prior testimony or prior  
9 information from Officer Gibson on the tape indicating all  
10 he sees is ashes. So, there's some sort of concern  
11 certainly with what Officer Vinesett sees at this point as  
12 ashes versus marijuana particles. Instead, at this point,  
13 this traffic stop for speeding for six to seven miles over  
14 the speed limit is over 15 minutes long. It would be my  
15 position that use of a flashlight in returning to the  
16 vehicle another time and looking down into an inner sort of  
17 area of the vehicle that is not immediately visible when  
18 someone is just looking in the passenger window for a  
19 routine traffic stop would constitute a search at that  
20 point.

21       Your Honor, in the absence, this is a situation where  
22 certainly there is -- no warrant has been obtained and there  
23 has to be some sort of exception, search warrant exception  
24 at this point, and, Your Honor, my position is there  
25 certainly is probable cause at this point given the

1 information that Officer Vinesett has, at this point by both  
2 Officer Gibson's observation and the observations, I guess  
3 could you say, of the drug dog in this situation.

4 I'm kind of -- my argument is in both. It's one of the  
5 Tindall case to being an unlawful extension of the traffic  
6 stop, and under that unlawful extension, that any items  
7 procured even during a valid search warrant exception would  
8 be suppressed under the fruit of a poisonous tree. Even if  
9 Your Honor were to find that it is not an unlawful extension  
10 of the traffic stop, then the argument would be, still be  
11 that the marijuana in this case should be suppressed given  
12 that the search in this case was not supported by probable  
13 cause.

14 So, on both grounds, I would move to suppress, suppress  
15 all the marijuana in this case.

16 THE COURT: Mr. Reeves.

17 MR. REEVES: Your Honor, I can't increase upon that. I  
18 follow along with that argument.

19 SOLICITOR WEAVER: Your Honor, I do think that the  
20 search of the vehicle was based on probable cause. I think  
21 the officer could have searched the vehicle once he saw what  
22 he believed to be green particles to be marijuana on Mr.  
23 Burris' shirt when he first walks up to the vehicle.

24 Your Honor, he explained their routine is that they do  
25 not search a vehicle without another officer being present.

1 He then immediately radioed Officer Gibson to come to the  
2 scene. He had probable cause at that time to search the  
3 vehicle, but he still wanted to verify what he saw was to  
4 confirm that what he saw was marijuana. He asked the other  
5 officer to, to confirm that.

6 Officer Gibson does not see what he believes to be  
7 marijuana. But Officer Vinesett testified that, from the  
8 beginning, he saw what he believed to be marijuana. He then  
9 tries to get consent and asks for the drug dog just to  
10 verify what he has seen. The dog does not indicate. He  
11 then walks back up to, to check again and that's when he  
12 sees marijuana.

13 The total traffic stop was only 13 minutes. The walk  
14 of the drug dog, Officer Vinesett's still waiting on  
15 information to come back regarding Mr. Baxter's license and  
16 still dispatch has not returned about Mr. Burris'  
17 information, warrant information. About the time that  
18 Officer Vinesett goes back to the vehicle and sees the  
19 marijuana residue. So, Your Honor, I would say that the  
20 officer has not extended the, the traffic stop beyond its  
21 purpose.

22 There was reason for a further detention because he saw  
23 what he believed to be marijuana, which would allow him to  
24 extend that traffic stop to get, to try to get consent or  
25 to, to walk the drug dog, but, Your Honor, he could of

1 searched the vehicle when he first saw that, and the fact  
2 that he just wanted to confirm what he saw, Your Honor, he  
3 could extend the traffic stop. But it was extended very  
4 long. It's a 13 minute, 13 minutes between about when the  
5 vehicle was stopped, he first saw the marijuana, and by the  
6 time he saw, he walked up again and saw the marijuana  
7 residue.

8 THE COURT: All right. Do you have a case, a case  
9 that's even similar to this let alone on point?

10 SOLICITOR WEAVER: Yes, Your Honor. I think this case  
11 is similar.

12 THE COURT: All right. This is State versus Timothy  
13 Jones, 2005 case. What I'm gonna do is I'm gonna first give  
14 this back so I don't lose it. That is material involving  
15 the check. I'm going to give this back to Mr. Reeves.

16 MR. REEVES: Thank you, Your Honor.

17 THE COURT: And I think I need to read these cases.  
18 This is kind of an unusual set of facts. It doesn't fall  
19 into any of the theories that I thought it was going to fall  
20 into. So, I've got to wrestle with several overlapping  
21 theories I guess. So, so, I'm gonna take it under  
22 advisement and have a ruling when we reconvene in the  
23 morning.

24 Anything else from the State?

25 SOLICITOR WEAVER: Nothing from the State, Your Honor.

1 MS. ANDERSON: Nothing from Mr. Baxter, Your Honor.

2 MR. REEVES: No, Your Honor.

3 THE COURT: All right. we'll be back at 9:30. I do  
4 have that conference, but hopefully it will be over shortly.

5 SOLICITOR WEAVER: Your Honor, are they allowed to  
6 remain out on bond?

7 THE COURT: For these charges, I'm gonna require them  
8 to remain incarcerated, or not remain incarcerated, but be  
9 incarcerated.

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11 (whereupon, Court was in recess for the evening.)

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1 Tuesday, March 1<sup>st</sup>, 2011

2  
3 THE COURT: Anything else this morning before we get  
4 started on my ruling on the seizure, search and seizure  
5 issue?

6 SOLICITOR WEAVER: Nothing from the State, Your Honor.

7 MS. ANDERSON: No, Your Honor.

8 MR. REEVES: Nothing, Your Honor.

9 THE COURT: Well, I'm, I'm ready to rule. I spent an  
10 awful lot of time. This has a peculiar set of facts. The  
11 cases that were handed up all deal with detention and the  
12 length of detention and consents after the initial stop had  
13 concluded.

14 Quite frankly I don't believe that's the issue and Ms.  
15 weaver kind of hit on it at the end of everything else when  
16 she said, she said, that is, Officer Vinesett, would had a  
17 right, once he saw the, what he considered to be marijuana  
18 on the shirt of the passenger, Mr. Burris. They're a lot of  
19 issues that ran through my mind on this case including  
20 whether the dog not hitting, Officer Gibson not confirming  
21 that there was, whether or not that, in effect, rendered a  
22 reasonable suspicion or probable cause, ineffective that is,  
23 to have a reasonable suspicion, and then it's not confirmed  
24 by two other sources, does that mean your reasonable  
25 suspicion or probable cause disappears.

1 I don't think it does. So, I'm gonna deny the motion  
2 to suppress based solely on the automobile exception. I  
3 find that, based on the initial observing, observance of  
4 what Officer Vinesett believed to be marijuana on Mr.  
5 Burris, the passenger, shirt that he had probable cause.

6 Our Courts have said, articulating precisely what that  
7 term means is not possible, and then they go on to define it  
8 after saying they can't. But it does say probable cause is  
9 common sense, non-technical conception that deals with  
10 factual and practical considerations of everyday life on  
11 which reasonable and prudent men, not legal technician, act.  
12 Probable cause to search exists where none of the facts and  
13 circumstances are sufficient to warrant a man of reasonable  
14 prudence. This case used the word men, but in some case  
15 they actually use the word officer, which, in my mind, gives  
16 an officer even a little greater -- the standard is a  
17 little, I hate to say more relaxed, but I think the standard  
18 is a little bit with probable cause because I think officer  
19 cannot only use the reasonable man sort of standard, but the  
20 reasonable officer standard is sufficient, sufficient to  
21 warrant a man or an officer of reasonable prudence to  
22 believe that the contraband or evidence of the crime. It  
23 does not use the word serious crimes.

24 Some of the cases that I read and some of the Fourth  
25 Circuit, I believe there was a Ninth Circuit case, they all

1 talked about serious crimes. This does not say serious  
2 crime, and I'm reading from -- I got so many papers I can't  
3 find it now. State versus Brown, and to continue, principle  
4 components -- I'm sorry. Sufficient to warrant a man of  
5 reasonable prudence and belief that contraband or evidence  
6 of a crime would be found in a principal law. Principal  
7 components or a determination of probable cause to whether  
8 the events which occurred leading up to the search viewed  
9 from the standard of, here it is, an objectively reasonable  
10 police officer amount to probable cause. The scope of  
11 warrantless search of an automobile is defined by the  
12 operative search and places in which there's probable cause  
13 to believe that the object may be found.

14 So, I deny the motion to suppress. I find that the  
15 automobile exception applies.

16 All right. You ready for the jury?

17 SOLICITOR WEAVER: Yes, Your Honor.

18 MS. ANDERSON: Your Honor, as to the issue with the  
19 motion regarding the currency, I know Your Honor reviewed  
20 the paperwork.

21 THE COURT: Oh, what's the State's position on that?

22 He had, like three days before I believe, he cashed a  
23 check.

24 SOLICITOR WEAVER: We won't -- we don't intend to  
25 introduce that in evidence, Your Honor.

1 and you can consider the opportunity a witness had to  
2 actually know the things to which they testified. All of  
3 these things you consider, determine the true facts, apply  
4 the law, and you'll be able to return a verdict that speaks  
5 the truth.

6 Madam Forelady, you will be the liaison between the  
7 jury and myself, preside over the jury's deliberation, and  
8 ultimately sign the jury's unanimous verdict.

9 As I told you yesterday, you don't need to take notes.  
10 If you can't see or you hear, let me know. Cup your ear,  
11 voice raising gesture, nudging gesture. It's not fair to  
12 assign this task to you, that is to resolve this case, and  
13 then not let you see and hear those things which are  
14 important for you to see and hear.

15 We take breaks about every hour and a half. I find  
16 that is a good time just for doing this for 20 years. But  
17 if any of you need a break at any time, just simply raise  
18 your hand, and no questions asked, we'll take a break. We  
19 do want to move the case along, but we're not in such a  
20 hurry that we would not want to take a break if anyone needs  
21 to take a break. So, if you need a break, raise your right  
22 hand, we'll take a break, and I extend that to counsel and  
23 Mr. Baxter and Mr. Burris.

24 All right. Counsel.

25 SOLICITOR WEAVER: Ladies and gentlemen, this incident

1 occurred on September 11<sup>th</sup> of 2009. Officer with York  
2 County, Officer Vinesett, was on patrol on I-77 northbound  
3 in the area of Fort Mill. He came upon a vehicle. He paced  
4 it. The speed limit in that, in that zone was 60 miles per  
5 hour. He paced this vehicle going about 65, 66 miles an  
6 hour, and contacted a traffic stop.

7 When he pulled the vehicle over, he walked up to the  
8 vehicle and on the passenger side he noticed that  
9 Mr. Baxter, over here in the red, was the driver, and Mr.  
10 Burris, over here in the yellow, was the passenger. When he  
11 walked up on the passenger side, he noticed some green  
12 particles on Mr. Burris' t-shirt that led him to believe  
13 this could be the illegal substance marijuana.

14 You'll see the officer then called in for back up. He  
15 called Officer, Officer Gibson to the scene. So, while he's  
16 waiting for Officer Gibson to arrive to the scene with him,  
17 he asked Mr. Baxter, the driver, to step out of the vehicle  
18 and talk with him. He asked him some questions about where  
19 he's coming from, and Mr. Baxter answered those questions,  
20 and then Officer Gibson arrives.

21 Well then Officer Vinesett goes and talks with the  
22 passenger and leaves Mr. Baxter at the patrol car, goes and  
23 talks to Mr. Baxter at the vehicle, asked him where they  
24 were coming from, and Officer Vinesett gets a little bit of  
25 a different story about where they are coming from.

1        well then officer vinesett asks officer Gibson, tells  
2 him he's seen these green particles that he believes to be  
3 marijuana on Mr. Burris' t-shirt and asks him to go see if  
4 he sees the same thing. Officer Gibson walks up to the  
5 vehicle. He can't say that it was marijuana. He just sees  
6 ashes.

7        well, then officer vinesett asks officer Gibson to walk  
8 a K-9 dog. These dogs are trained to alert for narcotic  
9 substances. Officer Gibson walks the drug dog around the  
10 car, the dog does not alert. well then officer vinesett  
11 goes back up to the vehicle to see if he still sees those  
12 green particles and he takes a flashlight with him, and when  
13 he looks in that vehicle, he sees the pieces of marijuana.  
14 He then opens the door, grabs those pieces of marijuana, and  
15 bags those.

16        He then conducts a further search of the vehicle, and  
17 under the passenger seat he finds a Mason jar, and this  
18 Mason jar contains over an ounce of marijuana in several  
19 different baggies, and there's also loose marijuana in this  
20 Mason jar. They conduct a further search of the vehicle.  
21 There's pieces of marijuana on the driver's side floorboard.  
22 There's even a plastic bag in the tin foil on the driver  
23 side coin area.

24        So, there's marijuana found throughout this vehicle.  
25 Large portion of that being under the passenger seat.

1 You're also gonna hear testimony from Officer Vinesett about  
2 seeing Mr. Burris, the passenger, lean over while he's  
3 pulling over the vehicle and doing some movement.

4 So, we got Mr. Burris, who has pieces of marijuana on  
5 his t-shirt as viewed by the officer. We've got the leaning  
6 over in his seat consistent with putting that Mason jar  
7 underneath of the seat. We've also got other marijuana in  
8 the car on the driver's side floorboard and the driver's  
9 side coin area, and also you're gonna hear that this is a  
10 rental car rented by Mr. Baxter, and that this is what he's  
11 using at the time.

12 Ladies and gentlemen, both these defendants have been  
13 charged with possession with intent to distribute. And  
14 after you hear from the officers and the chemist, we're  
15 gonna show you that both of these defendants possessed  
16 marijuana, and that both of these defendants possessed  
17 marijuana with intent to distribute.

18 Thank you.

19 MS. ANDERSON: May it please the Court.

20 Ladies and gentlemen, I can't know what you're thinking  
21 this morning, but I can probably guess that you're not  
22 expecting an attorney to stand up in front of you and start  
23 talking to you about pole vaulting. It's probably something  
24 you're going why would she be talking about pole vaulting.  
25 It may sound silly to you by talking about it because I

1 think it really illustrates a legal concept that you're  
2 going to apply during this trial and that the judge is going  
3 to talk to you later about. I think the pole vaulting  
4 illustration just gives you sort of a practical way to think  
5 about the burden of proof in this case that is on the State.

6 In every criminal case, Mr. -- the State has the burden  
7 of proof. Mr. Baxter, my client, is presumed innocent. He  
8 is presumed innocent right now. He is presumed innocent  
9 through the entire trial. He is presumed innocent as you  
10 walk back into the jury room to begin your deliberations.  
11 He's never required to prove his innocence. The burden is  
12 always on the State to prove their case beyond a reasonable  
13 doubt, and that's where pole vaulting comes into play.

14 Beyond a reasonable doubt is a very high standard, a  
15 very high burden of proof. And if you think about it if  
16 you've seen maybe in the Olympics, maybe on television, or  
17 just know kind of generally what it's about, whether you see  
18 somebody doing the pole vaulting, and I don't know the  
19 specifics. What I know is what you see is you see that very  
20 high bar, and you see that runner, the athlete, running  
21 toward it with a pole, and planting the pole, and flying up  
22 in the air and trying to clear the bar, and what little I do  
23 know about the rules is that, in order for it to count, the  
24 person has to clear the bar completely.

25 Doesn't matter how close they get. If they're within a

1 hair of that bar, if they don't go completely over it  
2 cleanly, it doesn't count. If they get over it, but some  
3 part of their body knocks it over with them and the pole  
4 comes down, it doesn't count.

5 In this case, the State is that runner. The State has  
6 to clear that bar completely, that very very high bar.  
7 They're required to bring the evidence, the testimony, the  
8 exhibits, whatever tools they need to try to clear that bar,  
9 and it's your duty, as jurors, when they don't clear that  
10 bar, to return a verdict of not guilty.

11 Ladies and gentlemen, the prosecutor just stood up and  
12 talked to you a little bit about the facts in this case.  
13 This is just an opening statement. I'm not gonna go a lot  
14 into the detail of the facts, but what I would have you  
15 think about is, as you hear this case, is what evidence  
16 really points to Troy Baxter knowing this marijuana was in  
17 his car.

18 No question there was some marijuana found in this  
19 vehicle under the passenger seat, under the seat where Mr.  
20 Burris was sitting. The State is required to prove that  
21 Mr. Baxter knew about this marijuana, was able to exercise  
22 control over it, was aware even that it was there. But  
23 think about even what you just heard the State, from the  
24 prosecutor, about what she thinks the evidence will show.

25 A trained narcotics dog didn't know there was marijuana

1 there. Another officer didn't see marijuana when he went to  
2 the car, and based on those trained law enforcement,  
3 narcotic dog and a trained law enforcement officer, they  
4 didn't know it was there. The State wants you to believe  
5 that Troy Baxter knew it was there. That something under  
6 the seat where Mr. Burris was sitting, they want you to  
7 attribute that to Mr. Baxter.

8 Ladies and gentlemen, that's not enough to clear the  
9 bar. The State is required to prove the case against  
10 Mr. Baxter, each and every element of the case beyond a  
11 reasonable doubt. Reasonable doubt has been described as  
12 the kind of doubt that would cause a person to hesitate to  
13 act. You can think about it maybe as the kind of doubt that  
14 would cause a person to hesitate to step forward, and,  
15 ladies and gentlemen, I'm confident, as you listen carefully  
16 to the evidence in this case, you'll see that the State  
17 hasn't cleared the bar to show that Troy Baxter possessed  
18 marijuana, that Troy Baxter was aware of what Mr. Burris had  
19 in the car.

20 The State is required to prove the case as to Troy  
21 Baxter, and when the state doesn't prove the case as to Troy  
22 Baxter, it's your duty, as jurors, to return a verdict of  
23 not guilty.

24 Your role in this system is the finders of the fact.  
25 Your role in this system is also to return a just verdict.

1 Justice means what's right in the case, what's fair, what is  
2 the right resolution. In this case, ladies and gentlemen,  
3 the resolution, the right resolution, the just verdict is a  
4 verdict of not guilty as to Troy Baxter, and that, when I  
5 stand back up in front of you, is exactly what I will ask  
6 you to do.

7 Thank you.

8 THE COURT: Mr. Reeves.

9 MR. REEVES: Good morning. I'm Robert Reeves. I want  
10 to clarify who the parties and who the lawyers are. Then  
11 we'll go over the case in just a moment.

12 Ms. Weaver is a solicitor. She represents the State of  
13 South Carolina. Ms. Anderson is a public defender. She  
14 represents Mr. Baxter, one of the defendants.

15 Now, I'm Robert Reeves. I'm a private practice  
16 attorney, but in this case I've been appointed by the State  
17 and I represent Mr. Burris, who is a co-defendant.

18 Now, I never like people who tell about the, tell about  
19 the movie before you watch it, but I want to emphasize to  
20 you that this is a very serious charge. This is possession  
21 with intent to distribute, trafficking. They're accusing  
22 these two gentlemen of being drug dealers. You go to prison  
23 for that. It's a very serious matter.

24 Now, the case is relatively simple at first glance.  
25 It's a speeding traffic stop, but it quickly turns into a

1 back up-unit, a drug dog, looking inside cars, identifying  
2 what appears to be, one officers says it was green, it looks  
3 like marijuana. Another officer, the back-up officer, says  
4 it looks like cigarette ash. You find a Mason jar of  
5 marijuana under the seat in a rental car, a rental car. A  
6 rental car that was leased by Mr. Baxter, who had picked up  
7 my client, Mr. Burris, who had the wonderful fortune of  
8 sitting in the passenger seat above where the marijuana was  
9 found.

10 Now, the State has to prove whose marijuana is it and  
11 they can't. They've ran tests on it. We'll tell you it's  
12 marijuana. That's not hard. They ran tests on the jar.  
13 Fingerprints, none. DNA, none. No physical connection, no  
14 physical evidence showing whose marijuana that is.

15 The details are very important in this case. It looks  
16 simple, but pay very close attention to the details, and at  
17 the end of the case I'm gonna highlight to you the details I  
18 think are important, but you're gonna pick, the 12 of you,  
19 you're gonna pick up on things that I won't. You'll  
20 collectively review this case. Some of you will think this  
21 is important, some of you will think this is important, but  
22 I agree with Ms. Anderson, they have to clear the bar. They  
23 being the State of South Carolina. Before they put these  
24 gentlemen or my client in prison for years, they have to  
25 clear the bar.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 Thank you.

2 THE COURT: Call your first witness.

3 SOLICITOR WEAVER: Your Honor, State calls Officer  
4 Vinesett.

5 LONNIE VINESETT, being first duly sworn,  
6 testified as follows:

7 DIRECT EXAMINATION

8 BY SOLICITOR WEAVER:

9 Q Officer Vinesett, if you could please state your full  
10 name for the record.

11 A Lonnie Terrell Vinesett, Junior.

12 Q And where are you employed?

13 A York County Sheriff's Office.

14 Q And your duties are police officer?

15 A Yes, ma'am.

16 Q How long have you been a police officer?

17 A Since '97.

18 Q And have you been employed with York County since '97?

19 A Since 1999.

20 Q Where were you employed before York County Sheriff's  
21 Department?

22 A The Lancaster County Sheriff's Office?

23 Q And on September 11<sup>th</sup>, 2009, did you come into contact  
24 with the defendants, Mr. Baxter and Mr. Burris?

25 A Yes, ma'am.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 Q And during, during that time, were you assigned to any  
2 unit with the Sheriff's Office?

3 A At, at that time I was assigned to the York County  
4 Multi-Jurisdictional Highway Interdiction Team.

5 Q And can you explain to the jury what that team, what  
6 the duties of that team is?

7 A In 2004 the Sheriff's Office applied for a grant for  
8 two officers out on the interstate working traffic and  
9 looking for other things, other illegal activities taking  
10 place on the interstate, and I worked that until January of  
11 this year.

12 Q And did you receive any special training being a part  
13 of this team?

14 A Yes, ma'am, we had, we have training, several schools,  
15 Desert Snow, which is an interdiction training and Laughlin,  
16 Nevada. We had several trainings in Atlanta, some in  
17 Nashville, Tennessee, and locally here in the state, in  
18 Charlotte.

19 Q Did this training deal with how to identify illegal  
20 controlled substances?

21 A Illegal controlled substance, hidden compartments in  
22 vehicles, among other things.

23 Q And can you explain to the jury how it was that you  
24 came into contact with Mr. Baxter and Mr. Burris on  
25 September 11<sup>th</sup>, 2009?

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 A I was traveling up 77 northbound from Rock Hill into  
2 Fort Mill and we got in behind the vehicle. We stopped the  
3 vehicle just north of 160 for speeding.

4 Q How did you know the vehicle was speeding?

5 A I was behind it for a good bit pacing the vehicle. I  
6 actually turned my camera on as I was noticing that the  
7 vehicle was speeding and basically was talking, this  
8 vehicle's speeding, basically narrating what the vehicle was  
9 doing before I stopped the vehicle.

10 Q Did you use any radar?

11 A No, ma'am.

12 Q So, you just paced the vehicle?

13 A Yes, ma'am.

14 Q And what was the legal speed limit in this area?

15 A Sixty.

16 Q And what did you pace the vehicle at?

17 A Right around 66.

18 Q And then you conducted a traffic stop?

19 A Yes, ma'am.

20 Q Do you remember what area you stopped the vehicle in?

21 A It was just before the overpass of Coltharp Road.

22 Q And what city is that located in?

23 A Fort Mill.

24 Q And that's Fort Mill, South Carolina?

25 A Yes, ma'am.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 Q What county is that located in?

2 A York County.

3 Q And during the time that you observed the vehicle  
4 speeding, did that occur in York County, South Carolina?

5 A Yes, ma'am.

6 Q And once you stopped the vehicle, which side did you  
7 approach?

8 A I approached on the passenger side of the vehicle.

9 Q And when you approached the passenger side of the  
10 vehicle, who did you observe to be the driver?

11 A Mr. Baxter.

12 Q And where was Mr. Burris located in the vehicle?

13 A He was sitting on the passenger seat of the vehicle.

14 Q Any other occupants in the vehicle?

15 A No, ma'am.

16 Q Any other officers with you at this time?

17 A No, ma'am.

18 Q When you stepped up to the passenger side of the  
19 vehicle, did you ask Mr. Baxter for any information?

20 A Yeah, I asked him for his driver's license and vehicle  
21 registration.

22 Q And when you asked for this information, did you notice  
23 anything about Mr. Burris' t-shirt at this time?

24 A Yeah, I noticed he had a black t-shirt on and it had  
25 green plant material on, on his shirt.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 Q And in your training and experience, did you recognize  
2 this green plant material could possibly be an illegal  
3 controlled substance?

4 A Yes, ma'am.

5 MR. REEVES: Objection, Your Honor.

6 THE COURT: Rephrase the question.

7 Q In your training and experience, were you suspicious of  
8 this green plant material?

9 A Yes, sir.

10 Q And once you saw this green plant material on Mr.  
11 Burris' t-shirt, what did you do?

12 A I asked Mr. Baxter from the vehicle, and as soon as he  
13 exited the vehicle, I radioed for my partner to meet me at  
14 the location.

15 Q And your partner is?

16 A Officer Gibson.

17 Q So, you said you had Mr. Baxter step from the vehicle.  
18 Where did you take him once he stepped out of the  
19 vehicle?

20 A To the front of my vehicle.

21 Q Where was Mr. Burris at this time?

22 A He was still sitting in the passenger seat of the  
23 vehicle.

24 Q Did you ask him, Mr. Baxter, any questions at this  
25 time?

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 A I don't believe, at that point, I asked him anything.

2 Once I asked Mr. Baxter out, we talked for a little bit.

3 Q Explain the conversation you had with Mr. Baxter at  
4 that time.

5 A First of all, I was -- I explained to him that he was  
6 speeding, and we started talking. I asked him where he was  
7 coming from. He said he was coming from Rock Hill. I asked  
8 him what he had going on in Rock Hill, and he said that his,  
9 I believe he said his grandmother was sick and was taken to  
10 the hospital, and he went down there and we seen her and  
11 then we went to the Shrimp Boat to eat lunch.

12 Q And after getting this information from Mr. Baxter, did  
13 you speak with Mr. Burris after that?

14 A Yes, ma'am.

15 Q And did you ask Mr. Burris any questions?

16 A Yeah, I asked him for his, for his identification. He  
17 gave me his identification. I noticed, whenever he did, his  
18 hand was shaking pretty bad whenever he handed me the I.D.  
19 and I asked him where, where they were coming from. He said  
20 Rock Hill. I think the first time he just said the court  
21 meaning the basketball court because he was wearing  
22 basketball attire, and then, at some point, he said that  
23 they had also went and ate at the Shrimp Boat.

24 Q Did Mr. Burris mention anything about a grandmother?

25 A No, ma'am.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 Q Do you remember the information Mr. Baxter provided you  
2 about the vehicle?

3 A He told me that it was a rental vehicle that he had  
4 rented.

5 Q Did Mr. Baxter provide you with any information  
6 regarding the, the rental of the vehicle?

7 A He gave me the Avis rental agreement.

8 (WHEREUPON, the rental agreement was marked as State's  
9 Exhibit No. 2 for identification purposes only at this  
10 time.)

11 Q Officer Vinesett, I'm showing you what's been marked as  
12 State's Exhibit No. 2.

13 Can you explain what that is?

14 A This is the Avis rental agreement that Mr. Baxter gave  
15 me the day of the stop.

16 Q That is the original agreement Mr. Baxter gave to you?

17 A Yes, ma'am.

18 SOLICITOR WEAVER: Your Honor, at this time the State  
19 would like to enter State's Exhibit 2 in evidence.

20 THE COURT: Any objection?

21 MS. ANDERSON: No objection.

22 MR. REEVES: No.

23 THE COURT: In without objection.

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

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 Q At what point do remember Officer Gibson arriving at  
2 the scene?

3 A It, it wasn't long after. He, he got there pretty  
4 quick. I was still actually talking with Mr. Baxter at the  
5 front of my vehicle.

6 Q Can you explain to the jury why you called Officer  
7 Gibson to the scene?

8 A Whenever I walked up to the vehicle and was asking Mr.  
9 Baxter for his driver license, the green plant material that  
10 I noticed on Mr. Burris' shirt I thought, I thought it to be  
11 marijuana. That's the reason why I called Officer Gibson.

12 Q Okay. When Officer Gibson arrived on the scene, did  
13 you explain any of this situation to him?

14 A Yeah, I explained to him that I had saw some green  
15 plant material on Mr. Burris, that the stories really wasn't  
16 correct about where they were coming from and everything,  
17 and I asked him to go up there and take a look as well.

18 Q And did you observe Officer Gibson walk up to the  
19 vehicle?

20 A Yes, ma'am.

21 Q Was Mr. Burris still in the vehicle?

22 A Yes, ma'am.

23 Q Where was Mr. Baxter at this time?

24 A He was still at the front of my vehicle and shortly  
25 thereafter walked, walked out of the view of the camera back

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 to another officer.

2 Q And did you speak with Officer Gibson again about what  
3 he observed on Mr. Burris?

4 A Yeah, he had told me that, something about he, he was  
5 smoking, and I believe I explained to him yeah, he had lit  
6 up a cigarette shortly after the stop, and he said that he  
7 didn't, he didn't see anything on his shirt, that it  
8 appeared to be ashes to him.

9 Q And after Officer Gibson told you that all he saw was  
10 ashes, what did you ask Officer Gibson to do?

11 A I asked him if he would ask Mr. Baxter for permission  
12 to search the vehicle, and if he didn't get it, see if he  
13 would run his drug K-9 around the vehicle.

14 Q And did you observe Officer Gibson go up to Mr. Baxter?

15 A Yes, ma'am.

16 Q And did you observe Officer Gibson walk the drug dog  
17 around the vehicle?

18 A Yes, ma'am.

19 Q And during this time, what were you doing?

20 A I was sitting in the vehicle running a license check on  
21 Mr. Baxter.

22 Q And after Officer Gibson walked the drug dog, did he  
23 come back and speak with you?

24 A Yes, ma'am.

25 Q And after speaking with Officer Gibson, what did you do

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 after that?

2 A He told me that the drug K-9 dog did not alert to the  
3 vehicle. While I was waiting for some information to come  
4 back, I think, at that time, on Mr. Burris, I grabbed my  
5 flashlight, walked up to the vehicle, and looked down beside  
6 the seat and could see what I believed to be marijuana.

7 Q Was either Mr. Baxter or Mr. Burris in the vehicle at  
8 this time?

9 A No, ma'am.

10 Q And once you -- was the door opened or closed when you  
11 saw the pieces?

12 A It was closed.

13 Q And when you saw those pieces, what did you do?

14 A I opened the door and reached for them and secured  
15 them.

16 (WHEREUPON, an evidence bag was marked as State's  
17 Exhibit No. 3 for identification purposes only at this  
18 time.)

19 Q Officer Vinesett, I'm showing you what's been marked  
20 State's Exhibit No. 3.

21 Do you recognize what's contained in that bag?

22 A Yes, ma'am, this is some, some of the green plant  
23 material that I picked up beside the seat whenever I first  
24 opened the door.

25 Q What seat?

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 A The passenger seat in the door.

2 Q And after locating those pieces, what did you do with  
3 them?

4 A I put them in a small evidence bag and continued  
5 searching the vehicle.

6 Q Is that evidence bag---

7 A Yes, ma'am.

8 Q And describe to the jury what the evidence bag looks  
9 like.

10 A The -- basically just a blue, a blue bag that has a  
11 tamper proof seal and everything going around the side of it  
12 with the, the report number, the description of what it was,  
13 where it was found, who found it.

14 Q So, you placed it inside a, a blue bag, that blue bag?

15 A Yes, ma'am.

16 Q And is it a tamper proof seal?

17 A Yes, ma'am.

18 Q And did you seal it?

19 A Yes, ma'am.

20 Q And where did you put it?

21 A I put it in the evidence locker at the Rock Hill Police  
22 Department.

23 Q And what date did you find that item?

24 A September the 9<sup>th</sup>, 2009.

25 Q And what date did you place that into the York County

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 evidence---

2 A September 9<sup>th</sup>, 2009.

3 Q Can you explain to the jury where the York County  
4 evidence drop is located?

5 A At the, at the Rock Hill Police Department, we have a  
6 narcotics unit, and as interdiction officers, we, we answer  
7 to the narcotic supervisors and we have an officer at the  
8 Rock Hill Police Department that has a drug locker there.

9 Q And once that item is placed in the drug locker, who  
10 has access to it?

11 A Just the evidence technicians.

12 Q Do you have access to it after placing it in that  
13 locker?

14 A No, ma'am.

15 Q And before you placed those green pieces that were  
16 contained in that tamper proof bag into the locker, did you  
17 notice any evidence of tampering?

18 A No, ma'am.

19 Q Was it in your custody and control until you placed it  
20 in that evidence drop box?

21 A Yes, ma'am.

22 Q And after finding those green pieces beside the  
23 passenger seat, did you conduct a further, further search of  
24 the vehicle?

25 A Yes, ma'am.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 Q And what did you locate after that?

2 A Shortly thereafter I looked under the seat and located  
3 a, a glass Mason jar that was, had, had a couple of baggies  
4 in it that were filled with what I, what I thought to be  
5 marijuana.

6 Q In what seat did you locate this Mason jar?

7 A Under the passenger seat.

8 (WHEREUPON, the Mason jar was marked as State's Exhibit  
9 No. 4 for identification purposes only at this time.)

10 Q Officer Vinesett, I'm showing you what's been marked as  
11 State's Exhibit No. 4.

12 A Yes, ma'am.

13 Q Do you recognize that item?

14 A Yes, this is the Mason jar.

15 Q And after finding the Mason jar, did you place it in  
16 that bag?

17 A Yes, ma'am.

18 Q And on what date did you place it in the bag?

19 A September 9. I mean September 11<sup>th</sup>, 2009.

20 Q And that bag contains only the Mason jar?

21 A Yes, ma'am.

22 Q And did you seal the bag?

23 A Yes, ma'am.

24 Q How do you know that you sealed the bag?

25 A My signature and also my initials and Y-C-M-H-I-T on

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 the back.

2 Q After placing it in that bag and sealing it, what did  
3 you do with it?

4 A I placed it in evidence, and after reviewing my notes,  
5 I had -- actually they were transported to the York County  
6 Sheriff's Office, not the Rock Hill Police Department. So,  
7 this -- it shows on my notes York County evidence, not Rock  
8 Hill Police evidence. So, these items were placed here at  
9 the Sheriff's Office. Not at the Rock Hill Police  
10 Department.

11 Q Okay. So, let's go back to -- so, you're talking about  
12 State's Exhibit 3?

13 A Yes, ma'am.

14 Q And explain to the jury, there are, there are two  
15 lockers?

16 A Yeah.

17 Q Evidence lockers.

18 A Actually there's three that we drop narcotics at. Fort  
19 Mill, Rock, Fort Mill Police Department, Rock Hill Police  
20 Department, and here at the Sheriff's Office. Ninety  
21 percent of the stuff that we drop is at the Rock Hill Police  
22 Department, but this is, was here at York County evidence.  
23 So, I dropped it here at the Sheriff's Office.

24 Q And where is that evidence drop located within the  
25 Sheriff's Office?

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 A Downstairs right outside the evidence office.

2 Q So, the York County drop box that you dropped State's  
3 Exhibit 3 in is right outside the evidence department?

4 A Yes, ma'am.

5 Q And that's also where you dropped State's Exhibit 4?

6 A Yes, ma'am.

7 THE COURT: What's the date you dropped 3?

8 THE WITNESS: All of them were dropped on September  
9 11<sup>th</sup>, 2009.

10 THE COURT: Okay.

11 A I had to look back at my notes to where it said that  
12 they were transported to the York County Sheriff's Office.  
13 We didn't transport them to the Rock Hill Police Department.

14 Q And, Officer Vinesett, you found the Mason jar, was it  
15 wrapped in anything?

16 A Yes, ma'am.

17 Q What was it wrapped in?

18 A It was wrapped in, like a big t-shirt. I can't  
19 remember -- I want to say it was a blue t-shirt. I can't  
20 remember exactly, but it was wrapped around the, the jar.

21 Q Do you remember the condition of this t-shirt?

22 A It was wet.

23 Q Was it wet like it had been washed or wet in, in some  
24 other way?

25 A Some other way. I mean it was -- I, I -- as far as I

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 can remember, it wasn't like sopping wet, the whole thing.  
2 Just parts of it were wet.

3 (WHEREUPON, a blue t-shirt was marked as State's  
4 Exhibit No. 5 for identification purposes only at this  
5 time.)

6 Q Okay. Officer Vinesett, I'm handing you what's been  
7 marked State's Exhibit No. 5.

8 Can you explain to the jury what that item is?

9 A Yes, ma'am, this is a blue t-shirt that was wrapped  
10 around item number three, which is the Mason jar.

11 Q And what did you do with that t-shirt after finding it?

12 A Placed it into evidence.

13 Q And how did you place it into evidence?

14 A I put it in this bag, sealed it up, and wrote my, my  
15 initials, and Y-C-M-H-I-T on the back.

16 Q And what date did you locate the t-shirt?

17 A September 11<sup>th</sup>, '09.

18 Q And where did you -- after sealing that bag, where did  
19 you take it to?

20 A To the York County Sheriff's Office to be dropped.

21 Q And where did you place it at York County Sheriff's  
22 Office?

23 A York County evidence locker.

24 Q And on what date did you place it in the evidence  
25 locker?

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 A September 11<sup>th</sup>, '09.

2 Q Officer Vinesett, you testified that there were  
3 multiple items that you found within the Mason jar?

4 A Yes, ma'am, I can't remember exactly how many bags, but  
5 I think it was like three. I believe it was three bags with  
6 what I thought to be marijuana inside of the jars.

7 Q Do you remember locating anything outside of a baggie  
8 inside a Mason jar?

9 A Yeah, there were some, some loose particles inside of  
10 the Mason jar.

11 (WHEREUPON, an evidence bag was marked as State's  
12 Exhibit No. 6 for identification purposes only at this  
13 time.)

14 Q Officer Vinesett, I'm showing you what's been marked  
15 State's Exhibit No. 6.

16 Do you recognize that item?

17 A Yes, ma'am.

18 Q Where did you locate that item?

19 A This was from item number three, which would of been  
20 the, from inside the Mason jar.

21 Q And on what date did you locate that?

22 A September 11<sup>th</sup>, '09.

23 Q And after locating that within the Mason jar, what did  
24 you do with it?

25 A I placed it into a different bag so it wasn't all loose

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 in there, and placed it in a smaller evidence bag, and then  
2 placed it in the tamper proof sealed evidence bag.

3 Q And did you seal that evidence bag?

4 A Yes, ma'am, I have my initials and Y-C-M-H-I-T.

5 Q And what did you do with it after sealing it in the  
6 evidence bag?

7 A Placed it into the evidence locker at the Sheriff's  
8 office.

9 Q And on what date did you place that item into the York  
10 County evidence locker?

11 A September 11<sup>th</sup>, '09.

12 (WHEREUPON, two evidence bags were marked as State's  
13 Exhibit Nos. 7 and 8 for identification purposes only at  
14 this time.)

15 Q Officer Vinesett, I'm showing you what's been marked as  
16 State's Exhibit 7.

17 Where did you locate that item?

18 A This item was inside of item number three, which was  
19 the Mason jar.

20 Q Okay. And what is that item?

21 A This is a plastic bag that some of the green plant  
22 material was inside of.

23 Q And you said you found that plastic bag inside of item  
24 three, the Mason jar?

25 A Yes, ma'am.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 Q And after finding that plastic bag, what did you do  
2 with it?

3 A I placed the plastic bag into a evidence bag to be  
4 dropped for fingerprinting.

5 Q And did you seal that bag?

6 A Yes, ma'am.

7 Q How do you know that you sealed that bag?

8 A My initials and Y-C-M-H-I-T.

9 Q And after sealing that bag, what did you do with it?

10 A Placed in into evidence along with the others.

11 Q And where in evidence did you place it?

12 A At the York County Sheriff's Office in the evidence  
13 locker.

14 Q So, you dropped that in the evidence locker?

15 A Yes, ma'am.

16 Q And on what date did you find that item?

17 A September 11<sup>th</sup>, '09.

18 Q And what date did you drop it in the evidence locker?

19 A September 11<sup>th</sup>, '09.

20 Q And you said you noticed some green plant material in  
21 that bag?

22 A Yes, ma'am.

23 Q Did you recognize State's Exhibit No. 8?

24 A Yes, ma'am, it was the marijuana taken from item number  
25 five, which was the plastic bag.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 Q And where did you find State's Exhibit 8?

2 A It was in State's Exhibit No. 7, which was in the Mason  
3 jar.

4 Q And after finding that in the plastic bag, what did you  
5 do with it?

6 A I took the marijuana out as carefully as I could and  
7 placed it into a smaller bag before placing it into the, the  
8 blue tamper proof bag.

9 Q And did you seal that bag?

10 A Yes, ma'am.

11 Q How do you know that you sealed it?

12 A My initials on the bag and Y-C-M-H-I-T.

13 Q And on what date did you retrieve that item?

14 A September 11<sup>th</sup>, '09.

15 Q And what did you do with that after you sealed it in  
16 the tamper proof bag?

17 A Dropped it on September 11<sup>th</sup> of '09 into evidence.

18 Q And where did, into evidence did you drop it?

19 A Here at the Sheriff's Office in the evidence locker.

20 (WHEREUPON, three evidence bags were marked as State's  
21 Exhibit No. 9, State's Exhibit No. 10, and State's Exhibit  
22 No. 11. All of the above exhibits were for identification  
23 purposes only at this time.)

24 Q I'm showing what's been marked State's Exhibit No. 9.  
25 Where did you find that item?

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 A This was another plastic baggie that was in the Mason  
2 jar.

3 Q And when you found that plastic baggie in the Mason  
4 jar, did you notice anything inside?

5 A Yes, ma'am, some green plant material.

6 Q And on what date did you find that plastic baggie?

7 A September 11<sup>th</sup> '09.

8 Q And what did you do with it after you found it?

9 A I took the marijuana out and put it in a separate  
10 baggie for this to be fingerprinted.

11 Q And what did you do with the plastic bag?

12 A I put it in evidence, sealed it up, initialed it, and  
13 placed it into evidence.

14 Q And where in evidence did you place it?

15 A Here at the York County Sheriff's Office.

16 Q Did you place it in the locker?

17 A Yes, ma'am, in the evidence locker.

18 Q And on what date did you place it in the locker?

19 A September 11<sup>th</sup>, '09.

20 Q Did you seal the bag before placing it in the locker?

21 A Yes, ma'am.

22 Q I'm showing you what's been marked as State's Exhibit  
23 No. 10.

24 Where did you find that item?

25 A This is the, the green plant material that was taken

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 out of the plastic bag that was inside of the Mason jar.

2 Q And after finding that green plant material, what did  
3 you do with it?

4 A I put it inside of a smaller bag to place inside of the  
5 tamper proof evidence bag.

6 Q And did you seal that tamper proof evidence bag?

7 A Yes, ma'am.

8 Q And how do you know that you sealed it?

9 A My initials and W-C-M-H-I-T.

10 Q Now, what date did you find that item?

11 A September 11<sup>th</sup>, '09.

12 Q And after sealing it in that tamper proof evidence bag,  
13 what did you do with it?

14 A I placed it into evidence.

15 Q Where at in evidence?

16 A At the York County Sheriff's Office in the evidence  
17 locker.

18 Q And on what date did you place that sealed bag in the  
19 evidence locker?

20 A September 11<sup>th</sup>, '09.

21 Q I'm showing you what's been marked as State's Exhibit  
22 No. 11.

23 Where did you find that item?

24 A In item number seven, the plastic baggie.

25 Q And after finding that item, what did you do with it?

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 A I placed it into a smaller bag and then placed it in  
2 the tamper proof evidence bag.

3 Q And did you seal that tamper proof evidence bag?

4 A Yes, ma'am.

5 Q How do you know that you sealed it?

6 A My initials.

7 Q And after sealing it in that tamper proof evidence bag,  
8 what did you do with it?

9 A Placed into evidence at the York County Sheriff's  
10 office.

11 Q Where at in the York County Sheriff's Office?

12 A In the evidence locker.

13 Q And on what date did you find that item?

14 A September 11<sup>th</sup>, '09.

15 Q And on what date did you place it in the evidence  
16 locker?

17 A September 11<sup>th</sup>, '09.

18 (Whereupon, an evidence bag was marked as State's  
19 Exhibit No. 12 for identification purposes only at this  
20 time.)

21 Q Officer Vinesett, I'm showing you what's been marked as  
22 State's Exhibit No. 12.

23 where did you locate that item?

24 A From item number three, which is the Mason jar.

25 Q And what is that item?

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

- 1 A It's a plastic bag.
- 2 Q After locating that plastic bag within the Mason jar,  
3 what did you do with it?
- 4 A Placed it into the manila envelope, which is evidence  
5 basically if we're going to have something fingerprinted.
- 6 Q And did you seal that bag?
- 7 A Yes, ma'am.
- 8 Q How do you know that you sealed it?
- 9 A My initials on the bag.
- 10 Q After sealing that plastic bag within that manila bag,  
11 what did you do with it?
- 12 A Placed it into evidence here at the Sheriff's Office at  
13 the evidence locker.
- 14 Q And on what date did you find that item?
- 15 A September 11<sup>th</sup>, '09.
- 16 Q And what date did you place that item into the York  
17 County evidence locker?
- 18 A September 11<sup>th</sup>, '09.
- 19 Q Officer Vinesett, after finding this glass jar with  
20 these multiple bags containing the green plant material, did  
21 you conduct a further search of the vehicle?
- 22 A Yes, ma'am.
- 23 Q And also after finding this glass jar, did you place  
24 Mr. Baxter and Mr. Burris under arrest?
- 25 A Yes, I did.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 Q And where were Mr. Baxter and Mr. Burris placed under  
2 arrest?

3 A They were actually standing just to the right of my  
4 vehicle.

5 Q And were they handcuffed?

6 A At that point, no.

7 Q Did you tell Mr. Baxter and Mr. Burris that they were  
8 under arrest?

9 A Yes, ma'am.

10 Q Do you remember if you read them any Miranda rights?

11 A Yes, ma'am.

12 Q And did you read those Miranda rights from a card?

13 A Yes, ma'am.

14 (WHEREUPON, a copy of the Miranda rights was marked as  
15 State's Exhibit No. 13 for identification purposes only at  
16 this time.)

17 Q Officer Vinesett, I'm showing you what's been marked as  
18 State's Exhibit 13.

19 Do you recognize that item?

20 A Yes, ma'am, it's a photocopy of my Miranda warnings  
21 card.

22 Q Did you read your Miranda warnings card to Mr. Baxter  
23 and Mr. Burris?

24 A Yes, ma'am.

25 Q And how do you know that you read your Miranda rights

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 card to Mr. Baxter and Mr. Burris?

2 A After doing it and getting back to the office, I make a  
3 copy of it and I put on there read by Vinesett on September  
4 11<sup>th</sup>, '09.

5 SOLICITOR WEAVER: Your Honor, at this time we ask that  
6 State's Exhibit 13 be entered into evidence.

7 MR. REEVES: No objection, Your Honor.

8 MS. ANDERSON: No objection.

9 THE COURT: In without objection.

10 (WHEREUPON, State's Exhibit No. 13 was received into  
11 evidence at this time.)

12 Q Can you please read what you read to Mr. Baxter and Mr.  
13 Burris on September 11<sup>th</sup>, 2009?

14 A Yes, ma'am. You have the right to remain silent.  
15 Anything, anything you say can and will be used against you  
16 in a court of law. You have the right to talk to a lawyer  
17 and have him present with you while you're being questioned.  
18 If you cannot afford to hire a lawyer, one will be appointed  
19 to represent you before any questions if you wish. You can  
20 decide at any time to exercise these rights and not answer  
21 any questions or make any statement. Do you understand each  
22 of these rights I have explained to you.

23 Q And what was Mr. Baxter's response to that question?

24 A Both of them stated they understood.

25 Q Do you remember where Mr. Baxter and Mr. Burris was

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

- 1 located when you read them their Miranda rights?
- 2 A I believe they were in the back seat of my vehicle.
- 3 Q Do you remember if they were handcuffed at the time?
- 4 A Yes, ma'am.
- 5 Q Did you make them any promises or, or make any threats
- 6 to get them to waive their Miranda rights?
- 7 A No, ma'am.
- 8 Q Did any of the other officers make any promises or
- 9 threats to make them waive their Miranda rights?
- 10 A No, ma'am.
- 11 Q And after you read the Miranda rights to, both to Mr.
- 12 Baxter and Mr. Burris where did you place them?
- 13 A In the back seat of my vehicle.
- 14 Q And you said you conducted a further search---
- 15 A Yes, ma'am.
- 16 Q ---of the rental car?
- 17 (WHEREUPON, an evidence bag was marked as State's
- 18 Exhibit No. 14 for identification purposes only at this
- 19 time.)
- 20 Q Officer Vinesett, I'm showing you what's been marked as
- 21 State's Exhibit No. 14.
- 22 where did you locate that item?
- 23 A On the driver's side floorboard.
- 24 Q And what date did you locate that item?
- 25 A September 11<sup>th</sup>, 2009.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 Q And after locating that item, what did you do with it?

2 A Placed it into a small envelope bag.

3 Q And what did you do with the small evidence bag?

4 A I placed it inside of our larger tamper proof evidence  
5 bags.

6 Q And did you seal that tamper proof evidence bag?

7 A Yes, ma'am.

8 Q How do you know you sealed it?

9 A My initials on the back.

10 Q After sealing that item in that tamper proof evidence  
11 bag, what did you do with it?

12 A It was placed in the evidence locker here at the York  
13 County Sheriff's Office.

14 Q And on what date did you find that item?

15 A September 11<sup>th</sup>, '09.

16 Q And what date did you place it into the York County  
17 evidence locker?

18 A September 11<sup>th</sup>, '09.

19 (WHEREUPON, a plastic bag and tin foil was marked as  
20 State's Exhibit No. 15. The green plant material was marked  
21 as State's Exhibit No. 16. Both of the above exhibits were  
22 for identification purposes only at this time.)

23 Q Officer Vinesett, I'm showing you what's been marked as  
24 State's Exhibit 15.

25 where did you locate that item?

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 A It was in the, what, what I normally call the coin tray  
2 on the passenger, I mean on the driver's side of the  
3 vehicle. Like if you're sitting in the driver's seat and  
4 you reach over on the dash, there's just a little thing that  
5 drops down that people normally keep their coins in.

6 Q And, and what is that item?

7 A It's a plastic bag and tin foil.

8 Q Did you notice anything inside that plastic bag and tin  
9 foil?

10 A I noticed some small particles of green plant material  
11 inside of that plastic baggie.

12 Q And what did you do with that plastic bag and tin foil?

13 A I placed it in this manila envelope to be processed.

14 Q And on what date did you find that item?

15 A September 11<sup>th</sup>, '09.

16 Q And after finding that item, did you seal the bag?

17 A Yes, ma'am.

18 Q And where did you take the sealed bag?

19 A I placed it in the evidence locker at the York County  
20 Sheriff's office.

21 Q And on what date did you place it in the evidence  
22 locker?

23 A September 11<sup>th</sup>, '09.

24 Q Officer Vinesett, I'm showing you what's been marked  
25 State's Exhibit 16.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1           Where did you find that item?

2   A     This was actually what was inside of the plastic baggie  
3   in tin foil from State's Exhibit No. 15.

4   Q     And after finding that item, what did you do with it?

5   A     I placed it in a smaller evidence bag to be tested and  
6   placed it inside of the tamper proof evidence bag.

7   Q     Did you seal that tamper proof evidence bag?

8   A     Yes, ma'am.

9   Q     How do you know?

10   A     My initials are on the back.

11   Q     And on what date did you find that item?

12   A     September 11<sup>th</sup>, 2009.

13   Q     And after sealing it in that tamper proof evidence bag,  
14   what did you do with it?

15   A     I placed it into evidence at the York County Sheriff's  
16   office and into the evidence locker.

17   Q     And on what date did you place it into the York County  
18   evidence locker?

19   A     September 11<sup>th</sup>, '09.

20   Q     Officer Vinesett, you separated the green plant  
21   material from what was found in the plastic baggies?

22   A     Yes, ma'am.

23   Q     To your knowledge, were those plastic baggies submitted  
24   for fingerprint analysis?

25   A     Yes, ma'am.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

- 1 Q And are you aware of the results of that analysis?
- 2 A Yes, ma'am.
- 3 Q Can you tell the jury what the result was?
- 4 A There was no fingerprints located on the baggies.
- 5 Q Now, at the time that Mr. Baxter and Mr. Burris are
- 6 arrested, do they have to give a impression of their
- 7 fingerprints?
- 8 A Whenever they're at booking, yes, ma'am.
- 9 Q Are you aware if there was a fingerprint analysis on
- 10 the Mason jar?
- 11 A Yes, ma'am.
- 12 Q And are you aware of the results of that analysis?
- 13 A Yes, ma'am.
- 14 Q And were any fingerprints on the Mason jar?
- 15 A Yes, ma'am.
- 16 Q Whose fingerprints were on the Mason jar?
- 17 A Mine.
- 18 Q Any other fingerprints located on the Mason jar?
- 19 A No, ma'am.
- 20 Q And, Officer Vinesett, in dealing with Mr. Baxter and
- 21 Mr. Burris, at any time did you smell an odor that would
- 22 lead you to believe that marijuana had been smoked?
- 23 A No, ma'am.
- 24 Q Was there any odor of burnt marijuana in the vehicle?
- 25 A No, ma'am.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 Q How about when you talked with Mr. Baxter, did you  
2 smell an odor of burnt marijuana coming from him or his  
3 breath?

4 A No, ma'am.

5 Q How about when you talked with Mr. Burris, did you  
6 smell an odor of burnt marijuana coming from him or his  
7 breath?

8 A No, ma'am.

9 Q And in your search of the vehicle, did you find any  
10 items that would be used to smoke marijuana?

11 A No, ma'am.

12 Q Did you find any items that would aid in the use of  
13 marijuana?

14 A No, ma'am.

15 Q How about on Mr. Baxter, did you find any items that  
16 would aid in the use of smoke, or smoking marijuana?

17 A No, ma'am.

18 Q How about Mr. Baxter, did you find any items that could  
19 be used to smoke or use marijuana?

20 A No, ma'am.

21 Q Officer Vinesett, is your patrol car equipped with an  
22 audio video recording device?

23 A Yes, ma'am.

24 Q And did the device record the events of September 11<sup>th</sup>,  
25 2009?

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 A Yes, ma'am.

2 Q And explain to the jury how your audio video recording  
3 device worked.

4 A There's, there's a couple ways that you can actually  
5 turn the video camera on. It comes on when you turn the  
6 blue lights on. You can hit your body mic to turn it on  
7 just in case you're out of the vehicle and need to turn it  
8 on for some reason or you can just simply reach up and hit  
9 record.

10 Q And, so, there are microphones that record audio?

11 A Yes, ma'am.

12 Q Where are the microphones located?

13 A They're in the back seat of the patrol vehicle.

14 Q And does that microphone inside the patrol car have the  
15 ability to record conversations while persons are inside  
16 your patrol car?

17 A Yes, ma'am.

18 Q Okay. And was your audio video recording device on  
19 while Mr. Baxter and Mr. Burris were seated in your patrol  
20 car?

21 A Yes, ma'am.

22 Q And did it record their conversations?

23 A Yes, ma'am.

24 THE COURT: We'll take a short break. It's probably a  
25 good time to take our morning break anyway. So, we'll take

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 a break.

2 (WHEREUPON, the following takes place outside the  
3 presence of the jury.)

4 THE COURT: We'll be at ease for a few minutes.

5 (WHEREUPON, a short recess was taken at this time.)

6 THE COURT: Bring in the jury.

7 (WHEREUPON, the following takes place within the  
8 presence of the jury.)

9 THE COURT: You may proceed.

10 CONTINUED DIRECT EXAMINATION

11 BY SOLICITOR WEAVER:

12 Q Officer Vinesett, I'm showing you what's been marked as  
13 State's Exhibit No. 1.

14 Can you identify what that is?

15 A This is a DVD of the traffic stop that day on September  
16 11<sup>th</sup> of '09.

17 Q The traffic stop involving Mr. Baxter and Mr. Burris?

18 A Yes, ma'am.

19 Q And have you reviewed that DVD?

20 A Yes, ma'am.

21 Q Is it a fair and accurate copy of what or  
22 representation of what occurred?

23 A Yes, ma'am.

24 SOLICITOR WEAVER: At this time the State would like to  
25 enter State's Exhibit No. 1.

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 MS. ANDERSON: No objection.

2 MR. REEVES: No objection.

3 THE COURT: In without objection.

4 (WHEREUPON, State's Exhibit No. 1 was received into  
5 evidence at this time.)

6 SOLICITOR WEAVER: Your Honor, at this time I'd like to  
7 play it for the jury.

8 THE COURT: You may.

9 (WHEREUPON, State's Exhibit No. 1 was played for the  
10 jury at this time.)

11 Q Is -- can you explain what you are doing with Mr.  
12 Baxter and Mr. Burris at this point?

13 A Right there I read them their Miranda warnings from my  
14 card, from my card.

15 Q Officer Vinesett, can you explain what you are doing  
16 with Mr. Baxter and Mr. Burris at this point?

17 A Right there I read the Miranda warnings from my card.

18 Q Officer Vinesett, you testified that there's a  
19 microphone in your patrol car?

20 A Yes, ma'am.

21 Q Do you have any other microphones that record?

22 A Actually there's a microphone in the back seat and that  
23 vehicle there that was -- if I'm not mistaken, that was a  
24 spare vehicle, and I wasn't really sure about the microphone  
25 in the back. So, once I placed them under arrest, I took my

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 body mic off and set it in the, in the vehicle as well just  
2 basically to make sure that I would get the audio of  
3 anything in the back.

4 Q Officer Vinesett, the voice that we're hearing inside  
5 the patrol car, is that Mr. Baxter or Mr. Burris?

6 A Mr. Baxter.

7 Q Mr. Burris is the man, is the man in the black t-shirt?

8 A Yes, ma'am.

9 Q Officer Vinesett, you've said you've been a police  
10 officer since 1997?

11 A Yes, ma'am.

12 Q And you've had some training in detecting illegal  
13 substances?

14 A Yes, ma'am.

15 Q Have you had training in identifying illegal  
16 substances?

17 A Yes, ma'am.

18 Q Have you had training in the different terminology that  
19 people use to identify controlled substances?

20 A Yes, ma'am.

21 Q How about through your experience, have you learned  
22 what people may call controlled substances?

23 A Yes, ma'am.

24 Q How about through your experience, have you learned how  
25 to identify controlled substances?

Lonnie Vinesett - Direct examination  
by Solicitor Weaver

1 A Yes.

2 Q And in your training and experience, have you learned  
3 what different types of marijuana are?

4 A Yes, ma'am.

5 Q Have you ever heard the term bud before?

6 A Yes, ma'am.

7 Q Can you explain to the jury, in your training and  
8 experience, what bud is referring to?

9 A Bud is basically a higher concentrate of THC. It don't  
10 have any seeds or anything and it's more sought after and  
11 more expensive.

12 Q What controlled substance does bud refer to?

13 A Marijuana.

14 Q And through your training and experience, have you  
15 learned what the average value of marijuana is?

16 A Yes, ma'am.

17 Q Through your training and experience, have you learned  
18 what the average value of bud marijuana is?

19 A Yes, ma'am.

20 Q Can you explain what, what that value is to the jury?

21 MS. ANDERSON: Your Honor, I object.

22 THE COURT: I sustain the objection.

23 Q And, Officer Vinesett, the green plant material that  
24 you found in this case, what type of marijuana would that be  
25 consistent with in your training and experience?

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 MS. ANDERSON: Your Honor, I object to this as well.

2 THE COURT: I sustain the objection.

3 SOLICITOR WEAVER: We have no further questions, Your  
4 Honor.

5 THE COURT: Ms. Anderson.

6 CROSS-EXAMINATION

7 BY MS. ANDERSON:

8 Q Officer Vinesett, you testified the basis of this  
9 traffic stop was speeding, correct?

10 A Yes, ma'am.

11 Q And I think we heard on the tape and you've testified  
12 as well this was for approximately 66 to 67 miles per hour  
13 in a 60 mile per hour zone?

14 A Yes, ma'am.

15 Q And you've testified on direct that you paced the  
16 vehicle, correct?

17 A Yes, ma'am.

18 Q But that you did not use radar on the vehicle?

19 A That's correct.

20 Q So, the 66 to 67 is merely your estimate in this  
21 circumstance?

22 A The estimate of pacing, yes, ma'am.

23 Q But not based on any radar detection?

24 A That's correct.

25 Q And we observed on the video, the video as well that

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 the car that Mr. Baxter and Mr. Burris were in, the Pontiac,  
2 was initially in the far right lane stating on the right  
3 side of the interstate, correct?

4 A Yes, ma'am.

5 Q And when the video begins and you activate your, your  
6 video camera, you are in essentially the third lane from the  
7 right, correct?

8 A That's correct.

9 Q And would it -- this lane was the lane you paced the  
10 vehicle from?

11 A Yes, ma'am.

12 Q And there were other vehicles on the road at the time,  
13 at this time, correct?

14 A That's correct.

15 Q You see, in fact, I think there would be about three  
16 vehicles in various lanes in front of the Pontiac in this  
17 case?

18 A Yes, ma'am.

19 Q And you did not pace any of those vehicles?

20 A No, ma'am.

21 Q And you activated your blue lights in this case?

22 A Yes, ma'am.

23 Q And the vehicle did comply with that and pull over to  
24 the side, correct?

25 A That's correct.

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 Q And you indicated that you spoke with Mr. Baxter, the  
2 driver?

3 A Yes, ma'am.

4 Q And you explained to him that you were stopping the car  
5 for speeding, isn't that correct?

6 A Yes, ma'am.

7 Q And you did not explain to Mr. Baxter that you did not  
8 use your radar in this case, is that correct?

9 A That's correct.

10 Q That he contested the speed he was driving at?

11 A Yes, ma'am.

12 Q And it has been covered, but the passenger in this case  
13 was Mr. Burris, correct?

14 A Yes, ma'am.

15 Q And this took place at approximately somewhere around  
16 5:05 p.m., correct?

17 A Yes, ma'am.

18 Q And there was, which is observed on the video, it was  
19 daylight still, correct?

20 A Yes, ma'am.

21 Q And when you pulled the vehicle over to the side, you  
22 were able to see the vehicle without aid of your head lamps,  
23 correct?

24 A Yes, ma'am.

25 Q And when you initially approached the vehicle and speak

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 with the vehicle occupants, you did not take a flashlight  
2 with you, correct?

3 A That's correct.

4 Q And you were able to see clearly the people in the  
5 vehicle?

6 A That's correct.

7 Q And it was not raining on that date?

8 A No, ma'am.

9 Q No sort of difficulties with your visibility?

10 A No, ma'am.

11 Q Now, you also, I believe, testified of saying that the  
12 passenger was doing a lot of moving, correct?

13 A Yes, ma'am.

14 Q And that was movement you observed from when you were  
15 in the third lane from the right?

16 A I believe it was once I got in behind it and turned the  
17 vehicle, the blue lights on.

18 Q And the camera that the video is in this car, this was  
19 captured from your car is mounted above basically the  
20 dashboard area of your vehicle?

21 A Yes, it's basically on the top of the windshield.

22 Q So, it would be approximately about the sort of same  
23 position when you observed, would be observing?

24 A Yes, it's almost consistent with eye level.

25 Q And on the video you also, I believe when you were in

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 the passenger window of the vehicle, you told the occupants  
2 of the vehicle that you were going from line to line,  
3 correct?

4 A Yes, ma'am.

5 Q And, now, when you spoke to Mr. Baxter, which we see on  
6 tape in the front of the video, you were writing on  
7 something at some point, correct?

8 A Yes, ma'am.

9 Q And you actually issued a warning ticket, correct?

10 A I was writing a warning ticket, yes, ma'am.

11 Q And Mr. Baxter did comply with your request for the  
12 driver's license and registration, correct?

13 A Yes, ma'am.

14 Q He did give you the rental agreement of the vehicle as  
15 well?

16 A Yes, ma'am.

17 Q No question that this was a, a rental vehicle?

18 A That's correct.

19 Q And he spoke with you, answered your questions when he  
20 was at the front of your vehicle?

21 A Yes, ma'am.

22 Q Now, you testified that when you approached the  
23 passenger side of the vehicle that you observed what looked  
24 to be some green plant material on Mr. Burris' shirt,  
25 correct?

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 A Yes, ma'am.

2 Q And Mr. Burris was wearing a black shirt I believe?

3 A Yes, ma'am.

4 Q And when you were at the passenger vehicle, however,  
5 you had Mr. Baxter step from the vehicle, correct?

6 A Yes, ma'am.

7 Q You did not, at that point in time, have Mr. Burris  
8 step from the vehicle?

9 A No, ma'am.

10 Q And having reviewed the tape both before coming to  
11 court today and then just now when it was published to the  
12 jury, you would agree that no where on the tape you comment  
13 to Mr. Burris of what's on your shirt or anything to that  
14 nature?

15 A No, ma'am.

16 Q And you did not, at that point, take any item into  
17 evidence from Mr. Burris?

18 A No, ma'am.

19 Q And you also testified you called Officer Gibson to  
20 come on scene to assist as well, correct?

21 A Yes, ma'am.

22 Q And when Officer Gibson arrived you actually requested  
23 he go look up at Mr. Burris' shirt, correct?

24 A Correct.

25 Q And Officer Gibson did that, correct?

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 A Yes, ma'am.

2 Q And, again, Officer Gibson did not use any sort of  
3 flashlight, any sort of lights, or anything?

4 A I don't believe he did.

5 Q And Officer Gibson did come back to you and basically  
6 explain what he observed, correct?

7 A Yes, ma'am.

8 Q And he told you that he didn't see anything green,  
9 correct?

10 A That's correct.

11 Q And commented that Mr. Baxter, or excuse me, Mr. Burris  
12 was smoking and all he saw was ashes, correct?

13 A Yes.

14 Q And then subsequently the drug sniffing dog was called  
15 out, correct?

16 A Yes, ma'am.

17 Q And this is essentially a dog that the Sheriff's office  
18 has trained in order to sniff possible narcotics?

19 A That's correct.

20 Q And Officer Gibson was the one who actually walked the  
21 dog I believe?

22 A Yes, ma'am.

23 Q And the information you received from Officer Gibson  
24 was that the dog did not alert to any possible narcotics?

25 A That's correct.

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 Q And the dog, I think from your observations, did  
2 actually go around the car I believe about twice, correct?

3 A Yes, ma'am.

4 Q And you were seated inside your vehicle while this was  
5 going on?

6 A Yes, ma'am.

7 Q And, Officer Vinesett, you are designated, in summary,  
8 as the case agent in this case, correct?

9 A Yes, ma'am.

10 Q which would probably mean you were basically the  
11 primary officer involved in this case?

12 A Yes, ma'am.

13 Q And as part of being the case agent, one of the things  
14 you typically do is draft a case file summary?

15 A Yes, ma'am.

16 Q And you testified that you have been with the Sheriff's  
17 office I believe since 1999?

18 A Yes, ma'am.

19 Q And, so, you are familiar with the case file summary  
20 procedures through the Sheriff's Office?

21 A Yes, ma'am.

22 Q And you probably drafted thousands of them over that  
23 time, hundreds?

24 A I would say a hundred, probably a couple hundred.

25 Q And essentially what the case file summary is is a sort

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 of narrative summary of what your observations were?

2 A Yes, ma'am.

3 Q And it sets out sort of basically what information you  
4 think is important to the case?

5 A Yes, ma'am.

6 Q It sets out sort of a narrative to basically support  
7 whatever charges you've made in this case?

8 A Yes, ma'am.

9 Q And you're familiar with the fact that the case file  
10 summary is, at some point in time, transmitted to the  
11 solicitor's Office?

12 A Yes, ma'am.

13 Q And the case file summary is something the prosecutor  
14 then can look at and have a basic understanding of what  
15 happened?

16 A That's correct.

17 Q And because of the fact the case file summary is relied  
18 upon by the prosecutor, it's important the case file summary  
19 is accurate, correct?

20 A Yes, ma'am.

21 Q Also important that the case file summary be thorough?

22 A Yes, ma'am.

23 Q And, in fact, generally you write case file summaries a  
24 fairly short time after making the arrest, correct?

25 A Usually within five days.

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 Q within five days.

2 And you do that basically so the information is fresh  
3 in your mind too?

4 A Yes, ma'am.

5 Q And you did, in fact, draft a case file summary of  
6 this?

7 A Yes, ma'am.

8 Q And, now, in your case file summary, you noted that you  
9 believed you saw some small pieces of a green particle on  
10 Mr. Burris' shirt, correct?

11 A Yes, ma'am.

12 Q And then your case file summary also indicates that you  
13 went back to the passenger side of the vehicle and you did  
14 not see those particles again?

15 A Yes, ma'am.

16 Q And your case file summary also includes the fact that  
17 Officer Gibson and Officer Gonzales arrived on scene?

18 A Yes, ma'am.

19 Q And your sort of discussion with Officer Gibson, I  
20 think if you're maybe looking on the second page at the top.

21 A Yes, ma'am.

22 Q But your case file summary does not indicate that  
23 Officer Gibson told you he did not see anything green on Mr.  
24 Burris' shirt?

25 A That's correct.

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 Q And your case file summary does indicate that the drug  
2 dog, K-9, Justice, did not alert to the vehicle?

3 A Yes, ma'am.

4 Q Now, when you were returned to the passenger side of  
5 the vehicle, I believe, would this be about maybe the third  
6 time or so, but after you received the information the drug  
7 dog did not alert and you returned to the vehicle, correct?

8 A Yes, ma'am.

9 Q Both Mr. Baxter and Mr. Burris were out of the vehicle  
10 at this point, correct?

11 A Yes, ma'am.

12 Q And at that point in time you took a flashlight with  
13 you to the vehicle, correct?

14 A Yes, ma'am.

15 Q And as we see from the video, maybe sort of an obvious  
16 question, but the sun had not set at that point in time,  
17 correct?

18 A No, ma'am.

19 Q And you indicated that you observed a green plant  
20 material at this time, correct?

21 A Yes, ma'am.

22 Q And that was with the aid of a flashlight, correct?

23 A Yes, ma'am.

24 Q And you were essentially shining that flashlight down  
25 in the side of the door, correct?

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 A Yes, ma'am.

2 Q And the green plant material you indicated you found at  
3 that point was located essentially between the passenger  
4 seat and the door, correct?

5 A Yes, ma'am.

6 Q And you had not observed that green plant material  
7 that, between the passenger seat and the door at any of the  
8 prior times you walked up to the vehicle?

9 A No, ma'am.

10 Q And when you walked up just to sort of the level part  
11 of the vehicle, since you were level with the passenger  
12 window looking in, you would not observe that green plant  
13 material, correct?

14 A The level part of the vehicle?

15 Q The vehicle -- if you walked up, walking up to the  
16 window where you were just standing upright and you're sort  
17 of looking in, I guess I'm saying level laterally in the  
18 passenger window, that is not visible looking laterally, is  
19 that correct?

20 A No, you would probably not even see the corner of the  
21 right seat.

22 Q Okay. And the interior of the vehicle was dark in  
23 color, the floorboard?

24 A I'm not -- I believe it was a tan.

25 Q Okay.

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 A I'm not a hundred percent, but I think it was tan.

2 Q And you don't have notes or photographs as to that  
3 either?

4 A No, ma'am.

5 Q But I believe it may have been a tan color?

6 A Yes, ma'am.

7 Q Was it not white though, correct?

8 A I don't believe it was.

9 Q And you then indicated that you searched the vehicle,  
10 correct?

11 A Yes, ma'am.

12 Q And you testified that you recovered a Mason jar  
13 wrapped in a t-shirt beneath the passenger seat, correct?

14 A Correct.

15 Q And that would have been the seat where Mr. Burris was  
16 sitting, correct?

17 A Yes, ma'am.

18 Q And that was also not visible if you just looked  
19 straight into the window of the vehicle?

20 A That's correct.

21 Q And you only obtained that when you look under the  
22 seat, correct?

23 A Yes, ma'am.

24 Q And we see on the video that you actually place that on  
25 the hood of the car, correct?

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

- 1 A Yes, ma'am.
- 2 Q And you were not wearing gloves at the time, correct?
- 3 A No, ma'am.
- 4 Q In fact, the forensics report, your fingerprints were  
5 actually recovered from that jar, correct?
- 6 A Yes, ma'am.
- 7 Q And Troy Baxter's fingerprints were not recovered from  
8 that jar, correct?
- 9 A No, ma'am.
- 10 Q And, in fact, multiple officers -- scratch that.  
11 Multiple officers also searched the entire vehicle,  
12 correct?
- 13 A Yes, ma'am, we looked through it.
- 14 Q And none of those officers were wearing gloves when  
15 they were searching the vehicle?
- 16 A No, ma'am.
- 17 Q And the trunk of the vehicle was searched?
- 18 A Yes, ma'am.
- 19 Q And, in fact, there was some sort of a bag that looked  
20 like it might of been a garage bag or some sort of bag in  
21 the trunk of the vehicle?
- 22 A I believe that's right.
- 23 Q And there -- nothing was located in the trunk of the  
24 vehicle that was, you suspected to be narcotics?
- 25 A No, ma'am.

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 Q And you testified that you recovered a green plant  
2 material from a coin tray in the vehicle, correct?

3 A Yes, ma'am.

4 Q And that it was wrapped in tin foil and a plastic bag?

5 A Yes, ma'am.

6 Q And I believe we observed on the vehicle you actually  
7 had to open up the tin foil in order to see what was inside  
8 of it?

9 A Yes, ma'am.

10 Q And you testified that that was a coin tray that  
11 dropped down?

12 A I believe it pulled out. I'm not, I'm not a hundred  
13 percent. I think it just pulled out.

14 Q Okay. But it was some sort of it -- it had to be  
15 closed I guess so those things don't follow out, be closed  
16 up?

17 A Yes, ma'am.

18 Q And you opened it up and that's when you located this  
19 item?

20 A Yes, ma'am.

21 Q And the prosecutor asked you some questions about some  
22 items that you took into evidence, correct?

23 A Yes, ma'am.

24 Q And basically of how you put those items and you  
25 testified you sealed them in a bag, correct?

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 A Yes, ma'am.

2 Q And, for example, one of those items was State's  
3 Exhibit I believe No. 9, which you identified as being a  
4 plastic bag, correct?

5 A Yes, ma'am.

6 Q And you identified that you had placed that plastic bag  
7 in an evidence bag and had placed that in the evidence  
8 locker?

9 A Yes, ma'am.

10 Q And I believe you testified that, from that plastic  
11 bag, you had recovered some green plant material, correct?

12 A Yes, ma'am.

13 Q And that she had you identify as State's Exhibit No. 10  
14 I think?

15 A Can I see that?

16 Q In fact, that notation indicates that is from item  
17 number seven?

18 A This baggie?

19 Q This one.

20 A This is item number seven, which was taken from item  
21 number three, which is the Mason jar.

22 Q Okay. And then on your notation on six, State's  
23 Exhibit No. 10, is that was recovered from item number  
24 seven, correct?

25 A Yes, ma'am.

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 Q And also on State's No. 11, your notation indicates  
2 that was taken from item number seven?

3 A Yes, ma'am.

4 Q And, so, in other words, the -- what, what you  
5 submitted into the evidence locker, the items that the  
6 prosecutor had you identify, that was not how you recovered  
7 them from the vehicle, correct?

8 A Say again.

9 Q That, that -- those items were not recovered from the  
10 vehicle separate like that, correct?

11 A No, it was all taken from the Mason jar.

12 Q Okay. So, in other words, you recovered a jar -- you  
13 took plastic bags out of the jar?

14 A Yes, ma'am.

15 Q You took the green plant material out of the plastic  
16 bags?

17 A Yes, ma'am.

18 Q And then everything was packaged separately in evidence  
19 bags?

20 A Yes, ma'am.

21 Q And they were submitted into evidence that way?

22 A That's correct.

23 Q And you were not wearing gloves when you did this?

24 A Whenever I took it out of the Mason jar into these bags  
25 I was.

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 Q Okay. You were wearing gloves at that point once  
2 you---

3 A Yes, ma'am.

4 Q ---recovered the Mason jar?

5 And we do not see that on camera, that was done off the  
6 camera, correct?

7 A Yes, ma'am, here at the office.

8 Q At the office.

9 Beg the Court's indulgence.

10 (Pause.)

11 Q Officer Vinesett, you did have interaction with Mr.  
12 Baxter on scene once you located this green plant material,  
13 correct?

14 A Yes, ma'am.

15 Q And he denied ownership or knowledge or denied  
16 ownership of any of the items found in the vehicle?

17 A Yes, ma'am.

18 Q Repeatedly denied having any knowledge of---

19 A Yes, he did.

20 Q ---what was found in the vehicle?

21 And when he was handcuffed and placed under arrest, his  
22 pockets were also searched, correct?

23 A Yes, ma'am.

24 Q And that's pretty much a standard procedure when  
25 someone's arrested?

Lonnie Vinesett - Cross-examination  
by Ms. Anderson

1 A Yes, ma'am.

2 Q And you did not locate anything you suspected to be  
3 narcotics on him at that time?

4 A No, ma'am.

5 Q And none of the green plant material that you placed  
6 into evidence was ever located on Mr. Baxter's person,  
7 correct?

8 A That's correct.

9 MS. ANDERSON: Nothing further, Your Honor.

10 THE COURT: Mr. Reeves.

11 CROSS-EXAMINATION

12 BY MR. REEVES:

13 Q Deputy, I'm gonna try not to be too duplicative because  
14 we're all hungry. Just a few questions.

15 This was a speeding stop?

16 A Yes, sir.

17 Q This was on I-77?

18 A Yes, sir.

19 Q Somewhere between Rock Hill and Fort Mill?

20 A Between Rock Hill and Charlotte.

21 Q Heavily traveled?

22 A Yes, sir.

23 Q The speed limit is 60 miles an hour?

24 A Yes, sir.

25 Q Do you travel that roadway frequently?

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 A Yes, sir.

2 Q Do many people travel 60 miles an hour?

3 A Not many.

4 Q Do many people travel 66 or 67 miles per hour?

5 A I'm sure they do, yes, sir.

6 Q Isn't it true that many travel in excess of 70 miles an  
7 hour?

8 A Yes.

9 Q It's a fast road, isn't it?

10 A Most of the time.

11 Q Got to pay attention?

12 A Yes, sir.

13 Q Okay. On this day, you see a number of vehicles in  
14 front of your cruiser, is that correct?

15 A Yes, sir.

16 Q Do they appear to be traveling in the same basic speed  
17 area, speed zone?

18 Did one stand out over another?

19 A As, as far as the vehicle, the white vehicle that I  
20 stopped was actually catching up with that crowd, yes, sir.

21 Q Okay. So, the white vehicle appeared to be traveling  
22 somewhat faster than the others?

23 A Slightly faster, yes, sir.

24 Q Slightly faster, not a stand out?

25 A No, sir.

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 Q Okay. Did you observe the occupants of the white car  
2 before you turned on your video?

3 A No, sir.

4 Q And in the video, it appeared to be a relatively small  
5 car, would you agree?

6 A Yes, sir.

7 Q Has a headrest in the back seat?

8 A Yes, sir.

9 Q And headrest on the front seats?

10 A Yes, sir.

11 Q Is it difficult to see inside that vehicle even in  
12 broad daylight from your car?

13 A No, sir.

14 Q Were you able to identify if they were male or female  
15 occupants in that car?

16 A No, sir.

17 Q Were you able to identify whether they were white,  
18 black, or any other color in that car?

19 A No, sir.

20 Q All right. So, the first time you were aware of the,  
21 the make up of the occupants was when you came up on the  
22 passenger's side?

23 A Yes, sir.

24 Q Okay. Now, I think you testified that you did not use  
25 your radar?

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

- 1 A No, sir, I was on a spare vehicle that wasn't equipped  
2 with radar.
- 3 Q Okay. But you did activate your video?
- 4 A Yes, sir.
- 5 Q To pace the car?
- 6 A Yes, sir.
- 7 Q And I think you said to basically build your case?
- 8 A Yes, sir.
- 9 Q And I think you use the term that you were using the  
10 video to narrate what was going on?
- 11 A Yes, sir.
- 12 Q And you made certain comments, while you were pacing  
13 them, into the audio portion of that recording device, is  
14 that correct?
- 15 A Yes, sir.
- 16 Q Okay. Now, you activate your blue lights, the car  
17 pulls over to the side?
- 18 A Yes, sir.
- 19 Q Okay. You pull over behind them. You pull a little  
20 bit further over than they do on the road, is that correct?
- 21 A Yes, sir.
- 22 Q Was that white car safely off the roadway?
- 23 A Yes, sir, I believe so.
- 24 Q Plenty of room?
- 25 A Yes, sir.

Lonnie Vinesett - Cross-examination  
by Mr. Reeves.

1 Q Okay. Is it routine that you turn on your video camera  
2 for a routine speeding stop?

3 A I routinely, if I'm gonna stop a vehicle, I routinely  
4 hit record to obtain any type of evidence that might happen  
5 between me calling it in and that vehicle stopping.

6 Q But at this point your only suspicion was speeding?

7 A Yes, sir.

8 Q Nothing else?

9 A Yes, sir.

10 Q Okay. Is it common for you to stop a speeding car and  
11 then go up on the passenger side?

12 A Every vehicle that I stop I approach on the passenger  
13 side.

14 Q Why is that?

15 A Safety, element of surprise. Most of the time they're  
16 not expecting you to come to the passenger side. If someone  
17 is armed with a weapon, and you're walking up to the  
18 vehicle, and they do have a weapon, it could be as easy as  
19 shooting you right here as soon as you come around the  
20 corner, but if you're on this side, they would actually have  
21 to make a turn and basically, officer safety, give us a  
22 little more time to react.

23 Q Again, this is a broad daylight stop?

24 A Yes, sir.

25 Q Not in a remote area?

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 A That's correct.

2 Q And you only suspected speeding at this point?

3 A Yes, sir.

4 Q Wasn't an armed robbery or anything else?

5 Did you suspect drugs at that point?

6 A No, sir.

7 Q Okay. So, you walk up to the side of the car and  
8 before you do that you said you noticed some movement?

9 A Yes, sir.

10 Q By the passenger?

11 A That's correct.

12 Q And what sort of movement did you observe?

13 A The, the best I could describe is most of the time,  
14 whenever an officer gets behind a vehicle, you can see some  
15 type of movement. Most of the time it's just slight. You  
16 can see their arms come up, their shoulders go back and the  
17 seatbelt goes on. This wasn't consistent with that. It was  
18 as if he was leaning, leaning a little bit, leaning forward.

19 Q Okay. But you said it was difficult to see inside that  
20 small car with all the headrests and so forth.

21 So, what exactly did you observe?

22 A The headrest probably isn't but about that big, and  
23 someone's head and shoulders is a lot bigger than that, and  
24 that's, that's what I could see is what is consistent to me  
25 of someone leaning over.

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 Q And what is that---

2 A I could see a, a small portion of the head and the, the  
3 shoulder, the left shoulder.

4 Q What did you suspect?

5 A Either getting a weapon, getting or putting a weapon  
6 under the seat, or hiding any type of contraband.

7 Q From leaning forward?

8 A Yes, sir.

9 Q Okay. You walk up to the vehicle, you look in, and  
10 what do you see?

11 What do you identify as the occupants?

12 A Mr. Baxter is the driver and Mr. Burris is the  
13 passenger.

14 Q They're young?

15 A Yes, sir.

16 Q They're black?

17 A Yes, sir.

18 Q They're male?

19 A Yes, sir.

20 Q Two black males. This was the first time you were  
21 aware of the identity of the occupants of that car?

22 A Yes, sir.

23 Q Now, when you leave the vehicle, you still have the  
24 video going, is that correct?

25 A Yes, sir.

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

- 1 Q You're aware it's being videotaped?
- 2 A Yes, sir.
- 3 Q And you have your shoulder mic, which also records
- 4 sound?
- 5 A Yes, sir, body mic on the shoulder.
- 6 Q Body mic.
- 7 Records sound away from the video?
- 8 A Yes, sir.
- 9 Q And away from the car?
- 10 A Yes, sir.
- 11 Q And when you were narrating you made some comments when
- 12 you were pacing them before you pulled them over, is that
- 13 correct?
- 14 A Yes, sir.
- 15 Q Kind of filling in some of the what's going on kind of
- 16 a thing?
- 17 A Yes, sir.
- 18 Q When you see the two young black males in the car, you
- 19 immediately come back toward your cruiser, is that correct?
- 20 A Yes, sir.
- 21 Q And you get on your radio to call for back-up?
- 22 A That's correct.
- 23 Q You did not narrate and indicate that you saw any type
- 24 of material on the shirt of my client, Mr. Burris, did you?
- 25 A That's correct.

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

- 1 Q Why not?
- 2 A Not sure.
- 3 Q But what exactly did you observe?
- 4 You said green particles.
- 5 Where were they on his shirt?
- 6 A They was basically all over. Right, right on the front
- 7 part of the shirt.
- 8 Q Okay. All over both sides?
- 9 A A couple pieces here on the, the chest area.
- 10 Q Give me an approximation of how many pieces you saw.
- 11 A I would say probably four or five pieces.
- 12 Q And how large were they?
- 13 A Pretty small.
- 14 Q Okay. And you suspected, at that point, that was
- 15 marijuana?
- 16 A Yes, sir.
- 17 Q Okay. So, you're walking back. You call for back-up.
- 18 A Yes, sir.
- 19 Q The driver, Mr. Baxter, had already complied with his
- 20 license and his registration in this case, rental agreement?
- 21 A That's correct.
- 22 Q Okay. He disputed the speeding part?
- 23 A Yes, sir.
- 24 Q Okay. And you were immediately prepared to write him a
- 25 warning ticket?

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 A Yes, sir, I was.

2 Q Okay. So, they stopped. You identified them. He  
3 produced his license and registration.

4 why back up?

5 A Because I saw what appeared to me to be marijuana on  
6 his t-shirt and at that point I was gonna go further with  
7 the stop to see if there was anything else or in the, in the  
8 vehicle illegal.

9 Q But you did not narrate that?

10 A No, sir.

11 Q And you did not communicate that to the occupants?

12 A No, sir.

13 Q Now, your colleague is Officer Gibson, Deputy Gibson?

14 A Yes, sir.

15 Q Did he arrive?

16 A Yes, sir.

17 Q Okay. And he also had the drug sniffing dog?

18 A Yes, sir.

19 Q Okay. Now, Deputy Gibson arrives, you clue him in,  
20 hey, I think I see something. You identified what you think  
21 it is. You tell him where to look and then you asked him to  
22 go look.

23 Is that correct?

24 A That's correct.

25 Q So, you did everything but come over there and point to

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 it, is that correct?

2 A That's correct.

3 Q And he went down to the car, he looked where you told  
4 him, he looked for what you described, he came back and  
5 reported to you and what did he say?

6 A He said he only saw ashes, that he appeared that he had  
7 just lit up a cigarette, and I told him that's what he had  
8 done.

9 Q Okay. why was that not the end of the story?  
10 why did you go further?

11 A Because, as I saw what I appeared to, what I thought  
12 was marijuana on his t-shirt whenever I was first up there  
13 at the vehicle.

14 Q That's why you called back-up?

15 A That's correct.

16 Q That's why you had your colleague go look?

17 A Yes, sir.

18 Q He said I didn't see it, I saw cigarette ash?

19 A That's correct.

20 Q But you decided to proceed further?

21 A Yes, sir.

22 Q Okay. In proceeding further involved that dog?

23 A Yes, sir.

24 Q What's that dog's name?

25 A Justice.

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 Q Justice.

2 All right. Justice was taken around that car?

3 A Yes, sir.

4 Q Okay. And, again, this was Deputy Gibson and he was  
5 telling that dog where to sniff, didn't he?

6 A I don't believe the dog can understand him speak and he  
7 was actually pointing.

8 Q I'll stipulate that dog can't understand, but the dog  
9 understands this, doesn't he?

10 A Yes, sir.

11 Q This means sniff here, doesn't it?

12 A Yes, sir.

13 Q Sniff here and the dog sniffs?

14 A A couple of times he was actually looking out the other  
15 way.

16 Q That dog wanted to go play. We all saw it.

17 A That's what it looked like to me.

18 Q But he did his job, didn't he?

19 A He -- I'm not a K-9 handler.

20 Q Everywhere, everywhere Deputy Justice, Deputy Gibson  
21 told Justice to sniff, that dog sniffed, didn't he?

22 A I wouldn't say every place, no, sir.

23 Q Where did he miss?

24 A As he was walking around the back of the vehicle I  
25 think the second time he was pointing at the vehicle and the

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 dog was looking southbound and he pulled him around and I  
2 wouldn't say every time, no, sir.

3 Q Okay. Would you agree with me, deputy, that when  
4 Deputy Gibson said sniff here around this passenger door  
5 that dog sniffed?

6 A He came, he came close a few times, yes, sir.

7 Q In fact, he came close twice, didn't he?

8 A Yes, sir.

9 Q Okay. Did not alert?

10 A No, sir.

11 Q Okay. So, back up guy says I don't see it. I see  
12 cigarette ash. You bring in Justice. Justice sniffs  
13 around, says I'm wanting to go play ball, says I don't see  
14 it either, why did you go further?

15 A Because I knew what I had saw on the shirt the first  
16 time whenever I was up there.

17 Q Now, this time, despite your colleague, despite the  
18 sniff dog, you go get a flashlight?

19 A Yes, sir.

20 Q All right. You're gonna find it, aren't you?

21 A I'm gonna look for it.

22 Q All right. So, you go back to the car?

23 A Yes, sir.

24 Q And you turn on your flashlight.

25 Where do you look?

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 A Right basically in the seat first where Mr. Burris was  
2 sitting, and then right beside the seat as if -- if he said  
3 he didn't see it and I saw it, if he was to brush it off or  
4 clean it off, it would either be over here on this side or  
5 over here on this side, and that's where I looked at the  
6 flashlight.

7 Q The door was closed?

8 A Yes, sir.

9 Q Is that correct?

10 If you're standing outside the vehicle, without looking  
11 into that vehicle, can you see that residue or whatever it  
12 is you found?

13 A Yes, sir, I can.

14 Q From outside the vehicle?

15 A Yes, sir.

16 Q Without your flashlight?

17 A The way -- without my flashlight?

18 Q Yes, sir.

19 A I mean I can see inside the vehicle without a  
20 flashlight, yes, sir.

21 Q Well, why did you take a flashlight back?

22 A I mean I'm, I'm sitting there looking up under this,  
23 this bench here with a box and it's got something in it, I  
24 can't tell what it is, but if I had my flashlight shining on  
25 it, I could, I could tell what it was.

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 Q Is it your testimony, officer, that you can see between  
2 the passenger seat and the door frame from outside the  
3 vehicle?

4 A Yes, sir, because the window and the door's actually  
5 curved a little bit on the G-6 and---

6 Q You can, you can see it?

7 A ---me standing here and looking in, I could, I could  
8 see it without being in the vehicle.

9 Q Is your head inside the vehicle to look down that door  
10 in that area there?

11 A No, sir, I was actually, I was actually above, above  
12 the window looking down through where the glass would be.

13 Q Okay. In this area between the passenger seat and the  
14 door frame?

15 A Yes, sir.

16 Q This residue that you found was right there in the  
17 floorboard?

18 A Yes, sir.

19 Q Right where the bottom of the door is?

20 A Beside where the bottom of the door is.

21 Q Okay. Right, right in that area where Deputy Gibson is  
22 doing this and that dog sniffing there, isn't it?

23 A Yes, sir.

24 Q Did you find a significant amount of residue there?

25 A I found a couple of pieces. Not a significant.

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 Q When you asked my client, Mr. Burris, if you could  
2 search him, did he resist in any way?

3 A I didn't ask him that.

4 Q You didn't ask him to search him?

5 A No, sir.

6 Q You just told him to step out of the car?

7 A I didn't ask him to step out of the vehicle.

8 Q Did Deputy Gibson search my client or was that you?

9 A That was Deputy Gibson.

10 Q Okay. All right. To your knowledge, did my client  
11 resist Deputy Gibson's request to be searched?

12 A No, sir.

13 Q Now, after the dog did not alert, you go off camera,  
14 there's nobody standing in front of that car, no one  
15 standing in front of that video, do you recall that?

16 A Yes, sir.

17 Q And then the video or the audio, excuse me, I noticed  
18 went silent for about a minute.

19 A Yes, sir.

20 Q Was there something wrong with your equipment?

21 A No, sir.

22 Q During that minute, what were you doing?

23 A I was giving dispatch Mr. Baxter's information,  
24 checking wants or warrants, and basically checking his  
25 license status.

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 Q Were you also having a conversation with Deputy Gibson?

2 A I, I don't recall.

3 Q Okay. But you did observe, as I did, that, that the  
4 audio went silent?

5 A Yes, sir.

6 Q And this was just before you found the marijuana and  
7 made the arrest?

8 A Yes, sir.

9 Q Is that correct?

10 Okay. Now, as to what you found, you found some  
11 residue, different parts of the car, and you found a Mason  
12 jar?

13 A Yes, sir.

14 Q The Mason jar was wrapped in some sort of t-shirt?

15 A That's correct.

16 Q You said it was partially wet?

17 A Yes, sir.

18 Q Did it appear to be a water wetness or a sweat wetness?  
19 What would you describe it as?

20 A My guess would be sweat.

21 Q Okay.

22 A That's what I thought it was.

23 Q All right. And that was covering the Mason jar?

24 A Yes, sir.

25 Q Okay. You took the Mason jar out. I noticed everybody

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 was kind enough to touch just the top of it. That Mason jar  
2 was tested---

3 A Yes, sir.

4 Q ---by the crime lab?

5 A Yes, sir.

6 Q It was tested for fingerprints?

7 A Yes, sir.

8 Q Only fingerprints they found were yours?

9 A That's correct.

10 Q Didn't find Deputy Gibson's though?

11 A No, sir.

12 Q They didn't find my clients either?

13 A No, sir.

14 Q Now, if it's sweat wetness on that t-shirt, was that  
15 t-shirt tested?

16 A For?

17 Q DNA.

18 A I, I didn't request it be tested for DNA, no, sir.

19 Q So, no DNA evidence of any kind in this case?

20 A I've -- in, in my, in my past, I don't -- there's no  
21 section on there requesting DNA on our portion of it. I'm  
22 not sure if that would be less, left up to the prosecutors  
23 to request it. I've never, in my 14 years experience,  
24 requested DNA off of anything.

25 Q But the fingerprint test came back negative. That

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 would of shown who touched that Mason jar, whether it be Mr.  
2 Baxter or Mr. Burris, would it not?

3 A Yes, sir.

4 Q So, without fingerprint evidence, there's no physical  
5 evidence linking either of these gentlemen to that Mason  
6 jar, is there?

7 A No, sir.

8 Q But you have a sweaty t-shirt, sweat contains DNA, that  
9 would show, wouldn't it?

10 A Yes, sir.

11 Q One last thing, during the video, part of that  
12 narration, the dog is jumping around and clearly wants to go  
13 play, I heard someone say come on.

14 A Yes, sir.

15 Q Was that you?

16 A Yes, sir.

17 Q What, what do you mean by come on?

18 A Officer Gibson and myself had been partners for about  
19 four years, and a lot of the times I'll see Justice sniffing  
20 a car, and his nose will actually stay on that vehicle the  
21 entire time he runs around the vehicle. On this particular  
22 day, like the counselor stated, he looked like he wanted to  
23 go play, wanted to go fetch a ball, he kept pulling him,  
24 going side to side, and that was basically my frustration  
25 with the dog saying come on, just hoping that he would

Lonnie Vinesett - Cross-examination  
by Mr. Reeves

1 search.

2 Q Find what you think you had, is that right?

3 A Hoping he would search a little better.

4 Q Officer, in your experience, you pulled this car over,  
5 you think you see some four or five pieces of small

6 whatever, you ask an officer to verify it, he doesn't, you  
7 ask a dog to verify it, find it, the dog doesn't, do you  
8 consider this a weak stop or a strong stop?

9 A Strong.

10 Q Thank you, sir.

11 Nothing further.

12 SOLICITOR WEAVER: Nothing further.

13 THE COURT: You can step down and be excused and remain  
14 here if you want to remain with us.

15 We'll break for lunch until about -- it's about five  
16 till 1:00. So, we'll break until 2:15. So, please be back  
17 at 2:15 and we'll try to start promptly after that as we  
18 can.

19 (WHEREUPON, the following takes place outside the  
20 presence of the jury.)

21 THE COURT: We're in recess until 2:15.

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

23 THE COURT: Solicitor.

24 SOLICITOR WEAVER: I just have one matter to bring up  
25 before the jury is brought back in. Under Mr. Reeves

1 cross-examination of Officer Vinesett, Your Honor, I would  
2 ask that you do some sort of instructions to the jury about  
3 the silence that was on the video. He -- it -- for two  
4 reasons. One, it related to the State was trying to hide  
5 some conversation between Officer Vinesett or Officer  
6 Gibson, and also Officer Vinesett testified that he just  
7 radioed in for dispatch to give him information about Mr.  
8 Baxter's license and warrants check or status, and that the  
9 video was cutoff shortly thereafter. Maybe implying that  
10 we -- there was information regarding Mr. Baxter's status,  
11 which brings to light that, which is the whole purpose of us  
12 deleting that portion of the tape anyway.

13 THE COURT: well, I'm not sure I understand. I know  
14 what you're talking about, but did you -- what, what do you  
15 have to say about that, Mr. Reeves?

16 You did imply that they had cut something out and that  
17 there was something surreptitious or evil about it and, and  
18 it was done by agreement. Not with you, but with the  
19 other---

20 MR. REEVES: It was just an observation, Your Honor.  
21 I'm certainly not trying to cross any lines here, but I have  
22 no intention of bringing it up in closing.

23 THE COURT: well, but it's in the record now. So, if  
24 you'll bring, prepare me something to include in my charge  
25 that that was brought up during the testimony, but the

1 parties had agreed that, that would be redacted or something  
2 like that.

3 MR. REEVES: That's fine.

4 THE COURT: Bring in the jury.

5 (WHEREUPON, the following takes place within the  
6 presence of the jury.)

7 THE COURT: Call your next witness.

8 SOLICITOR WEAVER: Your Honor, the State calls Officer  
9 Gibson.

10 WILLIAM GIBSON, being first duly  
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR WEAVER:

14 Q Officer Gibson, if you will please state your full name  
15 for the record.

16 A Yes, ma'am, William R. Gibson, II.

17 Q And, Officer Gibson, where are you employed?

18 A Currently employed by the York County Sheriff's Office.

19 Q And you're a police officer?

20 A I am.

21 Q How long have you been a police officer?

22 A Approximately 17 years.

23 Q What unit are you currently assigned with the York  
24 County Sheriff's Office?

25 A Currently assigned to the Highway Interdiction Team.

William Gibson - Direct examination  
by Solicitor Weaver

1 Q Have you had any special training with the Interdiction  
2 Team?

3 A I have.

4 Q Have you had any special training regarding illegal  
5 substances such as marijuana?

6 A I have.

7 Q And on September 11<sup>th</sup>, 2009, were you called by Officer  
8 Vinesett to assist him on the scene of a traffic stop?

9 A I was.

10 Q And when you arrived, what did Officer Vinesett  
11 actually do?

12 A He asked me to ask for consent to search the vehicle in  
13 question that Mr., the Defendant Baxter was driving.

14 Q And did you ask Mr. Baxter for consent to search the  
15 vehicle?

16 A I did.

17 Q And what was Mr. Baxter's response?

18 A Did not consent.

19 Q Did Officer Vinesett ask you to do anything about Mr.  
20 Burris?

21 A He did. He asked me to approach the vehicle and see,  
22 and asked if I had seen anything on his shirt that related  
23 to the substance of marijuana.

24 Q And what did you tell Officer Gibson that you viewed?

25 A I stated to Officer Vinesett I had not seen any

William Gibson - Direct examination  
by Solicitor Weaver

1 marijuana on his shirt.

2 Q And did Officer Vinesett ask you to do anything else?

3 A He requested I walk the K-9, my drug sniffing K-9  
4 around the vehicle.

5 Q And you're an officer that handled a drug detection  
6 dog?

7 A Yes, I am.

8 Q How long have you been working with a drug detection  
9 dog?

10 A Approximately three years.

11 Q And the drug dog's name is Justice?

12 A Correct.

13 Q How long have you been working with Justice?

14 A Right about three -- a little more than three years.

15 Q And does Justice have any special training in detecting  
16 narcotic substances?

17 A He is a certified law enforcement K-9 Association as a  
18 drug sniffing K-9.

19 Q Has Justice been trained in detecting marijuana, the  
20 presence of marijuana?

21 A He has.

22 Q And did you walk Justice around the vehicle?

23 A I did.

24 Q And, to your knowledge, did Justice alert to the  
25 presence of narcotics, including marijuana, inside the

William Gibson - Direct examination  
by Solicitor Weaver

1 vehicle?

2 A He did not alert to the vehicle.

3 Q And after Justice did not alert to the vehicle, what  
4 did you do?

5 A I put Justice back in my patrol vehicle.

6 Q And did you have a conversation with Officer Vinesett  
7 about that?

8 A Yes, sir, I advised him that the, the dog did not alert  
9 to the vehicle.

10 Q And while out at the scene, did you have conversations  
11 with Mr. Baxter and Mr. Burris?

12 A Yeah, but I can't tell you exactly what it entails. It  
13 was two years ago, but I do specifically remember consent  
14 was denied on searching the vehicle from the driver.

15 Q And when you spoke with Mr. Baxter, did you smell any  
16 odor of burned marijuana coming from his person or his  
17 breath?

18 A I did not.

19 Q How about Mr. Burris, did you smell any odor of  
20 marijuana coming from his person or his breath?

21 A I did not.

22 Q How about the vehicle, did you smell any odor of  
23 marijuana or burnt marijuana coming from the vehicle?

24 A I did.

25 Q And did you assist in searching the vehicle?

William Gibson - Direct examination  
by Solicitor Weaver

1 A I believe I did.

2 Q Do you remember finding any items that could, could be  
3 used to smoke marijuana?

4 A No, ma'am.

5 Q How about on Mr. Baxter and Mr. Burris, did you find  
6 any items that would be used to smoke marijuana on either  
7 Mr. Baxter or Mr. Burris?

8 A No, ma'am.

9 SOLICITOR WEAVER: I have no further questions, Your  
10 Honor.

11 CROSS-EXAMINATION

12 BY MS. ANDERSON:

13 Q Officer Gibson, when you were, responded to the scene,  
14 it was still daylight, correct?

15 A It was.

16 Q And when you approached the vehicle at Officer  
17 Vinesett's request, you did not need a flashlight, correct?

18 A That is correct.

19 Q And you did not use your head lamps of your vehicle to  
20 illuminate the seat at all?

21 A That's correct.

22 Q And you indicated that Officer Vinesett advised you he  
23 thought he had observed some green particles on Mr. Burris'  
24 shirt, correct?

25 A Re, replay -- state your question.

William Gibson - Cross-examination  
by Ms. Anderson

1 Q When you arrived on scene, Officer Vinesett advised you  
2 that he, Officer Vinesett, thought he had observed some  
3 green particles on the passenger's shirt, correct?

4 A That's correct.

5 Q And you were actually asked to go up and look at that  
6 and see what you thought, correct?

7 A Correct.

8 Q And you did go up to the passenger vehicle, correct,  
9 the passenger side of the vehicle, correct?

10 A I did.

11 Q And you went up fairly close to the vehicle probably  
12 within a few feet of the, the door?

13 A I was probably next to the door so I could hear, due to  
14 the traffic on the interstate.

15 Q And the passenger side window was rolled down, correct?

16 A Correct.

17 Q And you did not observe any green material on the  
18 passenger's shirt, correct?

19 A I did not.

20 Q And you went back and told Officer Vinesett that I  
21 don't see anything green, correct?

22 A Correct.

23 Q And you did note that he was, the passenger was smoking  
24 a cigarette, correct?

25 A Yeah.

William Gibson - Cross-examination  
by Ms. Anderson

1 Q And Officer Vinesett also told you he had lit the  
2 cigarette when Officer Vinesett had been up at the vehicle?

3 A At some point in time he did light up a cigarette,  
4 correct.

5 Q And what you relayed to Officer Vinesett was it looks  
6 like ashes to me, correct?

7 A Correct.

8 Q And when you were up at the passenger side vehicle  
9 right up next to the door, you did not observe any other  
10 green plant material anywhere else in the car, correct?

11 A I did not.

12 Q And you indicated that you were trained in the use of  
13 the drug detection dog, correct?

14 A Correct.

15 Q And you specifically work with Justice as well?

16 A Correct.

17 Q And when you brought Justice out, you actually began at  
18 the front passenger side of the car, correct?

19 A Correct.

20 Q And then proceeded coming around the back of the car  
21 ending up around the front driver's side of the car,  
22 correct?

23 A That's correct.

24 Q And then actually came back around through, again  
25 through the back ending back up at the front passenger side,

William Gibson - Cross-examination  
by Ms. Anderson

1 correct?

2 A That is correct.

3 Q And at some point -- and the passenger window was still  
4 rolled down at this point in time, correct?

5 A Yes.

6 Q And at some point, when you were directing Justice as  
7 well, the -- Justice actually I think sort of stood up on  
8 hind legs and sort of put his head toward right in that open  
9 window, correct?

10 A Yes.

11 Q Okay. And you indicated that on neither of those sort  
12 of passes through the car did Justice detect any narcotics  
13 in the car?

14 A He did not alert to the vehicle, no, ma'am.

15 Q And you did not observe any odor of marijuana in the  
16 car, correct?

17 A I did not.

18 Q And you did not, prior to the search of the car, you  
19 did not observe anything that appeared to be marijuana in  
20 the vehicle?

21 A Correct.

22 MS. ANDERSON: Beg the Court's indulgence.

23 (Pause.)

24 Q Officer Gibson, you testified you have approximately 17  
25 years law enforcement experience?

William Gibson - Cross-examination  
by Ms. Anderson

1 A Yes, ma'am, I do.

2 Q And you testified as well that you do have some special  
3 trainings involving narcotics?

4 A Yes, ma'am.

5 Q And one of the narcotics you are trained in is  
6 marijuana, correct?

7 A Yes, ma'am.

8 Q And, so, in the course of your training, you would have  
9 been trained to identify, identify what marijuana looks  
10 like, correct?

11 A Correct.

12 Q And you also have law enforcement experience making  
13 cases interacting with something you believed to be  
14 marijuana, correct?

15 A Correct.

16 Q So, you would say you're fairly familiar with the  
17 appearance of marijuana, correct?

18 A With the appearance, yes, I am.

19 Q Thank you. Nothing further.

20 A Thank you.

21 CROSS-EXAMINATION

22 BY MR. REEVES:

23 Q Officer Gibson, just a couple of questions.

24 When you arrived at the scene, you were asked to go

25 look at my client's shirt, the black t-shirt, for what your

William Gibson - Cross-examination  
by Mr. Reeves

1 colleague had described as green particles or marijuana like  
2 particles?

3 A Yes, sir, that's correct.

4 Q And you've been on the force longer than your  
5 colleague?

6 A Yes, sir.

7 Q About seven years longer?

8 A Correct.

9 Q Okay. More experience?

10 A Yes, sir.

11 Q Okay. You went up there to look, didn't see anything?

12 A Correct.

13 Q And you reported that back to your colleague?

14 A That's correct.

15 Q Okay. Subsequently the dog didn't alert to the car?

16 A Did not.

17 Q Subsequently the car was searched and you found  
18 marijuana underneath the seat with some residue in the  
19 floorboard, but you didn't find any on Mr. Burris or Mr.  
20 Baxter, is that correct?

21 A On their person?

22 Q Yes, sir.

23 A No, sir.

24 Q No odor of marijuana on either defendant?

25 A No, sir.

William Gibson - Cross-examination  
by Mr. Reeves

1 Q No odor of marijuana in the vehicle?

2 A No, sir.

3 Q That's correct?

4 A No, sir, not that I recall.

5 Q And the evidence that was found was tested for  
6 fingerprints, is that correct?

7 A That's correct.

8 Q And the only fingerprints found were of your colleague?

9 A That's correct.

10 Q Not my client, not Mr. Baxter?

11 A Correct.

12 Q When you asked Mr. Baxter to search the car he refused?

13 A That's correct. He refused to a consensual search.

14 Q In your experience, is a refusal an indication of guilt  
15 or an indication of innocence?

16 SOLICITOR WEAVER: Objection, Your Honor.

17 THE COURT: Rephrase your question.

18 MR. REEVES: Thank you, Your Honor.

19 Q Did you ask my client to be searched, Mr. Burris?

20 A His person or the vehicle he was operating?

21 Q Person.

22 A I don't recall if I asked for consent to search his  
23 person or not.

24 Q You did, you did search Mr. Burris' person?

25 A Then I, then I asked for consent.

William Gibson - Cross-examination  
by Mr. Reeves

1 Q Okay. And he gave it to you?

2 A Correct.

3 Q Okay. Officer, the Mason jar containing the evidence  
4 yielded nothing but fingerprints, we established that.

5 You said there was also a shirt involved with the Mason  
6 jar?

7 A I believe there was a shirt that it was wrapped in.

8 Q Okay. And your colleague testified earlier the shirt  
9 appeared to be wet like sweat wet.

10 Did you find that as well?

11 A I, I didn't handle the evidence at all that evening --

12 Q Okay.

13 A -- as far as that shirt.

14 Q You didn't handle the shirt at all?

15 A I might of saw it visually, but I don't remember  
16 touching it on scene there.

17 Q If you assume for the moment that your colleague is  
18 correct that the shirt appeared to be wet from sweat, would  
19 you agree with me that sweat would contain DNA evidence?

20 A I'm not gonna assume anything, sir.

21 Q Okay. Fair enough.

22 Given the fact that we talk about no odor, no  
23 paraphernalia, nothing on the person, do you consider this a  
24 strong case or a weak case?

25 A I say it's a very strong case.

William Gibson - Cross-examination  
by Mr. Reeves

1 Q Very strong. Thank you, sir.

2 A Yes, sir.

3 SOLICITOR WEAVER: Nothing further, Your Honor.

4 THE COURT: You can step down. Thank you.

5 THE WITNESS: Thank you, judge.

6 SOLICITOR WEAVER: Your Honor, may this witness be  
7 excused?

8 THE COURT: You may be excused.

9 Call your next witness.

10 CYNTHIA MITCHUM, being first duly  
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR WEAVER:

14 Q Ms. Mitchum, please state your full name for the  
15 record.

16 A Cynthia Mitchum.

17 Q And where are you employed?

18 A I'm employed with the York County Sheriff's Office in  
19 the drug analysis department.

20 Q And how long have you been with the York County  
21 Sheriff's Office?

22 A I've been there ten and a half years.

23 Q And what are your duties with the York County Sheriff's  
24 Office?

25 A I received evidence from officers and I will analyze

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

1 the evidence for controlled and non-controlled substances.

2 Q Have you had any special education regarding detecting  
3 narcotic substances?

4 A Yes.

5 Q What education have you had?

6 A I have a Bachelor of Science in Chemistry which I  
7 received from Winthrop University in 1990, and prior to  
8 being employed with the Sheriff's Office I was employed with  
9 the South Carolina Law Enforcement Division in Columbia,  
10 also known as SLED, and I was there for seven and a half  
11 years.

12 Q And did you have any training regarding the detection  
13 of illegal substances?

14 A Yes, I worked in their drug analysis department where I  
15 received my training.

16 Q And have you ever been qualified as an expert for  
17 chemical drug analysis?

18 A Yes, I have.

19 Q Approximately how many times have you been qualified?

20 A Excess of 200 times.

21 SOLICITOR WEAVER: Your Honor, at this time I'd like to  
22 offer this witness as an expert in chemical analysis and  
23 identification of substances.

24 MS. ANDERSON: No objection, Your Honor.

25 MR. REEVES: No objection, Your Honor.

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

1 THE COURT: I find she's qualified.

2 Q Ms. Mitchum, about what year did you start working with  
3 the York County Sheriff's Office?

4 A I started in May of 2000.

5 Q And when you started with May of 2000, what department  
6 were you assigned to?

7 A I was assigned with the drug analysis department and  
8 also I worked in the evidence room also.

9 Q So, you had general evidence duties as well?

10 A Yes.

11 Q And can you explain some of those duties that you had  
12 in evidence?

13 A Basically what I would do in evidence is the evidence  
14 would come into a drop locker that's located right outside  
15 of evidence. I would check that daily to see if I had any  
16 evidence that would be mine and retrieve it from the drop  
17 box, log it in, and then put it into the laboratory until it  
18 needed analysis.

19 Q When you said evidence that would be yours, what are  
20 you referring to?

21 A Drug evidence.

22 Q And you said that when you retrieved the drug evidence  
23 from the locker, what would you do with it?

24 A I'd log it into the system in evidence. It would get  
25 stored in evidence until the time that the solicitor's

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

1 office would request an analysis be done on the case. Then  
2 I would retrieve it from evidence and put it into the drug  
3 lab into a lock box that I have back there that I have the  
4 only keys to and then do my analysis on the substance and  
5 return it back to evidence.

6 Q And how long did you work with the evidence department?

7 A It's about five years.

8 Q And are you still taking in evidence like you did in  
9 2000?

10 A No, I don't do that anymore. I, I get from evidence,  
11 but I don't log it in myself anymore.

12 Q Are you aware if the evidence department has the same  
13 procedures that you did back in 2000?

14 A Yes, they do.

15 Q Ms. Mitchum, I'm showing you what's been marked as  
16 State's Exhibit No. 3.

17 Do you recognize that item?

18 A Yes, I do.

19 Q When did you first receive that item?

20 A I received this on 9/25/2009.

21 Q Who did you receive it from?

22 A Clara Painter.

23 Q Who is Clara Painter?

24 A She was one of the evidence custodians in the evidence  
25 department.

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

1 Q Do you recognize her signature?

2 A Yes.

3 Q Have you seen her signature multiple times in the past?

4 A Yes.

5 Q And where did Ms. Painter retrieve that team to give it  
6 to you?

7 A She retrieved it from the evidence room to give it to  
8 me.

9 Q And when you received that item from Ms. Painter, what  
10 condition was it in?

11 A The original way I received it was in the blue filagree  
12 bag that's inside this plastic bag, and that was sealed when  
13 I got okay, and I know this because of the okay, the date I  
14 received it, and my initials.

15 Q So, you didn't see any evidence of tampering on the  
16 bag?

17 A That's correct.

18 Q Was it in a tamper proof bag?

19 A Yes.

20 Q And, Ms. Mitchum, I'm gonna point you to another  
21 signature.

22 Do you recognize that signature?

23 A Yes, that's Sharon Hartso.

24 Q And who is Sharon Hartso?

25 A She was also an evidence custodian in the evidence

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

- 1 room.
- 2 Q And do you recognize her signature?
- 3 A Yes.
- 4 Q You've seen it multiple times in the past?
- 5 A Yes, I have.
- 6 Q Where does it say that Ms. Hartso retrieved that item
- 7 from?
- 8 A She received it from the M-J-C evidence, which is the
- 9 drop box right outside of the evidence room.
- 10 Q And who has access to this drop box?
- 11 A The people working in evidence.
- 12 Q So, Ms. Hartso's one of those persons that works within
- 13 evidence --
- 14 A Correct.
- 15 Q -- that can, that has access to that drop box?
- 16 A That's correct.
- 17 Q How about Ms. Painter, she also works in the evidence
- 18 department?
- 19 A Yes.
- 20 Q And she had access to that drop box?
- 21 A That's correct.
- 22 Q Is Ms. Hartso still employed with the York County
- 23 Sheriff's Office?
- 24 A No, she's not.
- 25 Q How about Ms. Painter, is she still employed there?

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

1 A No, she's not either.

2 Q But at the time they were employed with the evidence  
3 department with York County?

4 A Yes, that's correct.

5 Q And officers don't have access to this drop box?

6 A No, they only have access to the top of the drop box.  
7 It's basically -- it looks like your post office box. So,  
8 they can put it in the top and evidence pulls out of the  
9 bottom. So, they only have access to the top to drop it in  
10 and it closes. Once they drop it, they can't get it back  
11 out without getting someone from evidence to open the  
12 bottom.

13 Q And can you explain to the jury again the general  
14 procedure of when you retrieve evidence from the drop box?

15 Q Basically what you would do is go out, open the box,  
16 look in it and see what -- they would actually get all of  
17 the evidence out of the box. When I did it, I would just  
18 get my drug evidence out, but they get all evidence, take it  
19 into the evidence room, log it into the computer where you  
20 get the bar code and everything, and then they would store  
21 it in evidence until somebody needs it or it gets destroyed.

22 Q And with drug evidence, it's stored until you need to  
23 test?

24 A That's correct.

25 Q It's requested to be tested?

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

1 A Correct.

2 Q So, their contact with this evidence is, for a brief  
3 period of time, to log it in and store it in case it's  
4 requested to be tested?

5 A That's correct.

6 Q And the person that retrieved it from the drop box was  
7 Sharon Hartso?

8 A That's correct.

9 Q And you recognize her signature as the person that  
10 grabbed it from the drop box?

11 A Yes.

12 Q And where, where does it say Sharon -- what does it say  
13 Sharon did with the evidence?

14 A It doesn't. What they do is when they pull it from the  
15 evidence box and they just put their initials, they don't  
16 put it where it goes or anything. It's automatically.  
17 Since they're all members of evidence, it goes into evidence  
18 and considered into evidence.

19 Q So, the general procedure with evidence is that they  
20 don't list what particular box it goes into?

21 A Oh, yeah, they do. It's up here on the top, and, in  
22 this case, Property B-42 and B-42 indicates it's the box  
23 they put it in that's in evidence.

24 Q And what date does it say Sharon Hartso retrieved the  
25 evidence from the drop box?

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

1 A 9/14 of 2009.

2 Q And is there -- and, again, what date did Clara Painter  
3 retrieve that evidence and give it to you?

4 A 9/25 of 2009.

5 Q Ms. Mitchum, did you test that item?

6 A Yes, I did.

7 Q And did you generate a report --

8 A Yes.

9 Q -- regarding that?

10 And can you tell the jury what your analysis revealed  
11 about that?

12 A Okay. Item -- let's see, State's Exhibit No. 3, which  
13 was item number one in this case was found to be marijuana,  
14 controlled one substance.

15 Q Ms. Mitchum, showing you what's been marked as State's  
16 Exhibit No. 6, when did you receive that item?

17 A On 9/25 of 2009.

18 Q And who did you receive that item from?

19 A Clara Painter.

20 Q And how do you know you received that item from Clara  
21 Painter?

22 A Her signature's right beside mine on the chain of  
23 custody.

24 Q And when you received that item, what condition was it  
25 in?

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

1 A It was in tact and I received the blue filagree bag  
2 that's inside the outside bag and it's okay, the date, and  
3 my initials in there to let me know it was in tact and  
4 everything was fine with it.

5 Q And the blue filagree bag that you refer to, is that a  
6 tamper proof bag?

7 A Yes.

8 Q And if you had noticed any evidence of tampering, what  
9 would you have done?

10 A We would have contacted the officer at that time so  
11 they could come, check and make sure that this is the  
12 correct evidence in there, and then they would seal the top  
13 with a piece of evidence tape.

14 Q And do you recognize any other signatures on the bag?

15 A Yes.

16 Q What other signatures do you recognize?

17 A Sharon Hartso's signature.

18 Q And where was Sharon Hartso employed at the time?

19 A The evidence department at the Sheriff's Office.

20 Q And where does it say Ms. Hartso retrieved that item?

21 A From the M-G-C evidence.

22 Q And what is that?

23 A That's the Moss Justice Center evidence box.

24 Q And what does it say that Ms. Hartso did with that,  
25 that item?

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

1 A She received it on 9/14 of 2009 and brought it into the  
2 evidence, evidence department.

3 Q And, Ms. Mitchum, did you test the item that's  
4 contained in that bag?

5 A Yes.

6 Q And did you generate a report as to your analysis?

7 A Yes.

8 Q And can you explain to the jury what was your finding?

9 A State's Exhibit No. 6, which is item number two in  
10 this, in this case was found to be marijuana in the amount  
11 of the 15.0 grams or 0.5 ounces, controlled one substance.

12 Q Ms. Mitchum, I'm showing you what's been marked as  
13 State's Exhibit 8.

14 When did you receive that item?

15 A On 9/25 of 2009.

16 Q And who did you receive that item from?

17 A Clara Painter.

18 Q And when you received that item, what condition was it  
19 in?

20 A It was in, it was in contact, the blue filagree bag,  
21 and I know this because there's okay, the date, and my  
22 initials in the corner.

23 Q Did you notice any evidence of tampering?

24 A No.

25 Q So, the blue filagree bag was in tact?

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

- 1 A Correct.
- 2 Q Do you recognize any other signatures?
- 3 A Yes, Sharon Hartso's.
- 4 Q And where does it say Sharon Hartso retrieved that bag?
- 5 A The M-J-C evidence.
- 6 Q And what is that?
- 7 A The evidence -- it's the box right outside of the
- 8 evidence room.
- 9 Q And on what date did Ms. Hartso retrieve that item?
- 10 A 9/14 of 2009.
- 11 Q Ms. Mitchum, did you test the item that's contained in
- 12 State's Exhibit 8?
- 13 A Yes, I did.
- 14 Q Did you generate a report?
- 15 A Yes.
- 16 Q And what was your finding?
- 17 A State's Exhibit No. 8, which is item number four in
- 18 this case, was found to be marijuana in the amount of 14.0
- 19 grams or 0.4 ounces, controlled one substance.
- 20 Q Ms. Mitchum, I'm showing you what's been marked as
- 21 State's Exhibit No. 10.
- 22 When did you first receive that item?
- 23 A On 9/25 of 2009.
- 24 Q Who did you receive it from?
- 25 A Clara Painter.

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

1 Q And at that time she worked with the York County  
2 evidence department?

3 A That's correct.

4 Q And when you received it, what condition was the bag  
5 in?

6 A It was sealed and I know this with my okay, the date,  
7 and my initials at the top corner.

8 Q So, you did not notice any evidence of tampering?

9 A That's correct.

10 Q And had you noticed any evidence of tampering, what  
11 would you have done?

12 A We would of have contacted the officer for them to come  
13 in, check the evidence and the bag, make sure it was correct  
14 and everything and then have them seal the top.

15 Q Do you recognize any other signatures?

16 A Yes, Sharon Hartso's.

17 Q And she was also employed with the York County evidence  
18 department at that time?

19 A Yes.

20 Q And where does it say that Ms. Hartso retrieved that  
21 item?

22 A M-J-C evidence.

23 Q And what is that?

24 A The evidence box outside the evidence room.

25 Q And on what date did Ms. Hartso retrieve that item?

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

- 1 A 9/14 of 2009.
- 2 Q Ms. Mitchum, did you test that item?
- 3 A Yes, I did.
- 4 Q And did you generate a report regarding your analysis?
- 5 A Yes.
- 6 Q And what was your finding?
- 7 A On State's Exhibit No. 10, which is item number six in
- 8 this bag, was found to be marijuana 1.33 grams or 0.04
- 9 ounces, control one substance.
- 10 Q All right. Ms. Mitchum, I'm handing you what's been
- 11 marked State's Exhibit No. 11.
- 12 when did you first receive that item?
- 13 A On 9/25 of 2009.
- 14 Q Who did you receive it from?
- 15 A Clara Painter.
- 16 Q And she was working with the evidence department at
- 17 that time?
- 18 A Yes, that's correct.
- 19 Q And what was the condition of the bag when you received
- 20 it?
- 21 A The bag was sealed and I know it with my initials and
- 22 the date and the okay, my date, and the initials at the top.
- 23 Q So, you didn't notice any evidence of tampering?
- 24 A That's correct.
- 25 Q And had you noticed any evidence of tampering, what

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

1 would you have done?

2 A We'd of have contacted the officer for them to check  
3 the evidence and then they would of sealed it at the top and  
4 initialed it.

5 Q And do you recognize any other signatures?

6 A Yes, Sharon Hartso's.

7 Q And was she working with the York County evidence  
8 department at that time?

9 A Yes.

10 Q Where does it say Ms. Hartso retrieved that item?

11 A The M-J-C evidence.

12 Q And what is that?

13 A The evidence box outside of the evidence room.

14 Q And what does it say Ms. Hartso did with that item?

15 A She got it on 9/14 of 2009 and brought it into the  
16 evidence room.

17 Q And, Ms. Mitchum, did you test the item contained in  
18 that bag?

19 A Yes.

20 Q And did you generate a report regarding your analysis?

21 A Yes.

22 Q And can you tell the jury your findings?

23 A State's Exhibit No. 11, which is item number eight in  
24 this case, was found to be marijuana in the amount of 2.19  
25 grams or 0.07 ounces, controlled one substance.

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

1 Q Ms. Mitchum, I'm handing you what's been marked State's  
2 Exhibit 14.

3 When did you receive that item?

4 A On 9/25 of 2009.

5 Q Who did you receive it from?

6 A Clara Painter.

7 Q And do you recognize her signature?

8 A Yes.

9 Q And on what date did you receive it from Clara Painter?

10 A 9/25 of 2009.

11 Q And what condition was the bag in when you received it?

12 A It was sealed and it had my initials and the date and  
13 okay at the top of the bag.

14 Q So, you didn't notice any evidence of tampering?

15 A That is correct.

16 Q And do you recognize any other signatures on that bag?

17 A Sharon Hartso's.

18 Q And what -- where did it say Ms. Hartso retrieved the  
19 item?

20 A The M-J-C evidence.

21 Q And what is that?

22 A The evidence box outside of the evidence room.

23 Q And on what date did it say Ms. Hartso retrieved that  
24 item from the evidence drop box?

25 A 9/14 of 2009.

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

1 Q And on that, on that date Ms. Hartso was employed with  
2 the York County evidence department?

3 A That is correct.

4 Q Ms. Mitchum, did you test the item contained in that  
5 bag?

6 A Yes, I did.

7 Q And did you generate a report regarding your analysis?

8 A Yes.

9 Q And can you tell the jury your finding?

10 A State's Exhibit No. 14, which is item number ten in  
11 this case, was found to be marijuana, control one substance.

12 Q Ms. Mitchum, I'm handing you what's been marked as  
13 State's Exhibit 16.

14 When did you first receive that item?

15 A On 9/25 of 2009.

16 Q Who did you receive it from?

17 A From Clara Painter.

18 Q And how do you know that?

19 A Her signature is beside mine in the chain of custody  
20 line.

21 Q At that time was Ms. Painter employed with the York  
22 County evidence department?

23 A Yes.

24 Q And when you received that item from Ms. Painter, what  
25 condition was it in?

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by Solicitor Weaver

- 1 A It was sealed and I know this because it's got okay,  
2 the date, and my initials in the top corner of the bag.
- 3 Q So, you did not notice any evidence of tampering?
- 4 A That's correct.
- 5 Q And when you received that item, was it in a tamper  
6 proof bag?
- 7 A Yes.
- 8 Q And do you recognize any other signatures on that item?
- 9 A Yes, Sharon Hartso's.
- 10 Q And where does it say Ms. Hartso retrieved that item?
- 11 A She received it from the M-J-C evidence.
- 12 Q And what is that?
- 13 A That's the evidence box that's located outside of the  
14 evidence room.
- 15 Q And what date does it say Ms. Hartso retrieved that  
16 item?
- 17 A 9/14 of 2009.
- 18 Q And, at that time, she was employed with the York  
19 County evidence department?
- 20 A Yes.
- 21 Q And did you test the item that's contained in that bag?
- 22 A Yes, I did.
- 23 Q And did you generate a report regarding your analysis?
- 24 A Yes.
- 25 Q Can you tell the jury your finding?

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

1 A State's Exhibit No. 16, which is item number eleven in  
2 this case, was found to be marijuana in the amount of 0.06  
3 grams or 0.002 ounces, control one substance.

4 (WHEREUPON, the drug report was marked as State's  
5 Exhibit No. 17 for identification purposes only at this  
6 time.)

7 Q Ms. Mitchum, I'm handing you what's been marked as  
8 State's Exhibit 17 and do you recognize that?

9 A Yes, I do.

10 Q And what is that?

11 A This is the report that I was just reading the results  
12 from.

13 Q And that report contains the result of your findings on  
14 each of these pieces of evidence that we just reviewed?

15 A Yes, it does.

16 Q If you look at the top of the report it says amended  
17 report.

18 A Yes.

19 Q Can you explain to the jury why it says that?

20 A The amended report, in item number one, the first time  
21 I looked at item one, due to the fact of the amount of  
22 substances in the other items, I did no analysis on item one  
23 because it was a small amount. It was less than .01 grams,  
24 which is my laboratory limit for reporting out. So, upon  
25 later, the solicitor's office asked me to relook at that

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

1 item and see if I could test it, and I did, and I did an  
2 analysis on it, and that's the basic change in it. Now it's  
3 marijuana found instead of no analysis performed.

4 SOLICITOR WEAVER: Your Honor, at this time the State  
5 would like to enter Items 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,  
6 14, 16, 15, and 17.

7 MS. ANDERSON: Your Honor, I do have an objection at  
8 this time.

9 THE COURT: Let me let the jury go to the jury room  
10 while we take up some legal matters.

11 (WHEREUPON, the following takes place outside the  
12 presence of the jury.)

13 THE COURT: Yes, ma'am.

14 MS. ANDERSON: Your Honor, initially the first ground  
15 would be we incorporate the arguments for the purposes of  
16 the record that I previously made pre-trial objecting to the  
17 admission of all items obtained during the search of the  
18 vehicle. Understanding Your Honor has ruled on that, but  
19 just for the purposes of the record, I would also object at  
20 this point to the admission of all of the exhibits listed by  
21 the State on that ground.

22 Additionally, on the ground of the chain of custody.  
23 while I understand Ms. Mitchum has testified as to her  
24 experience back, and it appears to be 2000 and 2005 in  
25 working in the evidence room, she has not worked in the

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by Solicitor Weaver

1 general evidence duties since 2005. She did testify as to  
2 general practices, but not specifically as to whether or not  
3 those practices were followed in this. While understanding  
4 the case law of the State identifying by signature Ms.  
5 Hartso and Ms. Painter, there is no testimony been done as  
6 to specifically viewing Ms. Painter and Ms. Hartso's  
7 checking the items in and out into evidence.

8 The testimony has been that the officer recovered the  
9 items and dropped them off at the evidence locker on  
10 September 11<sup>th</sup>, that Ms. Hartso's signature on the bag  
11 indicates she recovered the items on September 14. There  
12 has been a period of time from September 14<sup>th</sup> to September  
13 25<sup>th</sup>, when, according to Ms. Mitchum's testimony, according  
14 to the signature that she identified as Clara Painter that  
15 she received it understanding that the State did elicit  
16 testimony about no evidence of tampering, but, however,  
17 according to the case of State v. Hatcher, 384 S.C. 372, 681  
18 S.E.2d 925, the Court did say that the inquiry's not  
19 evidence of tampering versus actually meeting each chain of  
20 custody.

21 With Ms. Hartso and Ms. Painter not coming to testify,  
22 then the defense would also move to oppose, object to the  
23 admission of these evidence on the ground of chain of  
24 custody as well.

25 THE COURT: You got a copy of the Hatcher case?

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by Solicitor Weaver

1 MS. ANDERSON: Yes, Your Honor.

2 THE COURT: Mr. Reeves.

3 MR. REEVES: Your Honor, respectfully I want to join in  
4 the motion of co-counsel.

5 THE COURT: Okay. Ms. Weaver.

6 SOLICITOR WEAVER: Your Honor, I'm gonna have another  
7 case, State versus Taylor, which I think closely resembles  
8 this case. It was an evidence custodian, Your Honor, that  
9 had left I believe SLED. Another evidence custodian came  
10 in, testified in his place.

11 The Court ultimately found it was clear from these  
12 decisions that if the identity of each person in the chain  
13 entering the evidence is established, which we have in this  
14 case, and the manner of handling is reasonably demonstrated,  
15 which I also believe happened in this case, Your Honor, Ms.  
16 Mitchum testified that she worked in the evidence department  
17 for approximately five to six years, and that the same  
18 practices and procedures that she did back, back between  
19 those years are still practiced today. She also testified  
20 that there was brief contact with the evidence, retrieving  
21 it from the drop box, to logging it in, and then putting it  
22 in a storage box in evidence. She also referred to the fact  
23 that there's a label on which box it's actually stored in.  
24 She can identify the person who actually handed it to  
25 her, the signatures, and also there's been no evidence of

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1 abuse. It says also no abuse of discretion is shown the  
2 admission absent proof of tampering, bad faith, or real  
3 motive. We've also shown that there's absence of the  
4 tampering.

5 So, Your Honor, we would submit that we have reasonably  
6 demonstrated the chain of custody, and that, even that, you  
7 know, its credibility does ring with the evidence in this  
8 case.

9 THE COURT: All right. Ms. Anderson, back with you.  
10 The Hatcher case is a later case than the Taylor case. I'm  
11 looking at Page 4 or Page 5 of 7, and I hadn't had a chance  
12 to read it all, but below the footnote three in the  
13 indentation says while the chain of custody is only required  
14 to be as in evidence, as far as it is reasonable and  
15 practical, practical, South Carolina Courts have  
16 consistently held that all persons in the chain must be  
17 identified and the manner of handling the evidence must be  
18 demonstrated.

19 They've, they've identified everyone and indicated how  
20 it's handled in this case.

21 MS. ANDERSON: Your Honor, I think it, that---

22 THE COURT: Those, those particular people just haven't  
23 come in and testified.

24 MS. ANDERSON: I think, in looking slightly, and as  
25 Your Honor said, the Hatcher case is later than the Taylor

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1 case. The Taylor case that Ms. Weaver did highlight one  
2 thing that is there is the evidence custodian left, a  
3 successive evidence custodian came in and testified.  
4 I think the distinction would be that while Ms. Mitchum  
5 has testified to when she was employed there, what the  
6 practices were, I think a manner in testifying as to the  
7 manner had the individual who was now the evidence  
8 custodian come in and identified the manner, I think that  
9 would of been a circumstance versus testifying as to the  
10 manner that was familiar or was done back in the years  
11 2000 to 2005.

12 I would state that as well as the fact of whether the  
13 testifying that this is what was done at this time, either  
14 the signatures are recognized versus this is how I know  
15 she handled it or this is how I know what she's done. The  
16 distinction of someone who was working in the department  
17 would be more on point of testifying as to the manner in  
18 which it was handled. That would be my argument  
19 distinguishing with the Hatcher case versus a difference  
20 of a person who is now the evidence custodian which would  
21 testify this is how we were doing it.

22 I would still argue that without personal observation  
23 of Ms. Hartso and Ms. Painter doing this, and definitely  
24 the State cannot establish the manner in which this  
25 particular exhibits were handled between September 11<sup>th</sup>

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1 and September 14<sup>th</sup> and September 14<sup>th</sup> and September 25<sup>th</sup>  
2 when they were brought to Ms. Mitchum's custody.

3 THE COURT: All right. Well, in citing the support for  
4 that language, I just read the Court, Supreme Court, Court  
5 of Appeals in the Hatcher, Judge Konduros sets forth sort of  
6 a litany of cases going both ways where it was not  
7 admissible and where it was admissible. She does cite, cite  
8 State versus Taylor holding, for the holding, for the  
9 holding that the chain of custody was established when the  
10 identity of each custodian was established through  
11 documentary evidence and testimony through, through  
12 documentary evidence and testimony although the evidence  
13 custodian was unavailable to testify at trial or via  
14 affidavit. The -- I'm trying to find, under the facts,  
15 where the break in the chain was in Hatcher.

16 MS. ANDERSON: Your Honor, my understanding I believe  
17 that is found at page, at the end of Page 3 of 7, 4 of 7. I  
18 believe it is with the officer places it into a SLED  
19 evidence drop and then the next person who testified would  
20 be the SLED chemist who received it up at the top from the  
21 BEST kit from SLED's lab department processing and returned  
22 it to that. I believe that is where the facts or where the  
23 report---

24 THE COURT: I see what you're talking about. So,  
25 there, there you have the drop and no evidence who had it

Cynthia Mitchum - Direct examination  
by Solicitor Weaver

1 between the drop and the chemist.

2 well, I find that this case is before the Taylor case  
3 and it is the Hatcher case, and I deny the, or overrule the  
4 objection to the introduction of the evidence and allow it  
5 to be introduced.

6 MS. ANDERSON: Yes, Your Honor.

7 (WHEREUPON, State's Exhibit Nos. 3 through 12 and 14  
8 through 17 were received into evidence at this time.)

9 THE COURT: All right. Ready for the jury to come back  
10 in?

11 SOLICITOR WEAVER: The State's ready, Your Honor.

12 THE COURT: Bring in the jury.

13 (WHEREUPON, the following takes place within the  
14 presence of the jury.)

15 THE COURT: All right. You may proceed.

16 Over objection I allowed the exhibits discussed into  
17 evidence, and they're into evidence at this time.

18 SOLICITOR WEAVER: Your Honor, we have no further  
19 questions.

20 THE COURT: All right. Ms. Anderson.

21 CROSS-EXAMINATION

22 BY MS. ANDERSON:

23 Q Ms. Mitchum, on your report that you testified about  
24 some of your results contain weights?

25 A That's correct.

Cynthia Mitchum - Cross-examination  
by Ms. Anderson

1 Q And others do not?

2 A Correct.

3 Q And your standard, I believe, is if it is less than .01  
4 grams you do not ascribe a weight to it, correct?

5 A That's correct.

6 Q And, so, you were questioned about State's Exhibit No.  
7 3, and I believe you testified that that was item number---

8 A One.

9 Q ---one on your report?

10 A Correct.

11 Q And next to State's Exhibit 3 you did not ascribe to  
12 weight, correct?

13 A That's correct.

14 Q Meaning that State's Exhibit No. 3 would of been an  
15 amount less than .01 gram?

16 A Correct.

17 Q And also State's Exhibit No. 14, which I believe is  
18 item number ten on your report?

19 A That's correct.

20 Q And also next to the result for that is you did not  
21 ascribe a weight, correct?

22 A Correct.

23 Q which would also mean that the amount, total amount of  
24 State's Exhibit No. 14 would of been less than .01 grams,  
25 correct?

Cynthia Mitchum - Cross-examination  
by Ms. Anderson

1 A Correct.

2 Q Thank you.

3 In your analysis of items that you believed to be  
4 marijuana is based on a microscopic analysis, is that  
5 correct?

6 A Correct, and a chemical test.

7 MS. ANDERSON: Beg the Court's indulgence.

8 (Pause.)

9 Q And, Ms. Mitchum, your only involvement in this case  
10 was simply an analysis of the items, correct?

11 A That is correct.

12 Q And, so, you don't have any knowledge of where they  
13 were found or anything regarding the initial search of the  
14 items?

15 A Right, other than the paper where it says my personal  
16 knowledge, no.

17 Q Thank you. No further questions.

18 MR. REEVES: No questions, Your Honor.

19 THE COURT: Any redirect?

20 SOLICITOR WEAVER: No.

21 THE COURT: You can step down and be excused. Thank  
22 you.

23 Ms. Weaver.

24 SOLICITOR WEAVER: Your Honor, the State rests at this  
25 time.

1 THE COURT: All right. Members of the jury panel, the  
2 State is resting and that means the State has presented its  
3 case. So, we have to take a break, a break at this time  
4 before we proceed. So, I'm going to let you go back to the  
5 jury room even though you've just been there for a few, a  
6 few minutes ago. We'll let you go back for a few more  
7 minutes.

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

10 THE COURT: The jury is dismissed, anything from the  
11 State?

12 SOLICITOR WEAVER: Nothing from the State, Your Honor.

13 THE COURT: Ms. Anderson.

14 MS. ANDERSON: May it please the Court.

15 Your Honor, at this time, on behalf of the defendant,  
16 Mr. Baxter, we move for a directed verdict on the charge.  
17 First, in the light, the evidence taken in the light most  
18 favorable to the State does not point to Mr. Baxter as being  
19 in possession of the marijuana in this case, and,  
20 additionally, that the State has charged Mr. Baxter with  
21 possession with intent to distribute marijuana and there's  
22 been no testimony regarding sort of alleged deals, any sort  
23 of packaging for sale, any testimony regarding any sort of  
24 notebooks or any other documentation indicating marijuana  
25 sale, or that the marijuana located in the vehicle was for

1 sale.

2 And that, Your Honor, that, to move for that, the State  
3 be allowed to proceed only on the lesser included charge of  
4 possession of marijuana versus possession with intent to  
5 distribute. Also, for whatever purposes, would be necessary  
6 for the record, but also renew all prior motions just to  
7 reserve those for the record as well.

8 THE COURT: Okay. I'll hear from Ms. Weaver in a  
9 minute.

10 But tell me, I got my notes messed up apparently, what  
11 was the total weight?

12 MS. ANDERSON: Your Honor, I think individual weights  
13 were testified to, but there was never testimony as to  
14 total.

15 THE COURT: That's why I'm asking somebody. If I'd of  
16 written them all down I could of added them up.

17 SOLICITOR WEAVER: The total amount of the marijuana  
18 that was found in the Mason jar, that was item three---

19 THE COURT: Now, total weight found in everything.  
20 Just add it up and tell me.

21 SOLICITOR WEAVER: Okay. 32.58 grams, Your Honor.

22 THE COURT: How much?

23 SOLICITOR WEAVER: 32.58.

24 THE COURT: They want a smoke break. So, I'm gonna let  
25 them go smoke.

1       That's over the inference level. So, in addition, as  
2 to my charge as y'all should be aware since we do these all  
3 the time, intent may be shown by acts and conduct of the  
4 defendant and other circumstances in which naturally and  
5 reasonably infer intent. I don't know really what that  
6 means other than it's a jury question. So, I deny your  
7 motion for directed verdict on the grounds articulated on  
8 behalf of Mr. Baxter.

9       Mr. Reeves.

10       MR. REEVES: Your Honor, we have a similar motion. We,  
11 again, join in the motion with, with co-counsel, but Mr.  
12 Baxter's counsel. We would also add, Your Honor, I don't  
13 think the State met its burden of proof for possession. The  
14 only evidence that we have is green particles, which were  
15 not confirmed by a second officer, were not confirmed by a  
16 drug dog. We already raised the issue with the flashlight  
17 searches, but in all fairness, Your Honor, both officers,  
18 both State witnesses testified they've detected no odor of  
19 marijuana in the vehicle or on the person either of Mr.  
20 Baxter or Mr. Burris. No evidence of smoking in the vehicle  
21 or on their person. No paraphernalia. No marijuana was  
22 actually found on the person when they were searched. The  
23 Mason jar is the strongest evidence, was wrapped in some  
24 type of sweaty t-shirt stuffed under the passenger seat of a  
25 rental car.

1 THE COURT: The packets of marijuana?

2 MR. REEVES: The packets of marijuana, yes, sir, and  
3 some marijuana residency again in the floorboard area of a  
4 rental car. No fingerprints on the Mason jar. No  
5 fingerprints on the bags. No fingerprints on any of the  
6 items recovered. I just don't know how they've established  
7 possession by either defendant. So, we move to dismiss on  
8 that basis.

9 THE COURT: well, I'm gonna charge them, of course,  
10 constructive possession and I think that's a jury question.  
11 It's a jury argument and I expect to hear it again. I think  
12 that's what it is, a jury argument. I think there's  
13 evidence sufficient from which a jury could conclude, based  
14 on the charge that I intend to give, that these individuals  
15 were actually, if not constructive, or constructively if not  
16 actually I should say, in possession of marijuana, and I  
17 always like the triggerman and two or three people that  
18 shoot and nobody wants to claim it.

19 So, it's a question of whether they both had it, and  
20 I'm going to charge joint custody and also the hand of one  
21 is the hand of all, but more than one person can possess.  
22 And, so, I'll be glad to hear anything from you, Ms. Weaver,  
23 but I deny the motion by both defendants.

24 MR. REEVES: Thank you.

25 SOLICITOR WEAVER: Nothing from the State.

1        Now, if you chose to exercise your Constitutional right  
2 to remain silent, I will tell the jury that that's what  
3 you've done. I'll tell them they cannot use against you  
4 your exercise of that right. I will tell them that they  
5 cannot discuss it. They cannot factor it into their own  
6 consideration and they cannot, in any way, use it against  
7 you, your exercise of your Constitutional right to remain  
8 silent if that's what you chose to do, and, of course, I  
9 will remind them that you are both presumed innocent. Need  
10 not prove your innocence. The State must prove your guilt  
11 beyond a reasonable doubt.

12        Mr. Baxter, do you have any questions about any of  
13 that?

14        DEFENDANT BAXTER: No, sir.

15        THE COURT: All right. Do you, Mr. Burris?

16        DEFENDANT BURRIS: I don't.

17        THE COURT: Mr. Baxter, are you going to testify or  
18 exercise your right to remain silent?

19        DEFENDANT BAXTER: Silent.

20        THE COURT: All right. Mr. Burris, are you going to  
21 testify or exercise your right to remain silent?

22        DEFENDANT BURRIS: Silent, sir.

23        THE COURT: So, do we have any, any witnesses to  
24 present?

25        MS. ANDERSON: No, Your Honor.

1 THE COURT: I'm gonna stick to South Carolina law.

2 SOLICITOR WEAVER: But do you, do you have that  
3 language that they have control?

4 THE COURT: Well, I've got control over the property.  
5 I thought you looked at it. I have constructive possession  
6 means the defendant has dominion and control or right to  
7 exercise dominion and control over either the marijuana  
8 itself or the property on which it was found.

9 SOLICITOR WEAVER: Okay. That's satisfactory.

10 THE COURT: That would include an automobile. I'm not  
11 gonna tell them that, but that's certainly there.

12 State ready?

13 SOLICITOR WEAVER: The State's ready, Your Honor.

14 THE COURT: The State will have to open.

15 The defense ready?

16 MS. ANDERSON: Yes, Your Honor.

17 THE COURT: Mr. Reeves.

18 MR. REEVES: Yes, Your Honor.

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

20 (WHEREUPON, the following takes place within the  
21 presence of the jury.)

22 SOLICITOR WEAVER: Ladies and gentlemen, as, as you've  
23 heard, the defendants have been charged with possession with  
24 intent to distribute marijuana, and basically it's, it's  
25 real simple. It's possession of marijuana with intent to

1 distribute. Those are basically the three things we have to  
2 show.

3 while I don't think defense counsel is going to dispute  
4 what was found in this case was marijuana. They agree that  
5 Ms. Mitchum is an expert. She testified as to all those,  
6 all those substances came back marijuana and their weight.  
7 So, I don't think there's gonna be a real big dispute about  
8 what was found in this car was marijuana.

9 where the dispute's gonna come in is whether or not  
10 this defendant possessed it. That's gonna be one. The  
11 second is whether or not they possessed it with intent to  
12 distribute.

13 So, how do you prove possession?

14 well, there's two ways.

15 There's actual possession, and then there's  
16 constructive possession. Great legal terms.

17 The best way to describe this in this case is actual  
18 possession would be the pieces of marijuana that were seen  
19 on Mr. Burris' shirt. That's actual possession. It was on  
20 the defendant.

21 The way to describe constructive possession is did they  
22 have the right to exercise dominion and control.

23 Did they have dominion and control over the marijuana?

24 well, in this case, constructive possession would be  
25 all that marijuana that was found in that Mason jar was

1 under the passenger seat. Mr. Baxter rented that vehicle  
2 and you can see the rental agreement. We will have rented  
3 since July previous to this September incident.

4 By constructive possession, he has dominion and control  
5 over that vehicle. You will be charged that someone has  
6 dominion and control over the property, they have dominion  
7 and control of what's found in the vehicle. So, that's  
8 constructive possession.

9 Was it found on Mr. Baxter, but because he has dominion  
10 and control of that vehicle, then he has dominion and  
11 control of the contraband that was found there within. So,  
12 that's the difference between actual and constructive  
13 possession.

14 Mr. Burris also has constructive possession of all the,  
15 all the marijuana that was found in that Mason jar as well  
16 as the little bit of marijuana that was found on beside the  
17 passenger seat. That's constructive possession because it  
18 wasn't actually found on him. Again, constructive  
19 possession would deal with Mr. Baxter and the baggie of  
20 marijuana that was found in the coin, the coin area of the  
21 driver's side or even the pieces of marijuana that were on  
22 the driver's side floorboard.

23 Those weren't actually found on Mr. Baxter, but, again,  
24 he rented the vehicle, he has dominion and control over the  
25 vehicle. Therefore, he's deemed to have dominion and

1 control over the marijuana.

2 Now, defense counsel, on cross-examination, has brought  
3 out some points and I would like to call the magic act, and  
4 the reason I say it's a magic imagine act is it's like a  
5 magician. You know magician, when he's performing his  
6 tricks, he's, he's doing something over here to try to get  
7 you to look over here when what he's really doing is in this  
8 hand. And what they're trying to do, ladies and gentlemen,  
9 is they're trying to do this.

10 They want you to look over here and they want you to  
11 ignore what happened in this case. They want to say that  
12 officer Vinesett did something improper, that he didn't  
13 really pull the vehicle over for speeding. What they really  
14 don't want you to focus on is the fact they saw pieces of  
15 marijuana on Mr. Burris' shirt. They want to focus on  
16 officer Vinesett did something improper by pursuing the fact  
17 that he believed he saw marijuana, but we found marijuana in  
18 the vehicle. It confirms what Officer Vinesett saw. It  
19 confirms it, but they, they don't want you to focus on that.

20 They want you to focus on the fact that officer  
21 Vinesett did something improper in this case when that's not  
22 the case, and in -- the fact that he found this marijuana,  
23 it's been tested, proves he was right even though the other  
24 officer said he didn't see it, even though the drug dog  
25 didn't detect it, doesn't take away from the fact that he

1 found marijuana in this car and that it tested positive for  
2 marijuana. But they're gonna want you to focus on officer  
3 Gibson, not seeing how the drug dog might detect it. They  
4 want to put you over here and take away from the evidence  
5 that was found in this case.

6 In fact, it should show you that these officers are  
7 testifying truthfully. The fact that Officer Gibson isn't  
8 gonna walk up, take the stand and rubber stamp what Officer  
9 Vinesett did should show you they're testifying truthfully.  
10 They're not gonna come in here and tell you something that  
11 Officer Vinesett, everything he did was true. They're  
12 testifying truthfully.

13 Officer Gibson didn't see it. That's, that's his  
14 testimony. Officer Vinesett did. That's his true  
15 testimony, and it should have, relay to you their  
16 credibility and the fact that Officer Gibson is not, not  
17 gonna come in here and just rubber stamp everything Officer  
18 Vinesett did, and the fact that the drug dog, the fact that  
19 he's gonna come in here and say the drug dog didn't alert.  
20 Again, they're not gonna rubber stamp what Officer Vinesett  
21 saw. The fact they found the marijuana in the car confirms  
22 what he saw. They're not gonna want you to focus on that.

23 There's some mention about it being improper that  
24 Officer Vinesett turned on the video. I'll submit to you,  
25 ladies and gentlemen, if he didn't turn on that video, the

1 argument would be they had an opportunity to turn on the  
2 video and they didn't and, in fact, ladies and gentlemen,  
3 you didn't see the video. That would be the best evidence  
4 in this case.

5 I'll say it was proper for Officer Vinesett to turn on  
6 his video even though it's initially started off as a  
7 speeding violation because, as in many cases he deals with,  
8 although it initially started with speeding, it ends up with  
9 a bunch of dope found in the car. So, I think it's great he  
10 turned on the video. It gives you the best evidence of what  
11 happened. Gives you an audio and video recording of what  
12 happened.

13 They might say, try to allude to something that was  
14 improper for Officer Vinesett to call in back-up, to confirm  
15 what he did. I said that was, that was great of Officer  
16 Vinesett. He's trying to confirm what he's trying -- he's  
17 trying to protect their rights. He's trying to confirm what  
18 he saw.

19 They're gonna make that seem that it's something  
20 improper when he's just trying to follow the law. He's just  
21 trying to protect rights. And, again, marijuana is found in  
22 the car, which confirms what he initially saw.

23 They also may focus on the fact that no fingerprints  
24 were found in this case. Well, ladies and gentlemen, just  
25 because no fingerprints were found doesn't mean that they

1 didn't possess it. It just means we don't have that  
2 evidence. We don't have that evidence in fingerprints. It  
3 didn't mean they didn't possess it. We got no fingerprints.  
4 The only fingerprints we got was Officer Vinesett's on the  
5 Mason jar. That was it. We got no fingerprints of anybody  
6 on this, but it doesn't mean they didn't possess it.

7 Now, counsel for Mr. Baxter talked about one of the key  
8 issues in this case was the fact that we wouldn't be able to  
9 show Mr. Baxter knew that there was marijuana in the car,  
10 and knowledge of the presence of the drugs in the car is  
11 evidence towards possession. It's just a piece -- it's just  
12 another piece of evidence for you to consider, that they  
13 actually possessed, constructively possessed those drugs in  
14 the car, and, ladies and gentlemen, I would submit to you  
15 that the video recording of the conversations between Mr.  
16 Baxter and Burris show that both of them knew that marijuana  
17 was in the car.

18 Let me show it.

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

21 SOLICITOR WEAVER: It ain't mine. Now, you see, all  
22 the officer has done is pull out that Mason jar. He hasn't  
23 referred to it as being anything. All he's done is pull it  
24 out of the car. Both defendants can see where he pulled it  
25 out.

1       The first thing Mr. Baxter says is it ain't mine. It  
2 ain't mine.

3       What ain't yours?

4       The ashes, the coins.

5       Why did he say that?

6       Because he knew it was marijuana. He knew what the  
7 officers had found, had found and he was trying to take the  
8 blame off himself.

9       I just wanted you to take a look, ladies and gentlemen.  
10 That's all Mr. Baxter saw when the officer pulled it out of  
11 the vehicle. That's it. It ain't mine. He knows that's  
12 marijuana. He knows that's in his car and that's why he's  
13 denying it.

14       It ain't mine.

15       Again, Mr. Baxter, that's his stuff, that's his stuff.  
16 The officer asked him twice.

17       Did you see him put it in there?

18       Doesn't respond.

19       Did you see him put it in there?

20       He doesn't respond.

21       That his stuff.

22       I submit to you, ladies and gentlemen, if he knows  
23 that's Mr. Burris' stuff, then he saw him put it in the car,  
24 in his car that he rented. So, he knows that's marijuana  
25 underneath the seat.

1 And, again, ladies and gentlemen, how would Mr. Baxter  
2 know that wasn't in his car?

3 How would he already have that knowledge?

4 He knew it wasn't in there before Mr. Burris got in  
5 that vehicle, which means he knew Mr. Burris put that in his  
6 vehicle if that's what really happened. All it goes to show  
7 is that Mr. Baxter, who rented the vehicle, knew what was  
8 under that seat was marijuana.

9 The reason I played this for you, ladies and gentlemen,  
10 is this is the first time Baxter and Burris are in the back  
11 seat of that patrol car where the officers are out searching  
12 the vehicle. This is the, this is the first time they're  
13 alone together.

14 And what happens?

15 (Solicitor mumbles.)

16 SOLICITOR WEAVER: They're just talking. Hey, man,  
17 what's going on?

18 What is this in my car?

19 He's not, he's not attacking Burris. Burris isn't  
20 attacking Baxter because they know, both know that was  
21 marijuana under that seat. They're not attacking each  
22 other. They're discussing how they're gonna deal with this.  
23 How we gonna deal with it, and one way Baxter wants to deal  
24 with it is he wants Mr. Burris to tell him it's his.  
25 They're not arguing with each other.

1       This is the first time they're alone together, and this  
2 is all that happens, they just whisper?

3       Again, this conversation is important, ladies and  
4 gentlemen, to show that both Mr. Baxter and Mr. Burris knew  
5 that was marijuana in the car. In fact, it would go to show  
6 that Mr. Burris was the one who put the marijuana in the car  
7 and Mr. Baxter knew about it. It's his vehicle. He's  
8 aiding, he's abetting, he's conspiring with Mr. Burris to  
9 transport this marijuana. He's just as guilty, but it shows  
10 that they both knew there was marijuana in this car, and Mr.  
11 Baxter wants Mr. Burris to take all of it for him.

12       This video is very important, ladies and gentlemen,  
13 because, as you see, this officer found that plastic baggie  
14 containing marijuana from the driver's side, and you can see  
15 officer Vinesett, he finds it, he comes out and starts  
16 putting it on the, on the hood of the vehicle and that's  
17 when Mr. Burris goes they found some of your shit too. Mr.  
18 Baxter responds that ain't, that ain't nothing but a, a and  
19 he stops. That ain't nothing, man, that ain't nothing.

20       Well, it was something. You heard the chemist who  
21 tested it. It came back marijuana. Mr. Baxter wants Mr.  
22 Burris to take the fall for everything. So, he's trying to  
23 convince him to take it all. But you can tell by Mr.  
24 Burris' statement he ain't got nothing to do with that  
25 marijuana. That's his. That's Mr. Baxter's.

1        This clip, again, is very important to show Mr. Burris  
2 is pointing out hey, they already found your shit, and  
3 either Mr. Baxter says knew I shouldn't fucking brought  
4 mine. So, that's what he's talking about. He's talking  
5 about marijuana found on the driver's side.

6        Again, shows knowledge of the marijuana, possession  
7 goes towards possession. Even Mr. Burris refers to it as  
8 being Mr. Baxter's.

9        Again, this goes to Mr. Baxter and Mr. Burris'  
10 knowledge that there's marijuana in the car. Again, Mr.  
11 Baxter's trying to get Mr. Burris to take the blame for  
12 everything. Mr. Burris is pointing out I'm not, that's your  
13 shit, I'm not gonna take it. He even calls the officer over  
14 again. He tries to convince the officer that that's what  
15 Mr. Burris is gonna do, he's gonna claim all the drugs, and  
16 Mr. Burris doesn't.

17        Again, Mr. Baxter's trying to convince Mr. Burris that  
18 there was nothing found in that plastic baggie, but you  
19 heard the chemist. She tested it. It came back marijuana.

20        This is important, ladies and gentlemen, because  
21 Baxter's deny everything through this. He's not taking the  
22 rap for nothing. He's trying to get Mr. Burris to take,  
23 take everything. But you've seen, Mr. Baxter knows that  
24 that marijuana is underneath the passenger seat. He knows  
25 that plastic bag contains marijuana. That's why he's trying

1 to get Mr. Burris to tell the officers it's his because he  
2 knows what's in his car. This is his car. He's rented it.

3 Mr. Burris, I think, is being honest at this time that  
4 he's not gonna take everything, that he, that they found his  
5 stuff too.

6 Again, ladies and gentlemen, just more evidence that  
7 Mr. Baxter knows the marijuana is in the car and he's trying  
8 to get Mr. Burris to take all the blame for it.

9 what's really important about this portion of the tape,  
10 ladies and gentlemen, is that Mr. Baxter says they're  
11 listening to everything we're saying. He knows he's being  
12 recorded. He knows he's being recorded, which is, is why  
13 he's sitting there, you take it, ain't mine, ain't mine,  
14 officer, ain't mine. I got nothing to do with it.

15 Mr. Burris, I submit to you, doesn't know he's being  
16 recorded, which is why he's saying that's your stuff. You  
17 want me to take your stuff too. You want me to take your  
18 stuff too. I submit to you Mr. Burris did not know he was  
19 being recorded. I submit to you that, by Mr. Burris'  
20 statement, that marijuana that was found under the seat was  
21 placed there by Mr. Burris because he's sitting there, you  
22 want me to take your stuff too, you want me to take your  
23 stuff too. That's referring to the marijuana that the  
24 officers found on the driver's side. But, again, Mr. Baxter  
25 knew that marijuana was underneath the passenger seat.

1        Again, this clip is important cause Mr. Baxter refers  
2 to bud, and you heard Officer Vinesett that that's a common  
3 term to refer to marijuana. So, again, shows he has  
4 knowledge of marijuana, that he knows that marijuana is in  
5 the car.

6        Also, I think it's key that Mr. Burris says you're  
7 doing all this for nothing. Well, Mr. Baxter's not doing it  
8 for nothing. He's putting on a show. It ain't mine. Ain't  
9 none of this mine. He's trying to take blame off himself,  
10 put everything on Mr. Burris.

11       well, ladies and gentlemen, again, I wanted to play  
12 that for you because Mr. Baxter focuses on a lot of it ain't  
13 mine, it ain't mine. Well, the law of possession, it  
14 doesn't have to be yours in the sense that you purchased it  
15 or you intended to use it. Mr. Baxter, as long as he has  
16 constructive possession, and him knowing it's in his  
17 vehicle, he was transporting it, he's the one that was  
18 driving it, he has dominion and control. The judge is gonna  
19 charge you two or more persons can jointly possess the same  
20 marijuana.

21       So, by Mr. Baxter allowing it into his vehicle, he  
22 knows it's in his vehicle, he has dominion and control, he's  
23 just as guilty. Also, the law says aid, abet, or conspire.  
24 By helping Mr. Burris transfer that marijuana, he's aiding,  
25 abetting, and conspiring, which means that he's just as

1 guilty as Mr. Burris for possession with intent to  
2 distribute because, ladies and gentlemen, there's marijuana  
3 found throughout this car. Both these defendants possessed  
4 marijuana, and why they possess with intent to distribute,  
5 and keeping the focus on intent to distribute, not intent to  
6 sell, just intent to distribute, and as you heard the  
7 officers, there is no evidence that showed that either of  
8 these defendants intended to use or smoke the marijuana.

9       There were no items found in the car that can be used  
10 to smoke marijuana. There were no items found on them that  
11 can be used to smoke marijuana. Neither Mr. Baxter nor Mr.  
12 Burris smelled like marijuana. Their breath didn't smell  
13 like marijuana. There's no evidence to suggest that either  
14 one of these defendants were going to use or smoke  
15 marijuana. In fact, they deny that they, this marijuana was  
16 even theirs, which would go to show intent to distribute.

17       Also, there was over an ounce of marijuana found in  
18 this vehicle. That, in and of itself, you can infer intent  
19 to distribute. The legislature has said if you possess that  
20 much marijuana, then you can infer that they intended to  
21 distribute those drugs, but bear in mind, there's nothing,  
22 there was no evidence to show that either of these  
23 defendants intended to use this marijuana or smoke this  
24 marijuana, and that everything shows they intended to  
25 distribute it.

1        Again, remember two defendants, two or more persons can  
2 jointly possess the same marijuana. I submit to you that  
3 those video clips showed that Mr. Burris was the one that  
4 put the Mason jar of marijuana in that vehicle and that Mr.  
5 Baxter knew about it, and, in fact, remember when Officer  
6 Vinesett pulled it out, immediately the first response from  
7 Mr. Baxter, it ain't mine.

8        why would he say that unless he knew it was marijuana  
9 and he wanted to remove himself from it as quickly as  
10 possible?

11        Mr. Baxter knew about it. Mr. Burris knew about it.  
12 Also the other officer testified there was movement on Mr.  
13 Burris' part to be consistent with leaning over as if he was  
14 placing the Mason jar underneath the vehicle. There's also  
15 pieces on Mr. Burris.

16        So, keep in mind all that, ladies and gentlemen. Keep  
17 in mind those clips that you just saw that show the  
18 knowledge on both Mr. Baxter and Mr. Burris, and I submit to  
19 you that the evidence has shown, beyond a reasonable doubt,  
20 that both these defendants are guilty for possession of  
21 marijuana with the intent to distribute.

22        Thank you.

23        MS. ANDERSON: May it please the Court.

24        The State, ladies and gentlemen, has just stood up in  
25 front of you and said that she believes that I will be up

1 here doing a magic act. She's just stood up and out of a  
2 few seconds of a clip of a video played over and over and  
3 over, don't get confused about how many times it was played,  
4 a few seconds of video, she has constructed an elaborate  
5 conspiracy whereby, out of Troy Baxter denying having any  
6 marijuana, she has constructed how Mr. Burris brought it in,  
7 put it in the car, and that there is some elaborate  
8 conspiracy to transport this marijuana, to distribute this  
9 marijuana, despite no evidence at all of any intent to  
10 distribute.

11 Ladies and gentlemen, where's the magic act?

12 Where did the State talk to you about any of this?

13 How, how much did the State talk to you about any of  
14 the observations of the officer, anything of what happened  
15 prior to Mr. Baxter and Mr. Burris being arrested, being  
16 arrested?

17 Instead, she is spent what 95 percent of what she  
18 talked to you replaying ten, fifteen seconds of video over  
19 and over with some graphics put up there with some words.  
20 No where in that video do you ever hear Troy Baxter admit  
21 owning that marijuana, and out of that, denying, vehement  
22 denial, multiple denials, denials that one of the officers  
23 testified, Officer Vinesett, that he denied it to him as  
24 well, she is somehow constructed that as admitting to  
25 knowing about marijuana, being conspiring with Mr. Burris,

1 and intending to distribute marijuana.

2 That's the magic act, ladies and gentlemen, because  
3 what she hasn't talked to you about, what she hasn't wrote  
4 on at all is all of the other evidence you've heard in the  
5 case, all of the other testimony, all of the exhibits that  
6 she took the time to admit into evidence that you'll have in  
7 the jury room with you, and I ask you, ladies and gentlemen,  
8 think about why.

9 why wouldn't she talk about any of that?

10 I submit to you, ladies and gentlemen, is because all  
11 of that shows a lack of evidence that points to Troy Baxter  
12 being in possession of this marijuana and then certainly in  
13 possessing this marijuana with the intent to distribute.  
14 Think over -- what I'm gonna ask you to do is think about  
15 the testimony from the witness stand. Officers testified no  
16 drugs, no narcotics, no marijuana was ever found on Troy  
17 Baxter. Not in his pockets though you saw on the tape and  
18 you heard Officer Vinesett, excuse me, testify as well that  
19 once he was arrested his pockets were searched. Nothing  
20 found on him. No marijuana observed by either officer  
21 Vinesett or Officer Gibson ever be on Mr. Baxter when they  
22 walked him to the vehicle.

23 Think about after the search of the vehicle, to the  
24 trunk. You heard some discussion on the tape about Mr.  
25 Baxter asking if he can get his books out of the truck of

1 the car. There was a bag in the trunk of the car and  
2 something that looked to me like sort of a bucket. There  
3 wasn't any marijuana found in the trunk of the car. No  
4 marijuana found in any bag or anything that Mr. Baxter had  
5 in the trunk of the vehicle. No marijuana there. No odor  
6 of marijuana. I think both officers testified there was no  
7 odor of marijuana coming from Mr. Baxter. There was no odor  
8 of marijuana coming from the car.

9 why is that significant?

10 Because the State is trying to tell you that Mr. Baxter  
11 knew and exercised control over what was in the car. Ladies  
12 and gentlemen, what's important for you to think about is  
13 whether or not, logically, realistically, in a common sense  
14 analysis, he would of known what was in that car, and if  
15 there's no odor of marijuana, wouldn't that be something  
16 that really showed it wasn't obvious marijuana was in this  
17 car?

18 The Mason jar was fingerprinted. The Mason jar, the  
19 main amount of where the primary amount of marijuana was  
20 recovered. Ms. Weaver's closing, she wants to talk about  
21 how Mr. Baxter supposedly knew about Mr. Burris putting this  
22 jar in the car. His fingerprints weren't on it. Doesn't  
23 link him to being ever touching, holding the jar. In fact,  
24 Mr. Baxter is very upset and repeatedly denies any  
25 connection with it.

1 But out of that, the State wants to construct that he  
2 somehow was in this conspiracy. As a person who finds  
3 himself stopped for speeding, that wasn't based on radar,  
4 being written a warning ticket, and then finds himself  
5 handcuffed in the back of the police car, and because he's  
6 upset and protesting that he doesn't have this marijuana,  
7 out of that the State is constructing that he's elaborately  
8 conspired with Mr. Burris. Out of that, a denial the State  
9 is trying to say that shows responsibility.

10 Let's talk about the positioning of the marijuana in  
11 the car because the State didn't really talk to you about  
12 that. During the testimony, Officer Vinesett talked a lot  
13 about this marijuana he said he saw on Mr. Burris' shirt.

14 Now, it's daylight, ladies and gentlemen. You can see  
15 that from the tape. No need for head lamps, flashlights.  
16 You can clearly see. And you see on the tape that Officer  
17 Vinesett walks up to the passenger window, the passenger  
18 window's rolled down, and he testifies that the first time  
19 he walks up there he see these green particles on Mr.  
20 Burris' shirt. He sees in the video that Mr. Burris is  
21 wearing a black shirt.

22 Now, on cross-examination regarding this case file  
23 summary, he did indicate that his case file summary he wrote  
24 that when he went back up to the car he didn't see these  
25 green particles again, and then if you think Officer Gibson

1 arrives on the scene, Officer Gibson has a number of years  
2 of experience, he's trained in identifying narcotics, he's  
3 trained to know what the appearance of marijuana is. He  
4 should have no difficulty in recognizing marijuana when he  
5 sees it.

6 He's specifically sent up there to look at the shirt to  
7 look for marijuana. He testifies he walks right up to the  
8 passenger side, right up to the door, and he doesn't see it.  
9 In fact, what he can do is pretty much definitely identify  
10 it as cigarette ashes. But the State wants to make a big  
11 deal about these flakes being on Mr. Burris' shirt, and  
12 that, I suppose, that Mr. Baxter somehow knew what  
13 Mr. Burris had in the car based on these flakes.

14 And then Officer Vinesett testified that he went back  
15 up to the car with a flashlight and he looked down in the  
16 car by the door, by the seat, and that's when he saw the  
17 flakes, and I'm supposing that his position is these were  
18 these flakes that came off the shirt.

19 Ladies and gentlemen, you have this is evidence. This  
20 is State's Exhibit No. 3. It says this is the substance  
21 recovered by the passenger seat.

22 Now, look at this carefully. These are the flakes.  
23 These flakes Officer Vinesett saw on tan carpet by a seat.  
24 These flakes are supposedly so obvious that Troy Baxter  
25 would know that Mr. Burris had marijuana in the car. These

1 flakes. This is part of the State's elaborate conspiracy.  
2 The flakes in the coin tray.

3 Officer Vinesett testified that the coin tray was one  
4 that sort of popped down he recalled, and if you think about  
5 a coin tray, you're gonna want it to close somehow that the  
6 coins don't spill out.

7 Well, what does that mean and why is that significant,  
8 ladies and gentlemen?

9 It was closed.

10 Remember, this is a rental car. No question about  
11 that. That's a rental agreement. No question it's a rental  
12 car.

13 So, in a closed coin tray, there's something that, if  
14 you remember on the tape, the officer had to open all of it  
15 up, was sniffing it, had to look closely to see what was in  
16 there. Again, here's what we're talking about inside tin  
17 foil, inside a closed coin tray, and, again, based on this,  
18 the State is arguing Troy Baxter knew everything was in that  
19 car and was intending to distribute marijuana. You'll have  
20 that in the jury room as well.

21 Let's talk about the flakes on the driver's side  
22 floorboard the officer testified about, and this is State's  
23 Exhibit No. 14. It says this was found in the driver's side  
24 floorboard. Here it is, ladies and gentlemen. On the tan  
25 floorboard, the floorboard of a rental car, not a car owned

1 by Troy Baxter, this is evidence of his knowledge of what's  
2 in his car. This is evidence of this grand conspiracy to  
3 distribute marijuana.

4 Ladies and gentlemen, you can see it for what it is,  
5 the Mason jar. The State's theory is putting Troy Baxter  
6 responsible for that, for the equivalent of this. Something  
7 wrapped up in a t-shirt hid up under a seat. Officer  
8 Vinesett testified you couldn't see it when you looked in  
9 the window of the car. He only found it when he looked  
10 under the seat.

11 Now, the State's made a big deal with that clip that we  
12 played several times with the graphic that pops up of saying  
13 it was Troy Baxter said it isn't mine when the officer  
14 walked out, but that he must have known exactly what it is.

15 Well, ladies and gentlemen, if you noted on the tape,  
16 Officer Vinesett didn't bring it out of the car like this  
17 though he testified that it was rolled up in a shirt. You  
18 saw he brought out the jar on its own. It's daylight. The  
19 officer thinks it's clear enough that he identifies it as  
20 being marijuana, of what it looks like in a clear jar, and  
21 if you know on that clip she was playing before the graphic  
22 sort of popped up and obscured it, he's walking straight  
23 toward them with something in his hands.

24 Again, they've already been searching the car. They've  
25 already had a drug dog out. And now an officer is walking

1 toward them with a clear jar of something pointing it at  
2 them. And out of that, of denying ownership of that, the  
3 State is trying to construct that he knew that this was  
4 exactly under that seat.

5 Ladies and gentlemen, the State has to show more than  
6 that. The judge is gonna charge you on the law, and one of  
7 the points of law he will charge you on is what's called  
8 mere presence, and what that means is there has to be more  
9 than someone's merely present where drugs are found in order  
10 to convict someone. To find someone beyond a reasonable  
11 doubt, there has to be something more.

12 Ladies and gentlemen, all there is in this case is mere  
13 presence. Troy Baxter had rented that car, happened to pick  
14 up his cousin, who put a jar of marijuana under his seat,  
15 and he's just merely present. The State hasn't shown -- the  
16 State's trying to construct this conspiracy from a couple of  
17 seconds of video of two people upset and find themselves in  
18 the back of a police car. He never comes out and says  
19 that's our marijuana. The State, out of Troy Baxter's  
20 vehement denials of having any responsibility, when he's  
21 upset, when he finds himself handcuffed in the back of a  
22 police car, they're trying to say this is something more  
23 because mere presence is not enough.

24 I talked to you in opening a little about the  
25 illustration of pole vaulting, and I talked to you about it

1 because it's an illustration of the bar the State has to  
2 clear and how high a bar it is.

3 Ladies and gentlemen, what the State is doing in this  
4 case is stretching. Stretching by trying to construct  
5 something out of a few seconds of videotape. Not dwelling  
6 on the actual evidence in the case. But I want to talk  
7 about that because let's talk about the actual evidence in  
8 the case.

9 It's the State's responsibility to prove its case  
10 beyond a reasonable doubt. This is a case and this is a  
11 situation where Troy Baxter's liberty's at stake, and this  
12 is a case where the police and the State have the  
13 responsibility to do things right.

14 Now, the State, when she stood up, wanted to talk about  
15 you were trying to blame the officer for not doing something  
16 improper.

17 But, ladies and gentlemen, isn't justice, doesn't  
18 justice in our system require that law enforcement do things  
19 right, that they not jump to conclusions, that they not skim  
20 over things?

21 Think about what you heard in this case that the State  
22 didn't talk about. You have Officer Vinesett two lanes over  
23 from this vehicle, pulling this vehicle over, not with  
24 radar, just estimating his speed, not pulling any other cars  
25 around. You have the officer testifying and the State

1 arguing in closing that he sees him leaning over.

2 Ladies and gentlemen, I watched the tape. You can  
3 watch the tape. I certainly don't see, from the distance  
4 diagonally across two lanes, where that officer is  
5 estimating his speed cause he doesn't have any radar, and  
6 even when he zooms in a camera, I don't see Mr. Burris  
7 making any dramatic movements.

8 The State is jumping to some conclusion. The officer's  
9 jumping to some conclusion that I suppose if someone turns  
10 their head they're somehow hiding drugs. You have the  
11 officer testifying that he sees these flakes of marijuana,  
12 what he believes is marijuana, but he doesn't comment on  
13 them on tape, and he doesn't get Mr. Burris out of the car.

14 Wouldn't you think if he walks up, an experienced law  
15 enforcement officer with years of experience in narcotics  
16 training, walks up to someone and sees what he believes are  
17 illegal drugs on them, that you'd pull that person out of  
18 car, that you'd take it into evidence immediately?

19 He doesn't even make a comment about it on the  
20 videotape. Instead, he's getting the driver out to write a  
21 warning ticket. Then he calls another officer, another  
22 experienced law enforcement officer, officer with narcotics  
23 training, that officer comes up and definitely says I don't  
24 see any marijuana. Doesn't see any marijuana in the car.  
25 Doesn't see any marijuana on Mr. Burris.

1       Then what do they do?

2       They bring the drug dog out. The dog that is trained  
3 to detect narcotics including marijuana. They take him  
4 around the car twice. At the passenger side window, the  
5 point of the car that Officer Vinesett believes he saw  
6 marijuana with the window rolled down, you see on the tape  
7 the dog stands on its hind legs, sticks its head in there,  
8 sniffs and doesn't detect marijuana.

9       Both Officer Gibson, an experienced law enforcement  
10 officer, and a drug dog trained to detect narcotics say I  
11 don't see any marijuana in the car. Yet, Officer Vinesett  
12 goes back with the flashlight again to search, based on  
13 apparently what he thought he saw before, based on  
14 apparently this, a trained law enforcement officer with over  
15 ten years experience and a trained narcotics dogs can't  
16 perceive any dogs in that car, but Troy Baxter is supposed  
17 to know they are there.

18       The State is stretching, ladies and gentlemen. The  
19 State talked about an ounce of marijuana. The judge is  
20 gonna instruct you about the law of intent to distribute.  
21 The State wants to bring up that there was no, nothing found  
22 in the car that would show the marijuana was being smoked.

23       By the same count, ladies and gentlemen, there's  
24 nothing found in this car that showed this marijuana was  
25 intended to be distributed. No scales. No notebooks. No

1 documentation.

2       So, the State wants to argue that because there was  
3 nothing regarding smoking found that it means it's intent to  
4 distribute. No, ladies and gentlemen, the burden is the  
5 State's, and if there's no evidence, no exhibits, nothing in  
6 the car that shows with intent to distribute, then the State  
7 hasn't met their burden, and, at most, at most, this case is  
8 a case of simple possession. The judge will charge you  
9 regarding lesser included offense.

10       The State is stretching. The State is stretching all  
11 the way around, ladies and gentlemen, trying to make this  
12 into an intent to distribute case and trying to make Troy  
13 Baxter part of some grand conspiracy with Mr. Burris, and  
14 trying to make vehement denials into some sort of admission  
15 of conspiracy. It's stretching, and it's not clearing the  
16 bar.

17       Ladies and gentlemen, your duty is so important in our  
18 system. Your system -- our system trusts you to make the  
19 right decision. It trust you to issue a just verdict, to  
20 hold the State responsible when they don't meet their  
21 burden. It's why our system is created. Our system places  
22 the burden on the State, Mr. Baxter's presumed innocent, and  
23 the State has that very high burden to overcome. And when  
24 you have questions, when you have things that cause you to  
25 hesitate, then it's your duty to return a verdict of not

1 guilty.

2       Troy Baxter's liberty is at stake. He is trusting you  
3 to render justice. Justice is about doing what's right.  
4 And when the State hasn't met their burden, when law  
5 enforcement hasn't done things right, and when the evidence  
6 just isn't there, then justice means a verdict of not  
7 guilty.

8       Ladies and gentlemen, I ask you to think carefully over  
9 the testimony you've heard, to look at the exhibits, think  
10 of all that, think about all of what the State didn't want  
11 to talk about, because what they didn't want to talk about  
12 is what's missing in their case. At most, this case is a  
13 case of simple possession, but what this case truly is is a  
14 case that with a just verdict in this case is a verdict of  
15 not guilty.

16       Thank you, ladies and gentlemen.

17       MR. REEVES: Just one page I promise.

18       I think I mentioned this morning that this was a  
19 relatively simple case, but that the details made a huge  
20 difference, and I think now you understand what I meant by  
21 that.

22       How did we get here?

23       A stop for speeding, 66 or 67 miles an hour on I-77 to  
24 a call for back-up when he realizes that we have two young  
25 black male passengers or occupants.

1 SOLICITOR WEAVER: Your Honor, I object to that as jury  
2 nullification.

3 THE COURT: I don't follow where you're going with  
4 that, but I deny it.

5 SOLICITOR WEAVER: May, may we approach, Your Honor?

6 (WHEREUPON, a bench conference was held out of the  
7 hearing of the jury at this time.)

8 THE COURT: Objection overruled.

9 MR. REEVES: We then go to a warning ticket. So, the  
10 purpose of the stop is to issue a warning ticket, to a drug  
11 dog searching the car twice, to a flashlight search of the  
12 interior of the vehicle without consent, to an arrest for  
13 drug trafficking.

14 That's why the jump. PWID, possession with intent to  
15 distribute, possession, first one. First one they got to  
16 prove.

17 Now, you are dealing with a rental car that was rented  
18 by a co-defendant. Not my client. It's not his car.  
19 Apparently the rental car's been out for a couple of months.  
20 My guy is getting a ride. He gets into another person's  
21 car. You have residue throughout a rental car. Residue  
22 beside the passenger seat where my guy was sitting, but by  
23 everybody's account, my guy had just gotten in the car and  
24 was hitching a ride. And there was no odor of marijuana in  
25 the vehicle or on either defendant. There was no evidence

1 of marijuana smoking in either, on either defendant or in  
2 the vehicle. So, this residue had to be there before my guy  
3 got in.

4 Now, had no paraphernalia found in the vehicle or on  
5 the person.

6 Now, the biggest part of the case is the Mason jar and  
7 it contains bags of marijuana. Now, I'm not a marijuana  
8 smoker. So, I don't know if this is enough for spring break  
9 or enough for an Eagle's reunion tour, but it's a bag and  
10 it's in a Mason jar.

11 The State has the burden, burden of proving possession.  
12 It's wrapped in a t-shirt, and according to the first  
13 officer, it was a wet t-shirt. He believed it was a sweaty  
14 t-shirt.

15 Now, it's always interesting what is brought and what  
16 is not brought to trial. What is brought to trial is they  
17 tested it at the crime lab for fingerprints. They tested  
18 the jar. They tested the bags. No fingerprints of my  
19 client or the co-defendant were found. Just the officer's.

20 So, what's left?

21 A sweaty t-shirt. That's gonna answer the question.  
22 The sweaty t-shirt, which wrapped the Mason jar placed under  
23 the seat where my client happened to take a seat. Test  
24 that. It's got DNA. It answers all the questions.

25 It was not tested and that alone, all the hokus pokus,

1 rolling up my sleeve, the State has the burden of proof and  
2 they didn't prove it. You can't take possession of residue  
3 because there's no evidence of odor, of smoking, no evidence  
4 whatsoever that had been consumed. So, you can't get  
5 possession of the residue and the Mason jar and the key  
6 evidence, the key evidence in this case, the answer to the  
7 question could have been solved, but it was not.

8 So, I like the, the burden that was, the analogy about  
9 the pole vault. The State hasn't even come close. They  
10 didn't tag the bar. They didn't even get to the bar. They  
11 could have. They didn't. And before you take my client and  
12 put him in prison for years---

13 SOLICITOR WEAVER: Your Honor, I object to that.

14 THE COURT: I, I sustain the objection. What's gonna  
15 be sentencing, if there is gonna be any sentencing, is not  
16 for your consideration. Your consideration is simply  
17 whether he committed the offense. Anything regarding  
18 sentencing is not your consideration in any degree  
19 whatsoever, members of the jury.

20 MR. REEVES: Before you convict my client, hold the  
21 State accountable. The officers both said this was a very  
22 strong case. I respectfully disagree. That's your  
23 judgment.

24 Was it a strong case when they pulled the client over?

25 Was it a strong case when they searched the car?

1           Was it a strong case when they charged him with  
2 trafficking?

3           I submit it was not.

4           Thank you.

5           THE COURT: Members of the jury panel, I appreciate the  
6 attention you've given to the attorneys and myself and the  
7 witness. It's now my turn to talk to you and charge you the  
8 law which you are to apply to the facts in this case.

9           I remind you or tell you now, I'm not reminding you  
10 because I didn't tell you this earlier, but the indictments  
11 are simply the charging papers. You'll have them in the  
12 jury room, room with you. They're simply the paperwork by  
13 way of which this case is processed throughout the court  
14 system. They ultimately will have the jury's verdict,  
15 unanimous verdict, and will be the record of this trial, and  
16 they are not, but, but the indictments are not evidence.  
17 So, even though you'll have them in your jury room, keep in  
18 mind that they simply contain the charges, the allegation,  
19 and they're not evidentiary.

20           The fact that Mr. Baxter and Mr. Burris were arrested  
21 and charged and indicted and are on trial is not important.  
22 That's just the way our system works, and the fact that that  
23 is occurred, and the fact that they are here on trial is not  
24 to be considered by you as any evidence that they committed  
25 these offenses. They are, and I'll talk to you about this

1 more in a moment, presumed innocent of the charges, the  
2 charge as to each and need not prove their innocence.

3       The fact that there are two defendants does not make  
4 this case any greater than if they were one. Each defendant  
5 is entitled to be assessed, the facts as to that defendant.  
6 Each defendant deserves to have the facts as to them  
7 assessed independently of the other. That is, you are to  
8 look at each independently and accept for in any way that it  
9 may arise under the charge I give you and the law in just a  
10 moment, but you do not have to find the same verdict as to  
11 both. Again, you look at each and see if they have, the  
12 State has proven, under the facts, their guilt under the  
13 charge of the law that I give you at this time.

14       Now, this -- the defendants here have each pled not  
15 guilty to the charge against them. This plea of not guilty  
16 places on the State the burden of proof. That is the burden  
17 of proving their guilt beyond a reasonable doubt.

18       Anyone charged with any offense in our legal system is  
19 presumed innocent of that charge until such time as the  
20 State can, if it can, prove their guilt beyond a reasonable  
21 doubt. This presumption of innocence is a substantial  
22 right. It's not a mere legal theory and it's not just a  
23 phrase. It is a substantial right.

24       The presumption innocence attaches to Mr. Baxter and  
25 Mr. Burris at the time of their arrest, remains with them as

1 this case is processed throughout our court system, remains  
2 with them at this time. In fact, the presumption of  
3 innocence remains with them as you deliberate. The  
4 presumption of innocence, in Mr. Baxter and Burris' favor is  
5 removed if and when and only if and when you, as the trial  
6 jury in this case, determines the State has presented  
7 evidence which satisfies you of one or both of their guilt  
8 beyond a reasonable doubt.

9 Now, this -- the State is not required to prove their  
10 guilt beyond all or beyond every doubt, but beyond a  
11 reasonable doubt. Our Courts have defined a reasonable  
12 doubt as the kind of doubt that would cause a reasonable  
13 person to hesitate to act. Proof of beyond a reasonable  
14 doubt is proof that leaves you firmly convinced of an  
15 individual's guilt. There are very few things in our world  
16 that we can know with absolute certainty and our law does  
17 not require the State to overcome every possibility.

18 If, based on your consideration of the evidence, you  
19 are convinced that one or both of the defendants are guilty  
20 of the offense for which they are charged or the lesser  
21 offense, which I'll talk to you about later, you'll find  
22 them guilty. On the other hand, if you think there's a real  
23 possibility that either or both are not guilty of the charge  
24 against them, you will give them the benefit of that  
25 reasonable doubt and find them not guilty. The defendants

1 are entitled to the benefit of any reasonable doubt you have  
2 as to any issue in this case.

3 I remind you, as I told you at the first, I am the sole  
4 judge of the law. You take, accept, and apply the law as I  
5 charge it even if you think I charge the law in error or  
6 even if you think the law should be different.

7 I remind you that you are the judges of facts and  
8 you're not to infer from anything I have said or done or  
9 anything I now say or do as being an indication of an  
10 opinion of mine on the facts. Our law does not allow a  
11 trial judge to formulate or to express to a jury any opinion  
12 on the facts. It is solely your job. It is solely your job  
13 to examine the evidence and determine the true facts.

14 In doing this, you may believe one witness as opposed  
15 to several, several witnesses as opposed to one. You may  
16 believe all, part, or none of a witness' testimony. In  
17 analyzing the evidence, use your common sense, your sense of  
18 logic, your sense of reason, use your experiences in life as  
19 you analyze the evidence.

20 As judges of the facts, it is necessary that you judge  
21 the credibility. That is the believability of the witnesses  
22 who have testified. In assessing believability, you use the  
23 things I've just discussed. You use those things that you,  
24 in your day-to-day life, find as being indicative of  
25 truthfulness, and you can use certain evaluators. Such

1 things as a witness' demeanor, how they act on the stand,  
2 are they hesitant or straightforward. Was their testimony  
3 consistent or inconsistent. Do they have any bias or  
4 prejudice. That is, any reason to help or hurt one side or  
5 the other. You can consider the opportunity a witness had  
6 to actually know those things about which they testified.  
7 Consider all the evidence, determine the true facts, apply  
8 the law and your verdict will speak the truth.

9 The right -- each defendant has the right to remain  
10 silent, and they have exercised that constitutional right.  
11 I emphasize to you the fact that they have done this is not  
12 to be considered by in your deliberation in any way  
13 whatsoever. They are presumed innocent of the charges. The  
14 State has to prove their guilt beyond a reasonable doubt and  
15 they need not prove their innocence. A defendant, in any  
16 case in our system, has a right to remain silent and their  
17 assertion of that right can not, must not, and will not be  
18 used against you, against them by you in any way whatsoever.  
19 This fact, that is that they did not testify, cannot be  
20 discussed by you in the jury room. That would be improper.  
21 Nor can it be even factored into your individual  
22 determinations. It is not for your consideration that  
23 they've exercised their right to remain silent and cannot  
24 mitigate, mitigate against them in any way whatsoever.

25 Now, in this case we had Ms. Mitchum testify as to what

1 we call an expert witness. Generally an individual can only  
2 testify about something they've observed with one of their  
3 five senses. Usually it's something they've seen or heard,  
4 but it could be something they've tasted, touched, or  
5 smelled.

6       However, where an individual has certain training and  
7 education, has certain skill in a particular area, that  
8 person is allowed to take facts, and from those facts,  
9 render an opinion. The opinions of experts are allowed into  
10 evidence to assist you. They're not binding on you. You  
11 can accept them in whole or in part or you can reject them  
12 in whole or in part.

13       In addition to looking at an expert's testimony just as  
14 you look at the witnesses, any other witness' testimony  
15 because they are witnesses, in addition to looking at their  
16 testimony like you do other witnesses, as to an expert, you  
17 also can look at their credentials. That is the reason they  
18 are qualified as an expert in determining whether those  
19 qualifications are such that satisfies you that they are  
20 able to render an opinion as they did.

21       You can also look at any reason given for the opinion  
22 they reached. Again, you are not bound by the expert's  
23 testimony. It's given to assist you.

24       In this trial you heard testimony referred to an audio  
25 portion, certain audio portion of the tape having been

1 silenced or removed. That particular portion was removed by  
2 agreement of the parties. That is, by stipulation of the  
3 parties. So, the fact that there was an episode of silence  
4 in there should not be considered by you as evidence in this  
5 case, and you should not speculate why it was left out or  
6 what was left out. It was done by agreement of the parties  
7 for reasons satisfactory to them.

8 in a case such as this they're two types of evidence  
9 which are generally presented during a trial, direct and  
10 circumstantial evidence. Direct evidence is the testimony  
11 of a person who claims to have actual knowledge of a fact.  
12 That is usually an eye witness. Again, it could be somebody  
13 whose heard something or otherwise. Direct evidence is  
14 evidence which immediately establishes the main fact sought  
15 to be proven.

16 Circumstantial evidence is proof of a chain of events  
17 and circumstances and facts which indicate the existence of  
18 a fact. Circumstantial evidence is evidence which  
19 immediately establishes collateral facts in which the main  
20 fact can be inferred. Circumstantial evidence is based on  
21 inference and not on personal knowledge or observation,  
22 observation. Our law makes absolutely no distinction  
23 between the weight to be given to direct and circumstantial  
24 evidence. Nor is a greater degree of certainty required of  
25 circumstantial as opposed to direct evidence.

1        what you should do in this case is weigh all of the  
2 evidence in this case. After weighing all the evidence, if  
3 you're not convinced of the guilt of one or both of the  
4 defendants, you will return a verdict of not guilty.

5        Each of these defendants is charged with possession  
6 with intent to distribute marijuana. The State must prove,  
7 beyond a reasonable doubt, that a defendant possessed  
8 marijuana with intent to distribute. To prove possession,  
9 the State must prove, beyond a reasonable doubt, that a  
10 defendant had both the power and intent to control the  
11 disposition or use of the marijuana.

12        Possession may be either actual or constructive.  
13 Actual possession means that the marijuana was in the actual  
14 physical custody of a defendant. Constructive possession  
15 means that the defendant had dominion and control or the  
16 right to exercise dominion and control over either the  
17 marijuana itself or the property on which it was found.  
18 Mere presence at the scene where drugs are found is not  
19 enough alone to prove possession. Actual knowledge of the  
20 presence of marijuana is strong evidence of a defendant's  
21 intent to control its disposition or use.

22        A defendant's knowledge and possession may be inferred  
23 when a substance is found on the property under their  
24 control. However, this inference is simply an evidentiary  
25 fact to be taken into consideration by you along with the

1 other evidence in this case and should be given such weight  
2 as you decide it should have.

3 Two or more persons can have joint possession of a drug  
4 and marijuana, under our law, is, in fact, a controlled  
5 substance.

6 The State must prove, beyond a reasonable doubt, that a  
7 defendant intended to distribute the marijuana before you  
8 could convict either or both as to that, as to possessing  
9 marijuana with intent to distribute. Distribute means  
10 delivering or administering or dispensing a drug. Intent  
11 may be shown by acts and conduct of a defendant and from  
12 other circumstances from which you may naturally and  
13 reasonable infer intent.

14 In determining, in determining whether a defendant had  
15 the intent to distribute marijuana, you may consider the  
16 circumstances surrounding their alleged possession. You may  
17 consider the amount of the substance alleged to have been  
18 possessed. You may consider the manner in which it was  
19 allegedly possessed. You can also consider a place where it  
20 was allegedly possessed and such other factors as you  
21 consider important, important.

22 To find an individual guilty of possession with intent  
23 to distribute, you must find that they did not intend to  
24 possess it solely for their own use. Our legislature has  
25 passed a law that states that possession of more than 28

1 grams of marijuana creates an inference that a defendant  
2 possessed the marijuana with intent to distribute. This  
3 inference does not relieve the State of proving, beyond a  
4 reasonable doubt, that a defendant had the intent to  
5 distribute. This inference is simply an evidentiary fact to  
6 be taken into consideration by you along with other evidence  
7 in the case and should be given such weight, if any, as you  
8 determine it should have, it should have.

9       If you find the State has failed to prove either or  
10 both of the defendant's guilt beyond a reasonable doubt of  
11 the possession of marijuana with intent to distribute, you  
12 may consider whether the State has proven a lesser included  
13 offense, beyond a reasonable doubt. That is the offense of  
14 simple possession of marijuana. Simple possession does not  
15 require an intent to distribute the marijuana. The State  
16 must prove, beyond a reasonable doubt, that the defendant  
17 knowingly or intentionally possessed marijuana. That means  
18 that they did it with knowledge, consciously, not  
19 accidentally, and it must be done willfully. I have already  
20 explained to you actual and constructive possession.

21       In South Carolina, the law is that the hand of one is  
22 the hand of all. The crime is committed by two or more  
23 people who are acting together to commit a crime, the act of  
24 one is the act of both. The person who joins with another  
25 to commit an unlawful act is criminally responsible for

1 everything done by the other person which happens as a  
2 natural and probable consequence of the acts done in  
3 carrying out the common plan and purpose.

4 If two or more people are together, acting together,  
5 assisting each other in committing, in committing an  
6 offense, the act of one is the act of all or it is sometimes  
7 said the hand of one is the hand of all. Prior knowledge of  
8 a crime is going to be committed without more is not  
9 sufficient to make a person guilty of the crime. Mere  
10 knowledge that another person is going to commit, to commit  
11 a crime, even if the defendant is present when the crime is  
12 committed, is not sufficient to convict a defendant as a  
13 principle.

14 Guilt as a principle is shown by actual or constructive  
15 presence at the scene as a result of a prior agreement.  
16 Therefore, a finding of a prior arranged plan or common  
17 scheme is necessary for finding an individual guilty as a  
18 principle.

19 The State must prove, beyond a reasonable doubt, by  
20 competent evidence, the theory that the hand of one is the  
21 hand of all. A principle in a crime is one who actually  
22 either commits the crime or who is present aiding, abetting,  
23 or assisting in the commission of a crime.

24 When a person does an act in the presence of and with  
25 the assistance of another, the act is done by both. Where

1 there are two or more acting with a common plan or intent  
2 are present in the commission of a crime, it does not matter  
3 who actually committed the crime. All are guilty. The hand  
4 of one, as I said, is the hand of all.

5 Present at the commission of a crime means sufficiently  
6 near to aid, abet, and assist in the commission of that  
7 crime. However, mere presence at the scene of a crime is  
8 not alone sufficient to convict one as a principle on the  
9 theory of aiding and abetting.

10 Intent is also a necessary element. There must have  
11 been a common design or intent to commit the crime, and the  
12 crime must be committed pursuant thereto with the person  
13 aiding and abetting by some overt act. Intent means  
14 intending the result which actually occurs, something that  
15 is intentional, something that is not accidental or  
16 involuntary. Intent may be shown by acts and conduct of a  
17 defendant and from other circumstances from which you may  
18 naturally and reasonable infer intent. The State must prove  
19 this theory beyond a reasonable doubt.

20 In just a moment I'm going to go over with you, Madam  
21 Forelady, the verdict forms. They're attached to the  
22 particular indictments. Keep in mind the indictments are  
23 not evidence.

24 Your verdict must be unanimous. All 12 jurors must  
25 agree. A verdict cannot be based on passion, prejudice,

1 sympathy, public opinion, public feeling, or matters outside  
2 the record.

3 while you are deliberating, if you have any questions,  
4 write them down, knock on the door, and I've got a,  
5 something scheduled in just a few minutes, but it should not  
6 take very long, but I will make myself available as quickly  
7 as I can if you have a note. Write it down, any question,  
8 give it to the bailiff, and the bailiff will come and get  
9 me. Again, I will send for you as promptly as I can. Keep  
10 the note. I may be able to write an answer on the note  
11 itself. It may be that I'll have to bring you back in here  
12 and answer the your question.

13 We can have testimony replayed and the video is in  
14 evidence. We can bring it back out, and with no one saying  
15 anything, you can simply play the video for your -- do you  
16 have something that they can take it in and play it on?

17 SOLICITOR WEAVER: I can probably get something.

18 THE COURT: All right. We'll actually put in there,  
19 in, in the jury room, we'll put a device, I don't know what  
20 you call them now, what you can play and watch to whatever  
21 extent you deem necessary the video. But you'll have the  
22 evidence.

23 If I send a note back to you with an answer to a  
24 question, keep that note and turn it into the evidence  
25 because it has to be part of the record.

1        we can have testimony replayed if you wish. In South  
2 Carolina, we do not send a written charge on the law in with  
3 you. But if you wish me to go over any part or all of my  
4 charge on the law, let me know and I will bring you back out  
5 and here in open court I will recharge you any part or all  
6 of the law.

7        Madam Forelady, when you reached a verdict, when the  
8 jury has reached a unanimous verdict, knock on the door,  
9 tell the bailiff, and he will come and get me and I will  
10 send for you as quickly as I can.

11        When you first go into the jury room at this time, do  
12 not start deliberating.

13        Ms. Sowers, you'll stay in here with us. That is  
14 right, Sowers?

15        JUROR: Yes, sir.

16        THE COURT: You'll stay in here with us. You will not  
17 be participating in the deliberation, and I'll be with you  
18 more in just a moment.

19        But do not start deliberating because I have to go over  
20 my charge with the attorneys. If I have made an error I'll  
21 bring you back in and correct it. If I have not made an  
22 error, the bailiff will bring in the exhibits and the  
23 verdict forms, which I'll talk about in just a moment, and  
24 tell you to start deliberating and you, that will be your  
25 que to start deliberating, and, of course, you'll preside,

1 Madam Forelady, and knock on the door when a verdict has  
2 been reached.

3 I have a verdict form attached to each indictment, one  
4 for each defendant, and, again, remember that you assess  
5 each defendant's situation individually as to that defendant  
6 under the law and facts. If you find -- and the order these  
7 are in is of moment. I always put them -- I put them in  
8 some order and I always put them in the same order.

9 The first line, line says we find the defendant guilty  
10 of possession with intent to distribute marijuana. You  
11 would check a mark, put a check mark or an X in front of  
12 that line, in front of that sentence if you find the State  
13 has proven, beyond a reasonable doubt to your unanimous  
14 satisfaction, that one or both of the defendants have, are  
15 guilty of that charge. That is the charge that's set forth  
16 in the indictment.

17 If you find the State has failed to prove that offense,  
18 but has proven the lesser included offense of simple  
19 possession of marijuana, you would put a check or an X in  
20 front of the second line, which simply says that we find the  
21 defendant guilty of the lesser included offense of simple  
22 possession of marijuana. The third line says we find the  
23 defendant not guilty and you will use that if you find the  
24 State, as to one or both, has failed to prove that  
25 defendant's guilt beyond a reasonable doubt. Now, there's a

1 place for you to sign and I've already put the date on  
2 there.

3 So, I'm gonna let you go in the jury room, everyone but  
4 Mrs. Sowers, and don't start deliberating yet.

5 (WHEREUPON, the following takes place outside the  
6 presence of the jury.)

7 The Court: Any exception by the State?

8 SOLICITOR WEAVER: Not from the State.

9 THE COURT: Ms. Anderson.

10 MS. ANDERSON: No, Your Honor.

11 MR. REEVES: None, Your Honor.

12 THE COURT: All right. Check the exhibits and the  
13 verdict forms and send them back. We'll tell them to start  
14 deliberating.

15 (WHEREUPON, the alternate juror was excused and the  
16 jury began deliberations at 5:09 and returned with a verdict  
17 at 5:45.)

18 THE COURT: I understand we have a verdict.

19 Anything from the State before the jury is brought in?

20 SOLICITOR WEAVER: Nothing from the State.

21 MS. ANDERSON: No, Your Honor.

22 MR. REEVES: No, Your Honor.

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

24 (WHEREUPON, the following takes place within the  
25 presence of the jury.)

1       THE COURT: I understand the jury has reached a  
2 verdict?

3       FORELADY: Yes

4       THE COURT: If you'll hand it to the bailiff and he'll  
5 hand it up to me.

6       THE CLERK: In the State of South Carolina versus Troy  
7 Terrell Baxter, with Indictment 2010-46-01312, we, the jury,  
8 find the defendant guilty of the lesser included offense of  
9 simple possession of marijuana. Signed by the forelady on  
10 this day.

11       State of South Carolina versus Larick Pierre Burris in  
12 2010-46-1319, we, the jury, find the defendant guilty of the  
13 lesser included offense of simple possession of marijuana.  
14 Signed by the forelady on this day.

15       If this is your verdict, so say you-all by raising your  
16 right hand.

17       (WHEREUPON, all jurors raise their right hand at this  
18 time.)

19       THE CLERK: Let the record show all affirm.

20       THE COURT: Anything from the State before the jury is  
21 dismissed?

22       SOLICITOR WEAVER: Nothing from the State, Your Honor.

23       THE COURT: Ms. Anderson.

24       MS. ANDERSON: No.

25       THE COURT: Mr. Reeves.

1 MR. REEVES: Nothing.

2 (WHEREUPON, the jury is excused at this time.)

3 THE COURT: Anything from the State?

4 SOLICITOR WEAVER: Nothing from the State.

5 MS. ANDERSON: For purposes of the record, on behalf of  
6 Mr. Baxter, I would renew all prior motions made.

7 THE COURT: All right. Those motion are again denied.

8 MR. REEVES: Same for Mr. Burris.

9 THE COURT: Those motions are denied.

10 SOLICITOR WEAVER: These would be second or subsequent  
11 for both of them.

12 THE COURT: Any objection to that, Ms. Anderson?

13 MS. ANDERSON: No.

14 THE COURT: Mr. Reeves.

15 MR. REEVES: No.

16 THE COURT: You want to put on the record the  
17 enhancement.

18 SOLICITOR WEAVER: For Troy Baxter, prior conviction in  
19 1996 for possession with intent to distribute marijuana. In  
20 2002, possession with intent to distribute marijuana. Those  
21 are both convictions in South Carolina. 1993 he was  
22 convicted of contraband. In 2001, possession with intent to  
23 distribute marijuana.

24 As to Mr. Burris, he has possession of marijuana from  
25 2006, possession of marijuana from 2007. Also a petty

1 larceny in 2001.

2 THE COURT: All right. Ms. Anderson, be glad to hear  
3 from you on behalf of Mr. Baxter.

4 MS. ANDERSON: Mr. Baxter just turned 40 years old.  
5 He's currently a full-time student at the University of  
6 Phoenix. He's enrolled in A business management program as  
7 a four year degree. He has one year left on that program.  
8 He also does work -- he works on contract or with Time  
9 Warner Cable doing that on a contracting basis as well.

10 Your Honor, he resides in Charlotte. He has no  
11 children, but his girlfriend that he lives with, he does  
12 help support her two children.

13 Your Honor, I understand he does have prior offenses.  
14 However, the prior drug offense was essentially ten years  
15 ago. I understand Mr. Baxter was charged prior to the  
16 change in the new law. So, that would fall under, make it a  
17 second offense. However, we point out it's been some time  
18 since he was convicted on a, a drug offense and ten years is  
19 some time.

20 Your Honor, we're asking the Court to consider, in this  
21 case, a probationary sentence. I explained to Mr. Baxter he  
22 would report here in South Carolina. I understand he does  
23 have that prior record. But under the circumstances of the  
24 case that you heard, by this point we would nonetheless ask  
25 you consider that. He is working. He's enrolled in school.

1 Those are things that certainly will help him, keep him out  
2 of trouble. We would ask you to consider that as part of  
3 the sentence.

4 THE COURT: How many days is Mr. Baxter claiming for  
5 credit?

6 MS. ANDERSON: Two days, Your Honor.

7 THE COURT: Why do you think that school and working is  
8 going to keep him from reoffending?

9 Both of those were in existence at the time, were they  
10 not?

11 MS. ANDERSON: Yes, Your Honor, though obviously Mr.  
12 Baxter is contested the volume against him, and I understand  
13 the jury verdict.

14 THE COURT: I understand.

15 MS. ANDERSON: But I do think that is something that  
16 will ultimately allow him to be a productive member of  
17 society, and perhaps just to support the society versus  
18 being a drain on society in those circumstances. I do know  
19 he's been very deliberate with school with being concerned  
20 he's missing class obviously here today, but I know he's  
21 been very direct about that. So, I do think that's  
22 something that he can be a productive member of society.

23 THE COURT: Mr. Baxter, anything you want to say?

24 DEFENDANT BAXTER: Yeah, like she was saying, I've  
25 taken school very seriously, and me being raised in my

1 family, like my brother, he's a deputy sheriff. He talks to  
2 me every day. We have a good conversation, and we are very  
3 close. And as far as, you know, this charge like this, I  
4 mean as I get older I get smarter and now that I'm at the  
5 age of 40, I just, 40, I'm more focused on life because I  
6 was raised up in a good family and I do have good people  
7 around me. Just being in the wrong place at the wrong time  
8 with these charges really taught me a learning experience,  
9 taught me a learning experience.

10 THE COURT: Sentence is one year and giving you credit  
11 for the two days you already served.

12 MS. ANDERSON: Your Honor, if I may, under the  
13 circumstances with Your Honor, the sentence, with all due  
14 respect, we probably intend to file, intend to appeal. I  
15 would ask Your Honor, in the circumstances, to consider a  
16 appeal bond given, giving him appropriate time if---

17 THE COURT: Once it's filed, we'll talk about that.

18 MS. ANDERSON: Thank you, Your Honor.

19 THE COURT: Mr. Reeves, you want to bring Mr. Burris  
20 around?

21 MR. REEVES: Yes, sir.

22 THE COURT: Mr. Reeves, anything you want to tell me  
23 about -- first, did he stay in jail any before bonding out?

24 MS. ANDERSON: Yes, sir, two days, Your Honor.

25 THE COURT: All right. Be glad to hear from you now.

1 MR. REEVES: Your Honor, Mr. Burris is 28 years old.  
2 He is a father of three. He lives and supports his  
3 children. He lives with his girlfriend and supports his  
4 children. He's both employed and in school. He works at  
5 Tyco Electric and he also goes to the University of Phoenix  
6 where he's completing a four year degree in business  
7 administration.

8 His priors are thankfully possession and petty larceny.  
9 This is his wake up moment, his time to grow up. He  
10 recognized that and he accepts responsibility and he's  
11 hoping that you will give him the break that he's asking  
12 for.

13 THE COURT: Mr. Burris, anything you want to say?

14 DEFENDANT BURRIS: Yes, I'm just sorry and I take  
15 responsibility for my actions, and I just hope I can get a  
16 second chance to keep my job and finish my education and  
17 take care of my kids like I've been doing so far.

18 The incident, that's when I got a job at Tyco. Ever  
19 since then I've been working and going to school and  
20 taking care of my kids. That's all.

21 THE COURT: Sentence is one year and give you credit  
22 for two days. Thank you.

23 MR. REEVES: Thank you, Your Honor.

24

25 \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*



BRUCE M. BRYANT  
Sheriff

Gibson  
YCMHIT

## OFFICE OF THE SHERIFF

Moss Justice Center  
1675-2A York Highway  
York, South Carolina 29745-7430  
Tel: (803) 628-3059 • Fax: (803) 628-3075  
www.yorkcountysheriff.com

### Amended Report

April 08, 2010

Case Number: 200900030801

(S) Baxter, Troy Terrell

(S) Burris, Larick Pierre

### Court Type(s):

Magistrate:      Family:      General Sessions: X

**CONFIDENTIAL:** This is an official report of the York County Sheriff's Office Forensic Laboratory and is to be used only in conjunction with an official criminal investigation.

### ITEMS OF EVIDENCE:

Item 1:      (0043343) Green plant material

Results 1:      Marijuana found, C-I

Item 2:      (0043344) Green plant material

Results 2:      Marijuana found 15.0 grams (0.5 ounces), C-I

Item 4:      (0043346) Green plant material

Results 4:      Marijuana found 14.0 grams (0.4 ounces), C-I

Item 6:      (0043348) Green plant material

Results 6:      Marijuana found 1.33 grams (0.04 ounces), C-I

Cynthia J. Mitchum 04.08.10  
Cynthia J. Mitchum      (Chemical Analyst)      Date



BRUCE M. BRYANT  
Sheriff

Gibson  
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### Amended Report

April 08, 2010

Case Number: 200900030801

(S) Baxter, Troy Terrell

(S) Burris, Larick Pierre

### Court Type(s):

Magistrate:      Family:      General Sessions: X

**CONFIDENTIAL:** This is an official report of the York County Sheriff's Office Forensic Laboratory and is to be used only in conjunction with an official criminal investigation.

### ITEMS OF EVIDENCE:

Item 8:      (0043351) Green plant material

Results 8:      Marijuana found 2.19 grams (0.07 ounces), C-I

Item 10:      (0043353) Green plant material

Results 10:      Marijuana found, C-I

Item 11:      (0043355) Green plant material

Results 11:      Marijuana found 0.06 grams (0.002 ounces), C-I

Cynthia J Mitchum 04.08.10  
Cynthia J. Mitchum      (Chemical Analyst)      Date

DOCKET NO. 2010-GS-46-

01312

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

WITNESSES

YCMHITVinesett

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

March 25, Term 2010

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

ARREST WARRANT NUMBER

J-168790

THE STATE

vs.

Defendant

Witness:

ACTION OF GRAND JURY

TRUE BILL

TROY TERRELL BAXTER

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

VERDICT

Guilty - simple possession of marijuana

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

SC Code: 44-53-370  
CDR Code: 188

Rae Lovon  
Foreperson of Petit Jury

Date: 3-1-11

STATE OF SOUTH CAROLINA )

INDICTMENT

COUNTY OF YORK )

) CERTIFIED TRUE COPY

2011 MAR -3 AM 9:44

At a Court of General Sessions, convened March 25, 2010, the Grand Jurors of York County present upon their oath:

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY SC

**POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA**

On or about September 11, 2009, the Defendant, Troy Terrell Baxter, did distribute, deliver, purchase, aid, abet, attempt or conspire to distribute, deliver, or purchase or possess with intent to distribute or deliver marijuana, a controlled substance. Said incident occurred in York County, South Carolina, all in violation of Section 44-53-370, Code of Laws of South Carolina, (1976), as amended.

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

  
ASSISTANT SOLICITOR

OF York  
VS.  
Troy Baxter

INDICTMENT/CASE#: 2010GS4601312

239

A/W#: J168790

Date of Offense: 9/11/2009

S.C. Code § : 44-53-0370(b)(2)

CDR Code #: 0188

AKA:

Race: B

Sex: M

DOB:

SS#:

Address:

ing C.

City, State, Zip: Charlotte, NC 28273

DL#:

SID#:

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazardous ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession of Marijuana and offense or subsequent

in violation of § 44-53-0370(d)(4) of the S.C. Code of Laws, bearing CDR Code #

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Weaver, Teasa K.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed years  
and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment  
of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 2 yrs

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

### SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25

§ 14-1-213 (Drug Court Surcharge) \$150 \$100

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCA Surcharge) \$5 \$5

§ 44-53-450(C) (Conditional Discharge) \$350 \$

3% to County (if paid in installments) \$

TOTAL \$230

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ beginning \_\_\_\_\_

\$ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Conditional Discharge, § 44-53-450(C) requires  
\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Presiding Judge

Judge Code:

Sentence Date:

John C. Hays III

2049

3-1-11

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## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 29th, 2013

A handwritten signature in black ink, appearing to read "Breen Richard Stevens", written over a horizontal line.

Breen Richard Stevens  
Appellate Defender

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

ATTORNEY FOR APPELLANT