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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICKY MANIGO DAWSON,

APPELLANT

APPELLATE CASE NO. 2019-002107

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF BERKELEY)

STATE OF SOUTH CAROLINA,) TRANSCRIPT
)
PLAINTIFF,) OF
)
vs.) RECORD
)
RICKY MANIGO DAWSON,) 2016-GS-08-114 - 116
)
DEFENDANT.)

March 14th, 2018
Goose Creek, South Carolina

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, Judge.

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

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Transcribed by Pamela E. Green, Circuit Court Reporter

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P R O C E E D I N G S

THE COURT: State ready to proceed?

SOLICITOR STEGALL: We are, Your Honor. And may I approach before we do?

THE COURT: Sure, and have these cases been indicted or are they simply still warrant numbers?

SOLICITOR STEGALL: They've been indicted, Your Honor.

THE COURT: I need to see them.

Do y'all have the indictments?

Thank you, ma'am.

And, for the record, this is the State versus Ricky Manigo, M-A-N-I-G-O, Dawson, and I hope I didn't mispronounce it.

MR. SMILEY: Manigo.

THE COURT: Manigo. You know, and I should know that. I'm the Charlestonian. I'm having a long week.

Yes, sir.

(WHEREUPON, a bench conference took place at this time.)

THE COURT: 2016-GS-08-114, trafficking cocaine 28 to less than 100 grams third offense, 2016-GS-08-115, distribution PWID manufacturing crack third offense, and 2016-GS-08-116, possession of a weapon during the commission of a violent crime.

It's before the Court on a Motion to Suppress, which was filed on March 12th of 2018. Motion was filed by Mr. Smiley. It appears that he's assisted by Ms. Hemsley. The State is, is represented by Mr. Stegall, and are y'all ready to proceed?

Can I ask, preliminarily, has an offer been extended to Mr. Dawson and has all the discovery been completed?

MR. SMILEY: Yes, ma'am, is it -- is -- the offer is an extensive offer, and we---

THE COURT: Uh-huh. (Affirmative).

MR. SMILEY: ---put it on the record that he declined.

THE COURT: When was that?

MR. SMILEY: About a month ago, six weeks ago.

SOLICITOR STEGALL: Your Honor, initially, an offer was extended. I forgot the date. Let me see. Some time last year, but we revisited that offer. I got approval from my supervisor. We reduced the offer and extended it to Mr. Smiley and his client, and that was rejected on the record, I believe, last month, Your Honor, in front of -- who was the judge?

MR. SMILEY: I don't---

SOLICITOR STEGALL: Judge Brown.

MR. SMILEY: It might of been Judge Brown. It was, it was put on the record. I don't remember the judge, Your Honor, but it was -- at the time my client was in custody

for child support --

THE COURT: Uh-huh. (Affirmative).

MR. SMILEY: -- and he was brought over to see if he wanted to enter the plea to the -- it was a three part deal. He could plea without a suppression hearing to seven years, is he could have a suppression hearing, and, if he lost, the prosecutor is given him two parts. He could then enter a plea to a second for a negotiated 15 years, but he'd lose his appeal rights, or we could have the trial, and preserve the issue, which he would, of course, have to get a mandatory minimum 25 years is -- at this point, we have rejected the seven, Your Honor.

THE COURT: You rejected the --?

MR. SMILEY: The plea without a suppression hearing.

THE COURT: And what was the---

MR. SMILEY: Seven years.

THE COURT: Wow.

He did that with -- against or with your advice?

MR. SMILEY: He did it with my advice.

THE COURT: Okay.

MR. SMILEY: Yes, ma'am. Well, I -- let me just -- no I, I -- Your Honor, let me change that. I -- cause I---

THE COURT: Let me deal with something real quick.

MR. SMILEY: Yes, ma'am. Yes, ma'am.

(Pause.)

MR. SMILEY: If I could, Your Honor, is when I say with my advice is I explained the legal issues in this case extensively with Mr. Dawson. Is -- I gave him the -- actually even gave him the cases to take to read.

It -- his uncle is an attorney in another state. I've had long discussions with him. As -- this was not a quick decision cause Mr. Dawson, after great reflection, made the choice to go forward. I told him I believed that this was an issue that I believe it to be an illegal search.

I also explained to him that South Carolina has not ruled on this specific issue. And so we were gonna be looking at United States Supreme Court decisions and persuasive authority in other jurisdictions. I told him I could not tell him anything further, and that he had to make the choice of which way he wanted to do it, and I was real clear on that. He's very clear on that, and we turned down the seven years at his -- by his choice, Your Honor.

THE COURT: Okay. All right. Y'all ready?

SOLICITOR STEGALL: Yes, Your Honor.

State calls Officer Erickson.

THE COURT: Sir, if you'd come to the stand to be sworn.

ALEXANDER ERICKSON, being first duly sworn, testified as follows:

THE CLERK: Oh, please state your first and last name,

and spell your last name for the record please, sir.

THE WITNESS: Alexander Erickson. E-R-I-C-K-S-O-N.

THE COURT: I'm sorry, sir. Can you restate your name for me?

THE WITNESS: Alexander Erickson. E-R-I-C-K-S-O-N.

THE COURT: Thank you.

You may proceed.

SOLICITOR STEGALL: Thank you, Your Honor.

THE COURT: You're welcome.

DIRECT EXAMINATION

BY SOLICITOR STEGALL:

Q Officer Erickson, can you tell us where you work?

A The City of Goose Creek Police Department.

Q Okay. And what do you do for Goose Creek?

A I'm a member of the SAL Unit/K-9 unit---

(WHEREUPON, Mr. Smiley's computer began playing, and the remainder of the witness' answer was unable to be heard.)

MR. SMILEY: I'm sorry. I got a computer that's closed, but it started playing something, Your Honor. Let me turn this off.

THE COURT: Thank you.

Q Describe for the Court what, what that position entails, what your duties and responsibilities are.

A It's a two part responsibility -- three part. I assist

the patrol division by answering calls for service, and the other part is handling a police K-9 certified in narcotics detection and crime prevention.

Q Okay. And how long have you been a K-9 officer?

A Approximately three years.

Q Okay.

MR. SMILEY: Your Honor, could I ask that we -- he speak up or we get a mic?

THE COURT: It is -- he's a little soft spoken.

Could you speak directly into the microphone, sir?

THE WITNESS: Better?

THE COURT: Yes, I think -- repeat it one more time.

THE WITNESS: Better.

MR. SMILEY: A little---

THE COURT: I don't know.

Is the mic on?

SOLICITOR STEGALL: It might not be on.

THE CLERK: Tap, tap the mic.

SOLICITOR STEGALL: Yeah, it's on.

Okay. Okay. So, going back to my questioning, were you on duty the night of October 23rd, 2015?

A I was.

Q Okay. Were you on-duty as, as a, as a K-9 officer that night?

A Yes, sir.

Q Did you have your K-9 with you that night?
A Yes, sir.
Q Okay. All right. Do you remember performing a traffic stop where the Defendant was a passenger in the auto -- in the car that night?
A Yes, sir.
Q Okay. Please describe that traffic stop to the Court.
A On the evening in question, I observed a -- it was a Chevrolet vehicle drive on Red Bank Road. The vehicle had a headlight out. I got behind the vehicle, got the traffic stop on -- for it for that violation. During the course of the investigation, the Defendant was identified as the passenger within the vehicle.
Q Okay. Do you remember who the driver was?
A I believe his name was Sam Carr.
Q Okay. All right.
THE COURT: Did you say Carr or Clark?
THE WITNESS: Carr.
Q And, and, going back, I think you answered it, but, but what was the violation?
A Defective headlight.
Q Okay. All right.
A And, just for clarification, it was at nighttime obviously.
Q Okay. All right. Okay. When you approached the

vehicle, what did you observe?
A I made a driver's side approach on the vehicle, which put me at the window with Mr. Carr, who was the driver. Immediately upon contact, I observed a plastic baggy on, on Carr's lap. The baggy, based on my experience and seeing narcotics, especially being in the role that I'm in all the time, it resembled a bag that contained narcotics. It looked like a sandwich baggy, which was twisted up on one end. I, I couldn't say for certain what was it, but it heightened my suspicion immediately that there was something going on in the vehicle.
Q And why would that -- why would you determine that that may be what that baggy was?
A Specifically the way that it was packaged. Time and time and time again, again, based on my personal experiences and training classes I've been to, that's almost always how I find narcotics, rolled up in a sandwich baggy, tied up at one end.
Q Okay. Okay. And you said you saw what appeared to be that baggy?
A Correct. And then when I had called the attention about it, he proceeded to -- it looked like he put it back in his pocket. And when I asked him about what it was, I couldn't get a clear, concise answer of what it was that -- it kept changing, and it just even raised my suspicion even

more that there was criminal activity continuing to proceed right in front of my face.

Q When you say it kept changing, was he giving you different answers?

Is that what you're referring to?

A Correct. I think it changed. When I'd asked him about it, I think he said it was a---

MR. SMILEY: Objection, Your Honor. Hearsay.

Q Okay.

THE COURT: Don't ask that. I haven't ruled yet.

Q So---

THE COURT: Is this being offered for its truth?

SOLICITOR STEGALL: No, Your Honor. It's---

THE COURT: Well, what purpose is it being offered?

SOLICITOR STEGALL: He -- it's -- he's answering -- Mr. Carr's answer is, is going to the heightened, reasonable suspicion that, that --.

THE COURT: That he had about Mr. Carr?

SOLICITOR STEGALL: -- Officer Erickson had -- that criminal activity was afoot.

THE COURT: I'm gonna give him a little latitude.

Overruled.

Q Go ahead and answer the question.

A I believe he said it was a, a candy wrapper when I first asked him.

Q Okay. Okay. So, what did you do based on his answers and, and what you saw?
A After I got a different answer a couple times, it was just the general nervousness that I observed. I asked for a second officer to respond with the intention of getting them to step out of the car to speak with him separate from one another, and to try to get to the bottom of what that bag was, which I already believed to be narcotics.
Q Is that common to, to call for backup?
A Absolutely.
Q Okay. Okay. So, you got Mr. Carr out of the vehicle. What did you do next?
A Yes. After my backup officer got there, I got the -- Mr. Carr out of the vehicle. I spoke with him a separate distance away from the Defendant, and I asked for consent to search the vehicle. Initially, my biggest concern was that bag. I did ask for a smaller scope of the search additionally, but I was very clear, before proceeding with that smaller scope search, which the smaller scope was I was asking for that general area of the car where I observed the bag. However, I fully explained to the driver that that scope of the search, it needed to be extended to the entire vehicle, and it turned it to a verbal consent from him to do so.
Q So -- okay. I want to, I want to back up and make sure

I understand you.

Initially, you're, you're testifying that you, you asked to search just the driver's side, correct?

A Yes.

Q Okay. And then when you, you said you expanded that, what did you -- how did you tell Mr. Carr that -- what you were going to search?

A I, I didn't say what specifically. I said the vehicle. I wanted to search the whole vehicle. I left it pretty broad that -- the entire vehicle. I wasn't just concerned about his side. I was concerned about the entire vehicle and everything within the vehicle. I think I'd -- when I asked him the, the limited search in the beginning, it was more trying to put him at ease. I intended to want to search the whole car, but, like I said, I kind of got hung up on the bag itself.

Q Okay.

A But I kind of caught myself, and realized the scope needed to be the entire car.

Q Okay. Did you receive consent to search the entire car?

MR. SMILEY: Objection, Your Honor.

THE COURT: Basis?

MR. SMILEY: It's gonna be hearsay.

SOLICITOR STEGALL: Okay. Your Honor, I don't think

it's hearsay when he can, he can testify that -- whether or not he was given consent to search the entire car. He's not saying what Mr. Carr told him. He's just --.

THE COURT: I don't know how -- I don't, I don't know -- it's Mr. Carr's car?

MR. SMILEY: Yes.

THE COURT: Your client doesn't have the ability to give consent to search. It goes to his reasonable -- it's really the basis of his investigation and why he took certain actions. I would assume, if they called Mr. Carr, he's gonna say he didn't give them consent, although I don't know what he'd say.

MR. SMILEY: Well, neither do I.

THE COURT: But I don't know that it's nec -- I don't, I don't think it's impermissible for him to -- otherwise how does he explain why he was in the vehicle, and why he undertook what he did for investigatory purposes?

MR. SMILEY: They called Mr. Carr.

THE COURT: They don't have to. There's case law---

MR. SMILEY: Well, if they want to get the consent in.

THE COURT: Case law---

MR. SMILEY: He's not, he's not a codefendant.

THE COURT: Don't interrupt me, Mr. Smiley.

MR. SMILEY: Yes, ma'am.

THE COURT: Case law says that an officer can testify

to hearsay as to the underlying purposes of embarking upon a certain course of investigatory behavior.

MR. SMILEY: And that --.

THE COURT: According to the Supreme Court.

MR. SMILEY: Yes, ma'am.

THE COURT: Uh-huh. (Affirmative).

MR. SMILEY: So, we agree it's hearsay, but there's an exception?

THE COURT: The Supreme Court says it's not hearsay.

MR. SMILEY: Okay.

THE COURT: Because it's not being offered for its truth.

MR. SMILEY: Okay.

THE COURT: It's being offered for the purpose of why they undertook a procedure -- a certain course of action.

MR. SMILEY: Okay. If you'll just note my objection.

THE COURT: It's noted and overruled.

MR. SMILEY: Thank you.

THE COURT: You may proceed.

SOLICITOR STEGALL: Thank you, Your Honor.

THE COURT: Uh-huh. (Affirmative).

Q After you explained to Mr. Carr that your search would be the entire car, were you given consent to search?

A I was.

Q Okay. And, and I want to back up real quick.

When, when you got Mr. Carr out of the, the automobile, did you search him?
A I did not search him. I did a Terry Frisk for his outer clothing for weapons and only weapons. That's all I was searching for or all I was checking for---
Q Okay.
A ---was weapons.
Q Okay. Did you find any weapons?
A Not on his person.
Q Okay. All right. So, once you were given consent, where was the passenger?
A The passenger, I believe, was with -- I believe it's PFC Kevin -- PFC Davis, and they were off to the side.
Q Okay. Did the passenger -- well, was -- where was Mr. Carr?
Were they, were they both with PFC Davis?
A When I was actually searching the vehicle?
Q Correct.
A He would of been within the eyesight of both. I'm not sure exactly where he had been standing.
Q Okay. But, at some point, was Mr. Dawson asked to get out of the car so you could conduct a search?
A Yes.
Q Okay. And he under -- was it your belief that he understood that the car was about to be searched?

A I, I don't know.

MR. SMILEY: I'm gonna object, Your Honor. It requires---

THE COURT: Speculation.

MR. SMILEY: ---speculation.

SOLICITOR STEGALL: Okay. I'm --.

THE COURT: Lack of foundation---

SOLICITOR STEGALL: Withdraw.

THE COURT: ---speculation and rephrase.

SOLICITOR STEGALL: I'll withdraw the question, Your Honor?

THE COURT: Uh-huh. (Affirmative).

Q Okay. So, did you end up searching the car?

A I did.

Q Okay. Please describe your search for the Court.

A I believe I started on the driver's side of the vehicle. Like I said, I was looking for that bag initially that I believed contained narcotics. That was kind of what I did the entire search to begin with. I did not find it where I thought I would locate it.

I then opened the center console and found a legally possessed firearm. I then had worked my way over to the passenger side of the vehicle. I actually -- I think I was still in the vehicle, and I was leaning over the center console kind of like reaching into the passenger compartment

where a black backpack was located on the passenger floorboard.

Q Okay. I'm gonna stop you right there.

Were there any identifying marks on the backpack?

A Not that I recall.

Q Could you determine whose backpack it was other than its position?

A Other than its position, no.

Q Okay. Go ahead.

A Upon opening the zipper pocket, I observed a green baggy that looked similar to a Crown Royal style bag. It actually might of been a Crown Royal bag.

THE COURT: I'm sorry. I didn't hear your answer.

A Oh, there was a, a green bag within the backpack. Upon opening the zipper pocket, I opened the zipped -- the green bag up, and there was a white bag containing a white powdery substance, and two additional bags with a yellow brick like substance. Again, they were tied up in a Ziploc baggy, twist tied at the end. Based on my training and experience, I believe they were cocaine and both individually contained wrappers.

Q Was that backpack locked in any way?

A No, sir.

Q Okay. At any point during your search did either Mr. Carr or Mr. Dawson withdraw their consent?

A No, sir.

MR. SMILEY: Objection, Your Honor. Arguing a fact that's not in evidence that Mr. Dawson had given consent. Did, did either of them withdraw their consent.

SOLICITOR STEGALL: Okay.

THE COURT: It hasn't been established that -- the only fact that's been established is that Mr. Carr gave consent. There's not been any testimony that Mr. Dawson gave consent.

SOLICITOR STEGALL: Okay.

THE COURT: The objection's sustained.

Q Did, did Mr. Carr withdraw consent at anytime?

A To my knowledge, no. Nothing was ever told to me.

Q Okay. So, where did you find the drugs in the backpack?

Can I -- I want to make sure we're, we're clear where the drugs were located.

A They were in the vehicle, which I had consent to search. That backpack was located inside the passenger compartment of the vehicle on the floorboard where the Defendant was seated. I'd established, prior to searching the vehicle, consent to search the entire vehicle, and that's exactly what happened.

Q What did you do with the backpack once you located the drugs?

A I immediately stopped what I was doing due to realizing

what I was dealing with, and the amount that I was dealing with, and stopped and immediately took control of the two individuals I was out with to avoid any future issues regarding flight or fight they could be considering.

Q Okay. What did you do with the bag after, after that?

A I left it in the car. I wasn't concerned about the bag right then and there.

Q Okay.

A I had two unsearched, unsecured individuals with a large amount of narcotics in a vehicle.

Q Okay. Did someone end up claiming ownership of that bag?

A Yes.

Q Okay. Who was that?

A The Defendant.

Q Okay. Did the Defendant tell you what was in that bag?

A He did.

Q What did he say?

A After reading him his Miranda rights, he advised me that the bag was his, and there was cocaine within it, and he actually told me there was a firearm in it that I didn't know was in it, yeah. So, I guess I'd had to stop doing what I was doing.

Q What did you do after he told you that there was also a firearm?

A I went, removed the bag from the car, and carried it with me to remove the contents until I found the firearm.
Q And where did that happen?
A On the trunk of the vehicle.
Q Okay. But you'd already found the drugs at that point?
A Yes, sir.
Q Okay. Did you find a firearm?
A Yes, sir.
Q Okay. Now, you've testified that you were given consent by Mr. Carr.

Had you not been given consent, what would you have done?

MR. SMILEY: Objection, Your Honor.

THE COURT: Basis?

MR. SMILEY: The speculation.

THE COURT: It's not speculation. He's asking him what would he---

MR. SMILEY: Hypothetical.

THE COURT: It's not hypothetical. It's his -- you may disagree with his version of what happened, but his version is that he had consent from Mr. Carr. He's asking him, absent that consent, what would he have done as a trained officer.

MR. SMILEY: Yes, ma'am.

THE COURT: It's admissible. Not speculation. Doesn't

require an expert opinion. It's within the scope of what he does for a living.

You may answer the question, sir.

A If he would of denied consent, I would of still had the vehicle, and I would of deployed my K-9, who's certified to detect narcotics in a vehicle, and conducted a free air sniff.

Q Okay. Why didn't you do that to start?

A Well, it's kind of a unwritten policy that we have at Goose Creek, and it's actually in the interest of the individuals we're making contact with. Our dogs are aggressive alert dogs, which means they scratch and they bite if they positively alert on a vehicle for narcotics. So, in order to prevent undue damage to an individual's vehicle, we give them the common courtesy to ask for consent first.

Q Okay. And did you place Mr. Dawson under arrest that night?

A I did.

Q Okay. And was that arrest based on the, the, the fruits of that search?

A Yes, sir.

SOLICITOR STEGALL: Okay. No further questions, Your Honor.

THE COURT: Any questions for the witness?

MR. SMILEY: Yes, ma'am.

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MR. SMILEY:

Q Did you have video that night?

A Yes, sir, I did.

Q Okay. And was it a body cam or a car cam?

A Just in-car. Not a body.

Q In-car?

A Correct.

Q All right. So, at the time that this stop began, you began to video it, correct?

A I believe it came on when my lights came on.

Q Right.

A Correct.

Q It's the, the regular system, when you turn on your lights, it begins to record, correct?

A Yes, sir.

Q And you turned on your lights before the car would stop, correct?

A Well, it does a 30 second prerecorded---

Q Right.

So you turned on the lights, and it basically backs up 30 seconds?

A Yes, sir.

Q So, my point is this is being videotaped before the car's even stopped, correct?
A Yes.
Q Okay. All right. So, there's the videotape of all your interactions with Mr. Carr, correct?
A Yes, sir.
Q Is -- and you've, you've had a chance to review the video?
A Yes, sir.
Q All right. And after reviewing it, is it a fair and accurate, accurate representation of what went on that night?
A Yes, sir.
Q Okay. Now, as -- I believe, and, and I'm gonna, gonna correct something for the record, is I believe you initially testified, testified that this stop was on October 23rd, but it was actually the 22nd, wasn't it?
A I --.
Q Would it help you to refresh your memory from your notes and report?
A Yeah, if I could see my report --
Q Yeah.
A -- that would be great, sir.
Q Okay. I'll give you my copy.
How about that?

MR. SMILEY: Your Honor, if I could be allowed to approach the witness to refresh his memory?

THE COURT: Yes, sir.

MR. SMILEY: And I hate using my only copy, but I, I, I'm good. We'll replace it with a fresh one if we need to if I enter it into evidence, Your Honor.

(WHEREUPON, the officer's report was marked as Defendant's Exhibit No. 1 for identification purposes only at this time.)

Q All right. I'm gonna show you what's been marked as Defendant's Exhibit No. 1, and see if you recognize it.

A It's a General Sessions prep sheet.

Q Okay. Is that the one you prepared for this case?

A Uh-huh. (Affirmative).

Q Yeah.

Would you take a moment to refresh your memory on the date of the stop?

I'm not trying to trick you. I really am just trying to get the record straight from the beginning.

A All right. You -- you're correct. On the, on the actual incident report it is 22.

Q Okay. So, it happened on October the 22nd, correct?

A Yes.

Q Okay.

A According to all my paperwork.

Q All right. Now, when you approached the car, it, it has Mr. Carr in the driver's seat, correct?
A Uh-huh. (Affirmative).
Q And it has Mr. Dawson in the passenger seat, right?
A Yes, sir.
Q Mr. Dawson had a backpack between his legs, correct, on the floorboard?
A Yes, sir.
Q Did you -- when you first approached Mr. Carr, did you get his driver's license, registration, insurance information?
A I don't remember exactly if I got it in that order or how I had got it.
Q Okay. I -- and I understand that. It, it would be captured on the video, correct?
A (WHEREUPON, there was no audible response.)
Q All right. As -- but that was, when you approached the car, that was your purpose of going up to talk to him about the defective headlamp, right?
A Right.
Q And I believe your testimony is, while you were standing at the driver's door, you looked down in Mr. Carr's lap and thought you saw a plastic baggy.
Is that right?
A Yes, sir.

Q All right. And was it sticking out of his pocket laying loose?

Where exactly did you see it?

A I think it was in his lap if I remember correctly. I don't believe he had -- while I was noticing it, he was like trying to cover it up, and put it in his pocket --

Q Okay. All right.

A -- and it all happened extremely fast.

Q Okay. And I believe your testimony is this plastic bag raised your suspicion, correct?

A Yes, sir.

Q All right. And did you ever find this plastic bag?

A No, sir.

Q So, no plastic bag was -- make sure I'm clear.

No plastic baggy was recovered from the floorboard area or the left-hand side, the driver's side of the car, front compartment, or from Mr. Carr's pockets, correct?

A Correct.

Q All right. As -- then you had Mr. Carr, who -- well, let me ask this.

Mr. Carr got out of the car when you first were talking to him, is that correct, and you had him put back in the car till that -- till backup---

A No, sir.

Q ---came.

No -- he stayed in the car the whole time?
A Yes, sir.
Q All right. So, they were both sitting there, Mr. Carr and Mr. Dawson.
You saw this baggy and then questioned Mr. Carr about it?
A I -- can you repeat it?
Q Okay.
A You're kind of tripping me up here.
Q All right. Easy question.
When you were speaking with Mr. Carr---
A Uh-huh. (Affirmative).
Q -- did you ask him about this alleged baggy you saw?
A Yes, I did.
Q All right. What was his response?
A He gave me a -- an answer. Something along the lines of a candy wrapper I think is what he said at first.
Q Okay.
A And then I believe he said a cigarette wrapper the second time.
Q Okay. At what point did you call for backup?
A I think while I was still speaking with him about the bag.
Q Okay. All right. Once Officer Davis, your backup arrived, then you took Mr. Carr out of the car?

A Yes, sir.
Q All right. And, and, at that point, you began talking to him about searching the car, correct?
A Yes, sir.
Q And when you were having this discussion, the two of y'all were standing back away from his car?
A Yeah, I -- we were -- I, I took Mr. Carr and kind of separate and create a distance between the Defendant and---
Q Right.
A ---Mr. Carr.
Q Cause you didn't want them hearing each other, right?
A Right.
Q Okay.
A I believe I had Mr. Carr somewhere near the front end of my car.
Q Okay. And it would of been recorded, of course.
All right. Mr. Carr, in talking to him, he wanted to limit the search, correct?
A No, I actually offered---
Q To limit it.
A ---a limited search---
Q All right.
A ---at first.
Q So, he wasn't concerned about what you were searching?
A No. Essentially how I brought it up to him was I

brought it up as a limited search. I kind of said something that I, I don't do it so much any more, but it's, you know, a way to kind of make them feel a little bit less -- at, at ease I guess would be a, an easy way to say it.

Q So, is -- your intent was to search the whole car, but you have found that, if you break into it by talking about a limited first, cause you can get them to give you consent, correct?

A No.

Q Correct?

A Well, yeah, but I am also am being very clear about it. It's not like I trick or a sales pitch or anything. It's very clear that hey, I want to search the entire vehicle.

Q Okay. Well, but you've already testified that you lied to him cause you had the intent to search the whole car, but, as a tactic, you only bring it up as a limited search, correct?

A Sure.

Q Okay. Now, while you were talking to Mr. Carr back in front of your car, Mr. Dawson's sitting in the front seat with his backpack between his legs, right?

A Was he still -- no, I believe he was -- he might of still been in the car. I don't know if Officer Davis had gotten him out. I'm pretty sure that I got out -- him out---

Q Uh-huh. (Affirmative).
A ---of the car.
Q I---
A But, yeah, he was---
Q Upon Mr.---
A I don't remember the exact time---
Q I---
A ---that all this happened.
Q I understand.
At, at some point you get Mr. Carr to give you consent to search the automobile?
A Correct.
Q All right. At that point, Mr. Dawson was gotten out of the car for sure, right?
A Yes, sir.
Q And was back with Patrolman Davis, right?
A Yes, sir.
Q All right. You then searched starting on the driver's side, correct?
A Yes, sir.
Q All right. And, and you were looking, you were looking, at that point, for the small baggy that you thought you had seen, correct?
A Yes, sir.
Q Now, did you -- and this is sort of important.

Do you remember whether you got Mr. Dawson out of the car or whether it was Patrolman or Officer Davis?
A I don't remember off the top of my head.
Q All right.
A I'm sure it's on the video we did.
Q Okay. When Mr. Dawson was asked to get out of the car, was he told to leave his belongings behind or to bring them with him?
A Again, I don't remember who got him out of the car. So, I don't remember if that was --.
Q All right. So, you're searching the compartment of the car -- of Mr. Carr's car based on the consent you had been given, correct?
A I'm searching the side with Mr. Dawson?
Is that what you said?
Q No. Maybe I'm not speaking very well this morning. So, I'll start again.
As, as -- you were searching the car, Mr. Carr's car, based on the consent that you had been given by Mr. Carr, correct?
A Correct.
Q All right.
A There's a lot of cars there. So, it's---
Q Yeah, I know. That's why I slowed it down.
Okay. As -- at the point that you come across this

backpack, all right, it's still on the floorboard of the front seat, right?
A The front passenger floorboard.
Q Okay. And it's zipped up, right?
A Yes, sir.
Q All right. You did not ask Mr. Dawson if he owned the backpack, did you?
A No.
Q You didn't ask Mr. Carr if he owned the backpack, did you?
A No.
Q It's at that point, based on the consent of Mr. Carr, you opened the backpack?
A Absolutely.
Q All right. And you went through Mr. Dawson's backpack while it was located on the floorboard of the car, right?
A Yes, sir.
Q And upon unzipping it and looking into his bag, you saw a green velvet bag similar to a Crown Royal bag, correct?
A Yes, sir, it might of been a Crown Royal bag.
Q Right.
It, it was a green velvet bag with a drawstring, correct?
A Yes, sir.
Q And that bag was closed also, right?

A Yes, sir.
Q And you opened it up inside the backpack of Mr. Dawson's, and, at that point, saw what you believed to be narcotics, right?
A Yes, sir.
Q All right. And that was all done on -- where the backpack laid on the front floorboard of Mr. Carr's vehicle, right?
A Correct.
Q While that was going on, Mr. Dawson was back with Patrolman Davis, right?
A Yes, sir.
Q All right. All right. So, at this point, you find the drugs.
So, you have Mr. Dawson and Mr. Carr cuffed?
A Yes, sir.
Q All right. So, they're both detained, right?
A (WHEREUPON, there was no audible response.)
Q And is then you approached, make sure, make sure I get this right, you approached Mr. Dawson and ask him about his backpack, right?
A Yes, sir.
Q All right. As -- and you ask him if -- what was in his backpack, right?
You didn't tell him you had found drugs?

You asked him what was in it, right?
A I read him his rights.
Q You read him his rights, but you told him he was under arrest?
He's detained---
A I didn't tell him he was under arrest.
Q Well---
A I read him his rights.
Q Okay. He is cuffed, correct?
A Yes.
Q All right. He's being detained?
A Well, I told him he was being detained. I didn't---
Q All right.
A ---tell him he was under arrest. There's a difference between me telling somebody they're detained, and that they're under arrest. He was told he was detained.
Q All right. As -- at the point you read, read him his Miranda rights, right?
A Uh-huh. (Affirmative).
Q You have Mr. Dawson in custody, right?
A (WHEREUPON, there was no audible response.)
Q And you want to ask him questions concerning his backpack, right?
A Yes, sir.
Q So, before you did that, you, you read him his Miranda

rights?
A Yes, sir.
Q Okay. After you read him his Miranda rights, you asked him what was in his backpack, correct?
A Yes, sir.
Q Okay. And he told you there was drugs in it.
He further told you that there were a gun in it, right?
A Yes, sir.
Q So, did you ask Mr. Carr what was in his backpack?
A No.
Q Mr. Carr didn't have a backpack?
A No.
Q Mr. Dawson---
A I---
Q ---had a backpack, right?
A Sure.
Q Okay. And based on the fact that the backpack was a -- was between Mr. Dawson's legs and that he had acknowledged that there were -- drugs inside where his, right?
He said there's drugs in my backpack, is -- you elected to charge only him and not Mr. Carr, correct?
A There was no question of who the narcotics belonged to.
Q Right.
Because it was Mr. Dawson's backpack, right?
A Uh-huh. (Affirmative).

Q Okay. Now, you asked for consent cause you did not have probable cause, correct?

You agree with that?

A Absolutely.

Q All right. And you certainly didn't have a warrant at that point, right?

A Correct.

Q Okay. And, at that point, neither fellow was under arrest.

So, this wasn't a search incident to arrest, correct?

A Correct.

Q And the car had not been impounded.

So, this was not a search -- an inventory search of any sort, correct?

A Correct.

Q As this was a warrantless search based on the consent of Mr. Carr, correct?

A Correct.

MR. SMILEY: Beg the Court's indulgence.

THE COURT: Uh-huh. (Affirmative).

(Pause.)

MR. SMILEY: Beg the Court's indulgence one more time.

THE COURT: Uh-huh. (Affirmative).

(Pause.)

Q A couple more questions, Officer Erickson, is you're a

K-9 officer, correct?
A Yes, sir.
Q And you had a K-9 dog with you that night?
A Correct.
Q What's his name?
A Kron. K-R-O-N.
Q Okay. Is -- however, Kron really doesn't have anything to do with this case cause he was not used, was he?
A No.
Q All right. Never even threatened to be used by you?
You didn't say I'm gonna get out the dog or anything like that, did you?
A I actually think I said something about it then in the initial contact.
Q And, and a dog---
A I didn't---
Q The dog though is, is -- was never brought out before or after finding the drugs?
A He was never brought out of the car.
Q All right. And I think you answered this, but just want to make sure I understand, is the thing that heightened your awareness or suspicion was never found, right?
A Correct.
MR. SMILEY: All right. At this point, Your Honor, I don't have any questions. I may have some recross after

redirect.

THE COURT: You may proceed.

SOLICITOR STEGALL: Thank you, Your Honor.

REDIRECT EXAMINATION

BY SOLICITOR STEGALL:

Q Mr. Smiley asked you whether or not you found the plastic bag on Mr. Carr.

Can you, can you tell me, again, whether or not you searched Mr. Carr when you got him out of the --?

A I did not.

Q Okay. But, but you conducted what's called a Terry Frisk, right?

A Yes, sir.

Q And, and can you tell what a Terry Frisk is?

A It's an outer pat down, protective sweep of the outer clothing for weapons and only for weapons.

Q So, you weren't intending on going in his pockets to try and look for the bag?

A No, sir.

Q Okay.

A You can't manipulate pockets. You can't do anything like that.

Q Okay.

A So --.

Q All right. He also said there was some videos of that

night. I'm gonna show you -- may I approach, Your Honor?

THE COURT: You may.

(WHEREUPON, two videos were marked as State's Exhibit Nos. 1 and 2 for identification purposes only at this time.)

Q I show you what's been premarked as State's Exhibit 1. See if you recognize that.

A Yes.

Q Okay.

A It appears to be a video that I have.

Q Have you had a chance to review it?

A I have.

Q Okay. And is that a -- an accurate recording of the incident that took place that night?

A Yes.

SOLICITOR STEGALL: Okay. Your Honor, at this time the State moves to admit Exhibit 1 into evidence for the purpose of this hearing.

THE COURT: Any objection?

MR. SMILEY: Only my previous, previously stated objection as to hearsay cause it's gonna contain Mr. Carr.

THE COURT: State versus Pressley says it's not hearsay.

MR. SMILEY: Yes, ma'am.

THE COURT: Says it's offered for the purposes of the investigation. Therefore, it is admissible, but you've---

MR. SMILEY: Yes, ma'am.
THE COURT: ---questioned what happened in the video.
MR. SMILEY: Yes, ma'am.
THE COURT: I guess I'm trying to figure out how does that prejudice your client in seeing what actually contemporaneously happened.
MR. SMILEY: Well, because there's a confrontation clause problem in that, while there's an allegation and some video that Mr. Carr gave consent, I have not been given the opportunity to confront Mr. Carr about what he meant by consent what, whatsoever. I'm just told---
THE COURT: But is that even on the video?
MR. SMILEY: The consent?
THE COURT: Uh-huh. (Affirmative).
MR. SMILEY: Yes, ma'am.
THE COURT: See I haven't seen the video.
MR. SMILEY: Yes, ma'am.
THE COURT: So, I don't know what's on it.
MR. SMILEY: I gotcha. I, I thought we would of already seen it by this point.
THE COURT: No.
MR. SMILEY: We're getting ready to.
THE COURT: Oh, I don't know.
Are we?
MR. SMILEY: Yes, ma'am.

THE COURT: I don't need somebody to annotate a video for me. I generally---

MR. SMILEY: Yes, ma'am.

THE COURT: ---watch them alone.

MR. SMILEY: I, I gotcha.

THE COURT: So, if you want me to watch it, I'll watch it.

MR. SMILEY: Well, but I---

SOLICITOR STEGALL: Your Honor, I can certainly do that.

THE COURT: How long is it?

SOLICITOR STEGALL: There's two videos, Your Honor. I want to say 20 minutes each or---

MR. SMILEY: About---

SOLICITOR STEGALL: Twenty---

MR. SMILEY: ---25 to 30 minutes, Your Honor.

SOLICITOR STEGALL: About 30 minutes each. So, I mean we can certainly---

THE COURT: So, what testimony would be elicited about the videos?

Aren't they self-authenticating?

Don't they speak for themselves?

MR. SMILEY: I'm not doubting---

THE COURT: Unless you want to cross-examine him about something he says in the video.

MR. SMILEY: Well, I do.

THE COURT: Then you can point to those portions of it, and you can play it to refresh his memory and question him about it, but I guess I'm trying to figure out -- I guess I'm trying to figure out why didn't you offer it during his direct testimony, Mr. Stegall?

SOLICITOR STEGALL: That was, that was my mistake, Your Honor, and, and when Mr. Smiley brought it up on cross, realized I made -- I could of fixed that mistake. So, I apologize.

THE COURT: What I would -- do you plan to -- what questions do you plan to elicit from the officer regarding the video?

SOLICITOR STEGALL: Nothing, Your Honor. He's testified to everything---

THE COURT: You just wanted to play it?

SOLICITOR STEGALL: ---that's on -- I just wanted to get the video in for the, for the purpose of the hearing.

THE COURT: Yeah, I think the video's admissible pursuant to State versus Pressley. The Supreme Court says that hearsay can be admitted for the purposes of establishing probable cause for the stop.

So, I would suggest, if you want to -- cause you certainly, during cross, would of been allowed to question him regarding any statements he made in the video, that you

should be allowed to do that, but I would ask that you isolate it to the portions of the video that you need to question him about, and if you need to play it for his -- to refresh his memory, that you do it in that manner. But I don't know that we need to watch 40 minutes for you to cross-examine him about it.

Does that make sense, what I'm saying?

MR. SMILEY: I, I understand what you -- and I believe that the first about 10 minutes are the pertinent part to where they get through the consent to the search. So, I would question him about the interaction between him and Mr. Carr, about the consent on the video, that's placed on the video.

THE COURT: Okay. And so did you have any other questions for the witness other than the video, Mr. Stegall?

SOLICITOR STEGALL: Your Honor, I was gonna move to admit the -- to establish the video.

THE COURT: I've admitted it.

SOLICITOR STEGALL: Okay. Then no.

THE COURT: It's for in camera purposes for the purpose of this Motion to Suppress, and, as I've already indicated, the Supreme Court articulated, in State versus Pressley, that an officer's hearsay regarding a consent to search is admissible for the purposes of determining the, the, what's the word I'm looking for, the appropriate venue by which the

search was accomplished.

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

MR. SMILEY: Yes, ma'am, and just so I'm clear --

THE COURT: Uh-huh. (Affirmative).

MR. SMILEY: -- I'm not objecting to what the officer said or the video part.

THE COURT: Uh-huh. (Affirmative).

MR. SMILEY: What I'm objecting to---

THE COURT: I understand exactly what you're objecting to.

MR. SMILEY: ---Mr. Carr saying---

THE COURT: The Supreme Court says that---

MR. SMILEY: Yes, ma'am, that's, that's---

THE COURT: Actually, in that case, it's an aunt's testimony that he's talking about.

MR. SMILEY: Yes, it's -- that's not my---

THE COURT: And I don't know that it's being offered necessarily for its truth. It's being offered for the purpose of the probable cause for the stop. Maybe for the scope of the search.

MR. SMILEY: The consent cause there's no probable cause.

THE COURT: The real issue in this case is not about the probable cause for the stop.

MR. SMILEY: No, I---

THE COURT: It's really not about the consent for the, for the search of the car cause certainly Mr. Carr can consent to his car being searched. The issue is akin to when somebody goes into somebody's apartment, and they share it with somebody else, you can't give consent to search somebody's bedroom, and that's really what -- where your argument is going. And what he's gonna argue is that he could of consented to his car being searched, but he can't consent to somebody else's backpack within the car being searched, and whether he had a reasonable expectation of privacy in his backpack.

That's where we're going, isn't it?

MR. SMILEY: Yes, ma'am.

THE COURT: Yeah.

MR. SMILEY: Apparent authority.

THE COURT: So, I don't know that really him -- I don't know that it really is -- I don't know that what you're objecting to has any bearing on that.

MR. SMILEY: I, I -- and I agree. It's not the ultimate issue but -- by any means. It's just Mr. Carr was available, and he's not being put up, and so I'm not being able to confront him about his consent. Yes, ma'am.

THE COURT: I would assume he's gonna say today that he didn't consent to the car being searched, and I wouldn't

give it much weight.

MR. SMILEY: Yes, ma'am.

THE COURT: Yeah, if that helps you.

MR. SMILEY: Um.

THE COURT: Cause it's only -- it would be---

MR. SMILEY: I---

THE COURT: It would be totally contrary to him, and -- to his own interest, for him to come in here today in the case---

MR. SMILEY: Well, he didn't get charged. He didn't get charged. He got a ticket---

THE COURT: I don't know that that matters.

MR. SMILEY: Yes, ma'am.

THE COURT: That's his crime.

MR. SMILEY: Yes, ma'am.

THE COURT: They were in a car together.

MR. SMILEY: I---

THE COURT: He's gonna say I didn't consent to them searching my car or he's gonna say I was pressured into feeling like I didn't have a choice cause I didn't want this dog sniffing around, scratching my car.

MR. SMILEY: Well, it wasn't about the dog. It was about consent.

THE COURT: I understand that, but he already testified that that reason they give people the purpose -- the option

of consent---

MR. SMILEY: Okay.

THE COURT: ---is because, once a dog alerts, he scratches and whatever, and that's why they give them the opportunity to consent versus using the K-9 to do their work. I don't know that it really makes a --

MR. SMILEY: I, I agree.

THE COURT: -- difference in the grand scheme---

MR. SMILEY: But it wasn't an option.

THE COURT: -- of your argument.

MR. SMILEY: There wasn't an option. It wasn't like I'm gonna get the dog to come search unless you consent. I'm not arguing that.

THE COURT: I know that.

MR. SMILEY: Okay. I, I just---

THE COURT: But what I'm saying is---

MR. SMILEY: I'll sit down.

THE COURT: ---Mr. Carr's consent really doesn't make any appreciable difference in your argument.

MR. SMILEY: No, I don't -- I agree.

THE COURT: And it's a novel issue and I don't know that they're any cases on point, but I'm looking to see.

MR. SMILEY: Well, I've, I've done the research on this one, Your Honor. I think -- I provided some cases.

THE COURT: Call me a little OCD, but I prefer to like

look for myself.

MR. SMILEY: I understand.

THE COURT: Yeah.

MR. SMILEY: I understand.

THE COURT: Four eyes are better than two.

MR. SMILEY: Yes, ma'am.

THE COURT: Who knows?

We might find something.

I, I don't know, I don't know that it's novel for the U.S. Supreme Court. We'll see.

But State versus Pressley is very clear that an officer can testify as to hearsay regarding somebody else's consent regarding the search of something to establish that the search was appropriate, and that they -- and for the purpose of them establishing consent to search.

MR. SMILEY: Yes, ma'am.

THE COURT: I don't know that it's really contended that he allowed -- he consented to his vehicle being searched. The issue is whether somebody else can consent to somebody's backpack being searched that's within the cabin of a vehicle, and whether he had a reasonable expectation of privacy, and whether they should of gone and gotten a warrant to search his backpack. That's really the -- isn't it by -- your argument in a nutshell?

MR. SMILEY: Yes, ma'am, but they didn't have probable

cause. They couldn't have gotten a warrant. He agreed with that, but, but he---

THE COURT: I don't know that he agreed to that. I don't know that the question was asked. He just said he didn't make any attempts to go do that. His testimony was that he didn't---

MR. SMILEY: I specifically---

THE COURT: ---get a warrant. I wrote down exactly what you asked him and his response. He -- his response was he did not get a warrant. Nobody was under arrest. It was not an inventory search. It was a warrantless search based on Mr. Carr's consent because the items that was between Mr. Carr's legs had heightened his suspicion, and the item that had heightened his suspicion was never found. So, the question that you're alluding to was never directly asked. You sort of danced around it, but---

MR. SMILEY: I asked him directly did you have probable -- you did not -- this was not a probable cause search, and he said no, it certainly was not. Absolutely not. But anyway, Your Honor.

THE COURT: Let's proceed.

MR. SMILEY: Yes, ma'am.

SOLICITOR STEGALL: Your Honor, I -- may I approach to get it back---

THE COURT: You may.

SOLICITOR STEGALL: ---from the --?

THE COURT: Uh-huh. (Affirmative).

SOLICITOR STEGALL: No further questions from the, from the --.

THE COURT: Since, Mr. Smiley, you did not have the opportunity to question the witness regarding the video, you may proceed on that limited issue.

MR. SMILEY: Your Honor, may we play the first 10 minutes?

His---

THE COURT: If it's necessary to refresh the witness' recollection cause I'm gonna watch it. I'm gonna watch both of them, and if there's specific questions---

MR. SMILEY: Are you putting -- wait a second.

You put in Davis---

SOLICITOR STEGALL: No, but---

MR. SMILEY: Well -- but that officer's not even here.

THE COURT: I was only aware of one video.

MR. SMILEY: Right. There's two and---

THE COURT: I thought, the way it was represented to me, both videos dealt with his cameras.

MR. SMILEY: No.

THE COURT: Is there something different?

MR. SMILEY: There's another officer---

SOLICITOR STEGALL: No, Your Honor, there's another---

THE COURT: Then to establish a foundation for that, you're gonna have to call that officer.

SOLICITOR STEGALL: Okay.

THE COURT: So, the only -- I'm sorry. I misapprehend what you were saying. The only video that would be admissible would be with this witness cause that's the only person that can authenticate that video and what took place. You can't admit somebody else's -- he's not here.

SOLICITOR STEGALL: We've---

THE COURT: They haven't had a chance---

SOLICITOR STEGALL: ---been trying to get him to---

THE COURT: ---to cross-examine him.

What number is that, No. 1?

SOLICITOR STEGALL: No. 2 is Davis' video, Your Honor.

THE COURT: Then it would -- yeah, you only asked me for No. 1.

So that would be this witness' video?

SOLICITOR STEGALL: That's correct.

THE COURT: That would be the only video that's being admitted. If you want to admit Davis' video, you need to call him as a witness, and see if he can meet the criteria.

SOLICITOR STEGALL: I mean he, he -- it's, it's the State's position that Mr. -- or Officer Erickson can authenticate it because he can testify that, that this is representative of, of the incident. I mean he reviewed

the -- Davis in-car. He initially---

THE COURT: That's hearsay on top of hearsay. You're asking him to authenticate somebody else's statement. They're entitled to cross-examine that officer as to what he said and what he did.

SOLICITOR STEGALL: Okay.

THE COURT: Stretching it. But you can call him as a witness. There's nothing to preclude you from doing it.

SOLICITOR STEGALL: We're, we're having trouble getting him to come in, Your Honor.

THE COURT: You may proceed.

MR. SMILEY: Your Honor, at this time, can we publish the beginning of the video, and I'll, I'll direct when I wish it to be stopped, if that's all right Your Honor?

Okay. And I can set up my equipment if I need to. I'd ask the Solicitor, since they have the equipment already hooked up, if they could play it, Your Honor.

Is that okay?

SOLICITOR STEGALL: Yeah.

RECROSS EXAMINATION

BY MR. SMILEY:

Q And, Officer Erickson, at this point, for the record, is I'm gonna show you what's been admitted as State's Exhibit No. 1 into evidence, which is, I think you've already authenticated, it is a copy of the video from your

in-car cameras that night.

Is that right?

A Yes, sir.

Q Okay.

(WHEREUPON, a small portion of the video was played at this time.)

MR. SMILEY: It's going too fast there. They were talking like Mickey Mouse. Let me back up and try to get the speed down.

(WHEREUPON, another small portion of the video was played at this time.)

MR. SMILEY: Your Honor, could we have five minutes while I go to the restroom and they get it fixed?

THE COURT: Sure.

MR. SMILEY: Okay.

THE COURT: We'll be at ease for five minutes.

Sir, you can go to the restroom if you'd like. Just don't discuss your testimony with anyone.

THE WITNESS: Thank you, Your Honor.

THE COURT: You're welcome.

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

THE COURT: All right. Y'all got the technical issues resolved?

You may be seated.

You have the technical issues resolved?

UNIDENTIFIED SPEAKER: Yes, ma'am.

THE COURT: All right. Let's proceed.

SOLICITOR STEGALL: You ready?

MR. SMILEY: Yes, if you could, just start the video please.

(WHEREUPON, a portion of the video was played at this time.)

Q All right. Now, at this point, this is at this point when you've approached, and you've asked for license, and registration, and told them the headlight was out.

Is this the point that you believe you see a baggy?

A It's right around here.

Q Okay.

A Yes, it is.

MR. SMILEY: All right. You can continue playing it. Thank you. I'm sorry. Let's get back to that.

(WHEREUPON, another portion of the video was played at this time.)

Q It -- now, Officer Erickson, you're speaking with Mr. Carr at that point in time, correct?

A Yes.

Q The, the driver?

A Correct.

Q All right. And he's still in the car?

A Yes.

Q Okay.
All right. If we could continue.
(WHEREUPON, another portion of the video was played at this time, and the following was asked while the video was still playing.)
Q Officer, you're asking for Mr. Dawson's ID there.
Are you asking for Mr. Dawson's ID?
A (WHEREUPON, there was no audible response.)
Q Okay. Before we move into the next part, at that point in time, that's where you're getting Mr. Carr out of the car, right?
A Yes, sir.
Q Is -- and that is -- what you've put on the hood is his information that you gathered.
Is that right?
A I, I'm assuming so.
Q Okay. I'm, I'm just trying to place everything.
So, at this point, he's getting out of the car, and this is where you're going to talk about consent, correct?
A I believe I'm doing a Terry Frisk of him right now.
Q Right.
First and then -- okay.
A Yeah.
MR. SMILEY: We could play it further.
(WHEREUPON, another portion of the video was played at

this time.)
Q Now, Officer Erickson, if I can ask you a couple of questions right in here is -- I believe this is where you introduced a limited search to him, right, talking about that, of the car, correct?
A Yes, sir.
Q And, at that point, he said that he would give you some level of consent, but he also said that he couldn't talk about the passenger, right?
Did he just say that?
A Yes.
Q Okay.
(WHEREUPON, another portion of the video was played at this time.)
Q And, Officer Erickson, if I could ask you a couple of questions about your perception at this point is y'all obviously were having a discussion about -- to determine if he was giving consent, but also about how much of the car was gonna be searched, correct?
A Yes, sir.
Q All right. And he is telling you you're welcome to search for the car, but it is -- your perception is he is also telling you that he can't speak for Mr. Dawson, correct, to something to that?
Maybe not those words, but that's what he's implying.

A Yeah, I'll give you some on that, but, yeah, he's basically, in my perception---
Q Yeah.
A ---if that's what you really want to know --
Q Yeah.
A -- he's basically saying that well, I don't know what he has on him.
Q Right.
A To me, that's a red flag. Well, if you don't want to speak for what he has, he's probably the one that has whatever on him.
Q Okay.
A That's my perception of it.
Q But it certainly didn't rise to probable cause. You've already testified to that. That's why you're asking for consent.
Correct?
A Uh-huh. (Affirmative).
Q All right.
THE COURT: You need to answer yes or no please. Sir, I need you to answer yes or no.
THE WITNESS: Yes.
Q Okay. So, is even though you're talking about asserting Constitutional rights, and that raises red flags, is, is there is -- this is about consent.

You did not have probable cause, correct?
A Correct. I did not---
Q All right.
A ---have probable cause to search the car.
MR. SMILEY: All right. We can continue.
(WHEREUPON, another portion of the video was played at this time.)
Q Officer Erickson, is that Officer Davis that's arrived at this point in time?
A He arrived a little while ago.
Q Okay.
A But, yes.
Q But it's the first time we've seen him.
That's Officer Davis, correct?
A Yes, sir.
Q All right. And Mr. Carr is out of the car at this point, but I, I haven't seen or heard anything about Mr. Dawson being taken out of the car.
Has he been taken out of the car at this point?
A It sounds like he -- it sounds like I did -- just did a pat---
Q Okay.
A ---Terry Frisk of her person.
Q Okay. So, you patted him down for safety, correct?
A Yes, sir.

MR. SMILEY: All right. Please continue.

(WHEREUPON, another portion of the video was played at this time.)

Q Now, at this point, just so we're clear, is this gun that you're calling in to check, is -- this is the one from the center console, the Highpoint?

A Yes, sir, the one I believe that belonged to Mr. Carr.

Q Okay. So, you, at this point, have searched the car and have gone into the center console, and found a pistol, a Highpoint, 9-millimeter, correct?

A Yes, sir.

Q Okay. You haven't gone into the book bag at this point at all?

A No.

Q Right?

A Not yet.

MR. SMILEY: Okay. We can continue.

(WHEREUPON, another portion of the video was played at this time.)

Q All right. Officer Erickson, at this point it appears you found the drugs, correct?

A Yes, sir.

Q So, you -- while the backpack, backpack was still on the floorboard where it had been between Mr. Dawson's legs, at this point you've unzipped it, and gone in it, and found

the drugs?
A Yes, sir.
Q And that's why we can hear on the tape you -- when you found that, you stopped immediately to back up and detain Mr. Dawson and, at that point, you restrained Mr. Carr, correct?
A Yes, sir.
Q All right.
(WHEREUPON, another portion of the video was played at this time.)
Q Okay. That's Mr. Dawson, correct?
A Yes, sir.
Q All right. And, and I'm sorry if I'm boring you by going over these details, but I think they're important.
Is -- at this point, you told Officer Davis to place Mr. Carr in the back of his car, right, while you dealt with Mr. Dawson, right?
A Yes, sir.
Q And this is right after you had found the drugs in the backpack, had detained Mr. Dawson and Mr. Carr, as you're going straight to Mr. Dawson to ask him about his backpack, right?
A Yes, sir.
MR. SMILEY: All right. If we can continue.
(WHEREUPON, another portion of the video was played at

this time.)
Q Now, you're asking, you're asking Mr. Dawson questions. At any point does your mic -- your mic's on the whole time, right?
You, you don't turn it off and on?
It's on, right?
A Correct.
Q Okay. And you -- have you read him Miranda at this point?
A I don't know if I have at this point or---
Q Well, it's been playing since the beginning of the video, and your mic's been on the whole time, right?
A Yes.
Q So, if you had red him Miranda at this point, we would of heard it on the video, correct?
A Presumably, yes.
MR. SMILEY: All right. If we could continue.
(WHEREUPON, another portion of the video was played at this time.)
Q At this point in time you've executed your consent search, you've found the drugs, you Mirandized Mr. Dawson, and he's told you that the drugs were his, right?
A Yes.
Q And the gun?
THE COURT: Sir, if you can say yes or no.

THE WITNESS: Yes. Excuse me.
Q And the gun was his also, correct?
A Yes.
Q All right. As -- at -- before the bag was gone into, had you asked either Mr. Carr or Mr. Dawson who owned the backpack?
A No.
Q As -- when you found the items in the backpack is you went directly to Mr. Dawson to question him about the contents of the backpack, correct?
A Yes.
Q Cause you did not believe it was Mr. Carr's backpack?
A No.
Q Okay.
A I believed it was who was sitting in the passenger seat.
MR. SMILEY: That's all I have, Your Honor.
THE COURT: Any questions for the witness?
SOLICITOR STEGALL: None, Your Honor.
THE COURT: Any objection to the witness being excused?
MR. SMILEY: Not, not from defense, Your Honor.
SOLICITOR STEGALL: No objection, Your Honor.
THE COURT: Sir, you're excused.
THE WITNESS: Thank you.
THE COURT: You're welcome.

State may call its next witness.

SOLICITOR STEGALL: State rests, Your Honor.

THE COURT: Any witnesses from the defense?

MR. SMILEY: No, ma'am.

THE COURT: Be glad to hear any argument.

MR. SMILEY: Yes, ma'am.

As I have -- and then I'm gonna be referring to my motion that I have prior---

THE COURT: And I've read it. So, you don't need to read it to me.

MR. SMILEY: Okay. Then I won't. I believe I'll -- I'll go at it this way, Your Honor.

I believe the question to be answered in this case is, is did the policeman need the consent of Mr. Dawson to go in the backpack or was the general consent given by the driver enough to go into the backpack.

Is -- the U.S. Supreme Court, Your Honor, in -- and I'm gonna mispronounce the name, Jimenez, Florida versus Jimenez I believe it is, established a general principle that, when one consents -- when a driver consents to the search of the car, he consents to the search of any containers therein because, in that case, it was a paper bag, and there was nobody else in the car, and he contested about whether you could go in that bag or not, and the Supreme Court said yeah, because the driver's presumed to own everything in his

car.

In this case, it's a little bit different cause we have a passenger. We have a passenger that has a backpack between his legs. It is a -- a backpack's not someone -- something that's commonly shared between individuals. It's sort of like a, a purse, a man's purse for a back of a -- lack of a better word in this case, and it is closed, Your Honor, as it's between my client's legs. The officer testified that he can not believe that bag was Mr. Carr's, that he had approached Mr. Dawson about it.

What's important is they never asked ownership of the bag before the search. Is -- also, the officer had to have the same opinion that it was Mr. Dawson's bag before he went into it after cause there's nothing happened besides he, he finds the drugs, and he immediately went to Mr. Dawson for the explanation of what was in his backpack.

So, I think he has an expectation of privacy in his bag that's zipped between his legs in a car, and the consent of the driver is could -- not extend to the closed bag.

South Carolina has not addressed this issue directly besides to accept the Fourth Amendment analysis of warrantless searches in which are, per se, unreasonable or unconstitutional without one of the exceptions, and the exception that's being relied on is the consent, Your Honor. Is -- the argument that the Supreme Court has put forward in

the Rodriquez case looks at apparent authority, and I -- and, Your Honor, I think it's real simple here is the officer already believed it to be Mr. Dawson's bag, and not to be Mr. Carr's. But, further, the bag was closed. It was between the legs of the passenger, and it would be reasonable to assume that the exclusive control of it would be Mr. Dawson's.

Is -- could of been fixed real easy. Could of asked Mr. Carr is that your bag. Could of asked Mr. Dawson is that your bag cause they searched the property of Mr. Dawson, a warrantless search, without his consent.

You know, while the United States -- well, excuse me, while the South Carolina Supreme Court has not ruled on this issue directly, is -- it's followed the Fourth Amendment analysis by the United States Supreme Court. And so I looked at other Courts to provide some persuasive authority, and I found several, but the case of State of Utah versus Harding, Your Honor, I believe is very tightly on point in this case, and would say -- and it -- and that -- in that case, there were two people in the car. The backpack was, actually, I believe in the back seat there.

As the officers went through that backpack, and found drugs very similar in this case is -- in that case, they noted that the driver gave consent. His -- there's nothing to indicate the passenger heard a discussion about the

search and consent, that the passenger was not asked for consent, and they went into the bag, and through their analysis using the Rodriquez case and apparent authority, is -- they have found that is -- it was, per se, not per se, that it was unreasonable and an invasion of the right of privacy as guaranteed by the Fourth Amendment and by -- and -- well, by the Fourth Amendment in that case, and, Your Honor, that the consent did not apply to the items that were under the control of Mr. Dawson.

Let me see. Beg the Court's indulgence.

(Pause.)

MR. SMILEY: And, and I think it's important in the Utah versus Harding case that their analysis did not use State Law so much as they relied on the analysis that had been done by the United States Supreme Court in their Fourth Amendment analysis.

And so I think that makes it very applicable in our case, and I think South Carolina's Constitution even has a heightened expectation of privacy than over the United States Constitution. But if we just take it the more liberal reading is it would be a warrantless search without an exception that has been met because the consent provided by the driver would not extend to a backpack owned by the passenger where the backpack's between his legs, Your Honor.

It also -- I think it would of put the officer on

notice when the -- just like he said, it raises a red flag, it also raises the flag of ownership when the driver says I'll consent to this, this side of the car being searched, but I can't speak for him telling them that Mr. Dawson has got an expectation of privacy. You'll have to ask him to search things related to him.

Your Honor, I believe that, under the United States Constitution, the Fourth Amendment, the South Carolina Constitution, Article 1 Section 10, would find this to be an unreasonable search since it does not fix -- fit one of the exceptions for a warrantless search, and, therefore, the evidence would have been obtained unconstitutionally, and is a fruit of the poisonous tree, both the drugs and the gun that were found require suppression, Your Honor.

That's all I've got, Your Honor.

THE COURT: Would you like to respond?

SOLICITOR STEGALL: Thank you, Your Honor.

I'll briefly get, get through the stop, and, and then we'll get into the meat of the issue, which is consent.

THE COURT: I don't think they contest there's probable cause for the stop.

SOLICITOR STEGALL: Okay. I won't---

THE COURT: Do you?

MR. SMILEY: Well, the stop itself is fine. I do not contest the, the seizure of the car -- Mr. Carr's car that

they did.

SOLICITOR STEGALL: Okay. We'll just jump right into consent, Your Honor.

It's the State's position that Officer Erickson was given consent by Sam Carr, who owned the automobile, and that allowed him to search the, the car and everything inside the car. And, Your Honor, the reason for that is, you know, consent is one of the seven warrant exceptions that the South Carolina Appellate Courts have recognized. Consent to search is a well settled exception to both the warrant, and the probable cause requirements of the Fourth Amendment, Your Honor. That's under State v. Adams.

THE COURT: But you can only consent to what you have dominion and control over, right?

That's like---

SOLICITOR STEGALL: It's---

THE COURT: ---if I'm riding in a car with my law clerk, and the police can search my pocketbook without my consent.

Tell me the difference. That's what I'm struggling with. I'm just gonna cut to the heart of it.

SOLICITOR STEGALL: Okay.

THE COURT: I know that there are -- the, the case law's really very clear, whether it be South Carolina Supreme Court or U.S. Supreme Court, if there's probable

cause, they can search everything in that car. They're unlimited in the scope of their search. As long as they're looking to find the contraband that gave rise to the probable cause, that there's reasonable articulable suspicion---

SOLICITOR STEGALL: Well---

THE COURT: ---criminal activity was afoot.

So, if the officer articulated that seeing this baggy in the lap was his probable cause, then, realistically, that would of been probable cause to search the whole vehicle. But he says he didn't feel he had probable cause. So then comes your rub cause your rub then becomes the next exception is consent, and then becomes the scope of that consent, and does that mean, when somebody -- cause I own a car, I can consent to everything in a car being searched that's not mine or am I simply saying I consent to you searching the compartments of my car cause that's what I own, and that's what -- you know, you can go in my glove compartment. You can go in my center console. You can look in my wheel wells can look in my trunk.

But does that mean then that I consent to you searching my wife's pocketbook, my husband's wallet, if the -- you know, sitting in his seat?

That becomes the question. There's one case that is very similar out of the South Carolina Court of Appeals that

talks -- came out of Colleton County that deals with consent where Judge Buckner said clearly folk didn't understand English, and neither one of them consented.

The only difference in that case is that, is that the officer sought consent from both the driver and the passenger to search not only the car, but all the contents in the car including their personal articles, and he said they didn't understand English well enough to have consented to the con -- to the search, and there's some other line of cases that deal with people giving consent, and then withdrawing their consent.

And it is novel. But I'm, I'm struggling with whether somebody -- I don't -- you know, whether, just cause I'm riding in a car with you, that I can -- that somebody can consent to you searching my stuff.

SOLICITOR STEGALL: Well -- and, Your Honor, I would argue that, you know, the United States Supreme Court made it clear that, that both driver and passenger have a reduced expectation of privacy---

THE COURT: But that deals in the probable cause context, and all those line of cases say, where there's probable cause, an officer is unlimited because you have a limited expectation of privacy in a car cause it's portable, and it's the whole different -- and we understand that line of case law. But I can't find a U.S. Supreme Court case

that says somebody else can consent to you searching my personal articles within the vehicle.

They're two different things. I had to help my law clerk understand the distinction too as we're researching that. Probable cause has one set of criteria, which is unlimited in its scope admittedly.

Consent, however, is limited in its scope because the case law says a person can limit the scope. They can expand the scope. They can even, in the middle of a consent search, say stop and the officer has to honor that. And there's a case that deals with somebody that says yeah, search my car, but when they get in his trunk, he says stop. They don't stop. But the U.S. Supreme Court suppresses everything that was found in the trunk.

So that's where you get into a little -- a bit of a distinction, and, admittedly, it's not the same as an apartment. It's a -- or a house. It's not -- you don't have that same expectation of privacy in a car. It's -- you know, the Supreme Court does draw a distinction when it, when it comes to that, but I think it's a nebulous kind of a -- it's -- admittedly. At least not that I can find in the short amount of time I've been researching it. I haven't been able to find a case exactly on point that deals with this specific fact pattern.

SOLICITOR STEGALL: Well, and, you know, and this is

sort of leaving this---

THE COURT: Except that there is a case out of California. I don't know if it's reported yet. I hadn't had a chance to research it, that says -- oh, let's see -- would that -- an owner's consent to search a car does not give law enforcement the latitude to search somebody's jacket that was found in the car.

But is says that a consent to search, which is effective to authorize a warrantless search, may be given by a person other than the individual who is the subject of the search.

SOLICITOR STEGALL: I---

THE COURT: And there's a case in South Carolina that deals with a passenger's purse being searched, and I remember reading it years ago, but I just got to find it. But, you know, my memory's not infallible, but I just seem to remember reading about somebody's purse, purse being searched during the course of a, of a stop in a vehicle on the side of either 26 or 95. I just can't remember. I'm gonna have to dig a little more and see if I can find it in the last 10 years I think. I'll just have to go back and see. I've been trying to find out while we've been talking.

But I don't mean to interrupt your argument, but I think really---

SOLICITOR STEGALL: No.

THE COURT: ---that cuts to the chase of what we're talking about, which is the officer, admittedly, and to his credit, says I don't think I had probable cause to search the car, which would of been an unlimited---

SOLICITOR STEGALL: Well---

THE COURT: ---type of search.

SOLICITOR STEGALL: I -- you know, and I mean he testified that Goose Creek has a policy that they ask for consent first---

THE COURT: Yeah.

SOLICITOR STEGALL: ---because the dogs --

THE COURT: Uh-huh. (Affirmative).

SOLICITOR STEGALL: -- you know. So, he, he would -- he, he chose to go that route, Your Honor.

THE COURT: Uh-huh. (Affirmative).

SOLICITOR STEGALL: And---

THE COURT: That's about consent though. That's not about---

SOLICITOR STEGALL: Well, I believe---

THE COURT: ---probable cause.

SOLICITOR STEGALL: ---if he would of run the dog, he would of gotten PC, and we wouldn't be here today.

THE COURT: Uh-huh. (Affirmative).

SOLICITOR STEGALL: But he, you know, because of a policy with Goose Creek --

THE COURT: Uh-huh. (Affirmative).

SOLICITOR STEGALL: -- and, you know, him looking out for the interest of Mr. Carr's automobile --

THE COURT: Uh-huh. (Affirmative).

SOLICITOR STEGALL: -- he, he asked for consent, and, and, you know, after some back and forth, consent was given to search the entire car, and it's the State's position that that includes items, you know, unlocked items inside the car that can conceal contraband, you know, and at any point---

THE COURT: But see you're mixing two concepts. Probable cause says unlimited. I can search anything. I can look in anything where I think drugs might be found that has raised my initial suspicion that criminal activity is taking on in this -- take -- being -- taking place in this vehicle or that you're gonna drive off and commit in this vehicle. Consent is different.

SOLICITOR STEGALL: Well---

THE COURT: Consent has limitations.

SOLICITOR STEGALL: So, from the Court's reasoning, it sounds almost like Mr. Carr was---

THE COURT: No.

SOLICITOR STEGALL: Oh.

THE COURT: It's the Supreme Court's reasoning. They draw these distinctions. They say that you have a limited expectation of privacy in a vehicle except under these

circumstances. Whereas probable cause, the police can do what -- cause a car is portable. It can drive off. It could -- you know, we -- you know, drugs -- people are very creative. They put drugs in steering columns. They put drugs in wheel wells. They put drugs every -- you know, there's lots of places where drugs can be concealed in a vehicle, and, for that purpose, to be portable across state lines, to be transported in vehicles, and then they're, they're three exceptions actually. One is probable cause, one is consent, and I forget the other one off the top of my head right now. Yes, search incident to arrest, which they're even limitations to that. Because even when you search incident to arrest, there's a Supreme Court case that says you can't go into my duffle bag when you're inventorying my car, and find drugs, and hold me responsible for it.

It says you can inventory the contents of my vehicle, but that doesn't give you the latitude to go in my duffle bag and find drugs. And that's a one passenger car case.

So, there's a, basically, a void in our case law that deals with the scope of consent of search by a third party -- by the owner of a vehicle -- in other words, how far does the consent of this owner go to searching this vehicle, and our -- and I think it's an open unanswered question -- unless I find something, which is possible --

SOLICITOR STEGALL: I---

THE COURT: -- on point.

SOLICITOR STEGALL: Yeah, and I, you know, I'd argue that -- I mean the, the bag was in the passenger's seat, you know, but he testified, at that point, he didn't know who the bag belonged to. He could assume that it might be the passenger.

THE COURT: He testified he didn't believe it was Mr. Carr's bag. That was his last---

SOLICITOR STEGALL: Okay.

THE COURT: Yeah, that was his -- those are the last questions that Mr. Smiley just asked him.

SOLICITOR STEGALL: Okay.

THE COURT: He, he said he didn't believe that it was, that it was Mr., Mr. Carr's duffle bag, and, I think, arguably, it's a tough question, and I really -- I'll admit to both of you I don't know the answer to it. I'm gonna research it and see. I'm gonna take it under advisement, and it could go either way. I don't know.

We may uncover something in a Law Review article or a, you know, or another case, I'm not certain, that's factually analogous to this, and with the state that has a -- well, I don't, I don't know that statutory framework would necessarily be applicable because, you know, it's the U.S. Supreme Court Constitution that would be controlling

regarding unreasonable searches and seizures, and I'm gonna watch the video again cause it -- you know, there's nothing that is visible on the video in terms of what transpired. You just hear the voices, which is indicative of what was taking place at the time, and the conversations, and the scope of the conversations, the scope of the consent, and, frankly, you know, this room's vacuous, and I need to listen to it in a smaller environment so I can hear exactly what's being said, and, and, and, and what took place.

But I think, arguably, it's a novel issue, and I don't know what the answer is. I'll be real transparent. I don't know what the answer is.

Now, does that mean -- and, and I don't know, and, of course, I'll do a written order once I follow the breadcrumbs so to speak, and I'll see where we end with it.

Does that mean that y'all need -- y'all have some room to see if y'all can work it out, yeah, because it could go either way. It's either black or white. There's no in-between on this. I don't know where I'm gonna land. I have no idea.

Is there anything further that you wish to state for the record, Mr. Stegall?

SOLICITOR STEGALL: Nothing further, Your Honor.

THE COURT: And we have the cases that you submitted and I'll review them again, and then Mr. Smiley submitted a,

a brief.

SOLICITOR STEGALL: And we have the disk, Your Honor, for the --.

THE COURT: I do need to look at that. That would be helpful, and then I'll give it to the court reporter, and she'll maintain it for the record.

SOLICITOR STEGALL: Thank you.

THE COURT: I assume you have another copy?

SOLICITOR STEGALL: I do, Your Honor.

THE COURT: Okay. Cause she'll, after I've listened to it, I will give it to her so she can maintain it with the record.

Okay, guys. We'll -- I'll think about it a little. I'll be in touch if I have any other questions.

MR. SMILEY: Yes, ma'am.

SOLICITOR STEGALL: Thank you.

THE COURT: You're welcome.

* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF BERKELEY	)	DOCKET NO. 2016-GS-08-0114
	)	2016-GS-08-0115
	)	2016-GS-08-0116
	)	
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STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
	)	
RICKY MANIGO DAWSON	)	
	)	
Defendant	)	
	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

December 9, 2019
Moncks Corner, S. Carolina

VOLUME 1 (of 2)

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JUDGE

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

BART STEGALL, ESQ.
TYLER JENKINS, ESQ.
Attorneys for the State

JAMES W. SMILEY, IV, ESQ.
Attorney for the Defendant

JOYCE C. RUEGER,
Certified Verbatim Reporter-Master
Circuit Court Reporter

PROCEEDINGS

THE COURT: All right, Mr. Smiley. Are we ready to hear from your client?

MR. SMILEY: Yes, sir.

THE COURT: All right.

MR. SMILEY: I'll just bring him in without waiving his rights.

[Whereupon, the Defendant enters the courtroom]

MR. SMILEY: Your Honor, this is my client, Mr. Ricky Dawson. And after a long discussion with Mr. Dawson he has elected to waive his right to a jury trial and present with a bench trial and I believe the State has agreed to also.

THE COURT: All right. Mr. Dawson, raise your right hand please?

[Whereupon, the Defendant complies]

[Whereupon, the Defendant is duly sworn by the Court]

THE COURT: Mr. Dawson, your attorney tells me that you are waiving your rights to a jury trial. Is that correct?

MR. DAWSON: Correct.

THE COURT: You understand that if you ask for a jury trial the State would give you a trial; you understand that?

MR. DAWSON: Yes, sir.

THE COURT: At that trial you would have the right to confront and cross-examine all witnesses against you. You would have the right to present any witnesses and/or evidence in your own defense. You would have the right to testify in your own defense if you wish to do so. No one could make you testify at your own trial.

If you decide to go to trial and not testify the Judge would tell the jury they could not hold your failure to testify against you. In fact, the jury could not even consider your failure to testify in their deliberations on your guilt or innocence. You would be presumed innocent throughout your trial.

The State would have to prove you guilty beyond a reasonable doubt to a jury of 12 people and all 12 people would have to unanimously agree that you were guilty in order for you to be convicted.

Even if you were convicted you would still have the right to appeal that conviction. Do you understand your rights with regard to a trial by jury?

MR. DAWSON: Yes sir, I do.

THE COURT: Understanding those rights you still want to have a bench trial instead of a jury trial?

MR. DAWSON: Yes, sir.

THE COURT: All right. Thank you very much. We

will begin at 2 o'clock; how about that?

MR. STEGALL: Sounds good, Your Honor. Thank you.

MR. SMILEY: Very good.

THE COURT: 2 o'clock everyone.

[Whereupon, Court is in recess from 1:00 p.m. until 2:07 p.m.]

MR. STEGALL: Judge, I assume we're waiving openings and closings since this is a bench trial if that's okay with Your Honor.

THE COURT: That'll be fine.

MR. STEGALL: A question ---

THE COURT: --- is the State ready to proceed?

MR. STEGALL: We are, Your Honor. We've got one question though. We ---

THE COURT: --- well let me find out; the defense ready to proceed?

MR. SMILEY: We are, Your Honor.

THE COURT: Thank you. Go ahead.

MR. STEGALL: Judge, we entered Officer Erickson's disk into evidence during the suppression hearing. We were planning on just entering another copy today but Mr. Smiley indicated it is already in the court's file entered as an exhibit. So I didn't know if Your Honor would prefer to leave that one in or enter a new one into evidence.

THE COURT: Is this the discussion we had in chambers?

MR. SMILEY: Partially, yes sir.

THE COURT: Well, I should have asked if there were any pretrial motions.

MR. SMILEY: Yes, sir.

THE COURT: Is this the issue with regard to the substitute disk?

MR. STEGALL: I guess in a way it's kind of related to that Your Honor because here again we've got a copy, a trial exhibit for today of Officer Erickson's DVD that we were prepared to put into evidence. But Mr. Smiley has brought up that there is a copy already in evidence which I guess brings us to an issue of that being a duplicate copy as well.

THE COURT: Right. It's my understanding that the original disk is missing or not to be found. Was delivered to Judge Jefferson and not returned.

MR. STEGALL: Correct, Your Honor.

THE COURT: All right. Well, I think we need to flesh that issue out. Mr. Smiley, what's the defense's position?

MR. SMILEY: Yes, sir. His position is -- should I lay out the procedure before I get to it?

THE COURT: You're on the record.

MR. SMILEY: Yes, sir. Mr. Dawson was charged on October 22, 2015 with trafficking in cocaine third offense greater than 28 grams, a possession with intent to distribute crack cocaine third offense, and possession of a weapon during a violent crime. Those were the three charges he was arrested on, Your Honor.

He was indicted for those charges. And subsequently even though the arrest was on October 22, 2015 a suppression hearing was scheduled March 14th of 2018. At that point in time the State produced Officer Erickson to testify as to the reasonableness after I had filed a Motion to Suppress and he had filed a brief to answer it.

We held the suppression hearing, Your Honor and during that the in-car video of Officer Erickson was entered into evidence.

THE COURT: Without objection?

MR. SMILEY: I wanted it in without objection, Your Honor. After -- actually he -- well, we won't get into the -- yes sir, I wanted it in. After that Your Honor Judge Jefferson said she would take it under advisement, she would review our briefs, look at the evidence and

render a decision. Your Honor, the decision was not rendered until July of 2019 some 16 months later. And then in the interim, and I don't know exactly when Your Honor, is Judge Jefferson had custody and control I guess of the disk that had been placed into evidence and she related ex parte through her Clerk to Mr. Stegall that she needed a replacement disk.

Mr. Stegall had his investigator I understand make a copy of the disk that was placed into evidence so a copy of a copy I would assume since the original was placed in evidence, Your Honor and brought up to Judge Jefferson. And Mr. Stegall subsequently let me know that had occurred as I at the time told him that I thought that was improper procedure. But then I went to check if the disk matched but I couldn't do that because the original disk is not in the file; only the replacement disk.

Therefore, I am asking Your Honor -- and I want to make sure I put on the record Your Honor I am not alleging that the disks aren't the same; I don't know. It was done in a manner instead of bringing us back to court and saying that that evidence either doesn't work or has been misplaced and have everybody agree that what was put into evidence that Judge Jefferson then relied on was the same. That was never done. Therefore, Your Honor, I am asking that the suppression order of Judge

Jefferson that was heard March 14th, 2018 and decided July 10th I believe she dated it 2019 be set aside for the following factors: One of which is the delay, Your Honor, is that there is no -- while there is no prejudice it is my client's appearance that something is not right when it took that long and then subsequently when I tell him that some evidence was replaced without a hearing I believe it creates an appearance of impropriety.

I would ask that it be set aside and that Your Honor allow us to proceed with the Motion to Suppress at this time. And of course I object to her conclusions in the order that she produced 16 months later. I would ask that the suppression hearing be heard a new.

THE COURT: What's the State's position?

MR. STEGALL: Your Honor, the State asks that you deny the defense's motion to reopen and us have another suppression hearing. As to the delay at the time Judge Jefferson heard the suppression hearing on March 14th, 2018 she was the Chief Admin Judge for Berkeley County.

As to the delay she went through multiple law clerks at that time. I believe Mr. Smiley even indicated just now that there was no prejudice done as a result of the delay. As to the disk the State has -- we have our investigator that made a copy of Officer Erickson's in-car video here today and is prepared to proffer if need

be to testify that the disk that he made was in fact a copy of the disk that was entered into evidence during the suppression hearing. And if Your Honor would like to hear from him we can...

THE COURT: I think that's essential that Judge Jefferson had either the original disk in her possession while she considered this matter or that she had a true and correct exact copy. And the only way to do that is to inquire of the officer who made the copy under oath. So I suggest you call your witness.

MR. STEGALL: Thank you, Your Honor. The State calls David Young.

[Whereupon, Mr. Young comes forward]

[Whereupon, the witness is duly sworn by the Clerk of Court]

[Whereupon, the witness is duly sworn by the Clerk of Court]

CLERK OF COURT: Please be seated. State your full name and spell your last name for the record.

THE WITNESS: David Young, Y-O-U-N-G.

- - - - -

DAVID YOUNG,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STEGALL:

Q. Investigator Young, where are you currently employed?

A. The Ninth Circuit Solicitor's Office in Berkeley County.

Q. How long have you been employed with the Ninth Circuit Solicitor's Office?

A. Seven years.

Q. Okay. As an employee of the Ninth Circuit Solicitor's Office what is your job title and your duties

and responsibilities?
A. I assist the solicitors in preparing for trial. I collect evidence for them. I obtain copies of in-cars and body camera videos and make copies of those for Rule 5's and for court.
Q. Okay. Were you an employee of the Ninth Circuit Solicitor's Office during October of 2015?
A. Yes, I was.
Q. Okay. Did you obtain audio video recordings from Goose Creek Police Department related to the case that we are here for today being Ricky Dawson?
A. I did.
Q. Okay. Do you remember the names of the officers who provided the in-car video?
A. I would have gotten the videos from the Goose Creek records office. The videos would have been of Officer Erickson and Officer Ted Davis.
Q. Early in 2019 did -- were you approached and asked to provide a copy of a disk?
A. Yes.
Q. A duplicate copy?
A. Yes.
Q. Okay. Do you remember what the reason for the request was?
A. I believe you told me that the Judge had misplaced

Officer Erickson's disk and to make another copy so we could give it back to her Clerk.

Q. Okay. And just to be clear did you make a copy of another disk?

A. Yes. We made a copy -- we had an original copy. When we come to court we make a copy so that the office always maintains a copy. And then I believe I made a copy from a copied disk.

Q. And whose officer in-car video did you make a copy for?

A. Officer Erickson.

Q. Okay.

THE COURT: I don't understand. The original disk from the officer was sent to Judge Benjamin [sic], is that correct?

MR. STEGALL: Jefferson.

THE COURT: Jefferson. I'm sorry; Jefferson.

MR. STEGALL: We have the original. We make a court copy to turn over to ---

THE COURT: --- to her?

MR. STEGALL: To the court.

THE COURT: So where is the original?

MR. STEGALL: We still have the original.

THE COURT: That came from the officer?

MR. STEGALL: Correct.

THE COURT: So she had a copy?

MR. STEGALL: She had a copy.

THE COURT: Okay. I'm with you now. Go forward.

MR. STEGALL: Thank you, Your Honor.

Q. [Mr. Stegall] So just to reiterate whose in-car video did you copy when approached about making a duplicate for Judge Jefferson?

A. Officer Erickson's.

Q. Okay. And did you make copies of any other officer's video?

A. No.

Q. For the purpose of...

A. To return to the Judge?

Q. Correct.

A. No.

Q. Okay.

MR. STEGALL: No further questions, Your Honor.

THE COURT: Cross-Examination?

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Mr. Young --

MR. SMILEY: And Your Honor I'm getting a little confused too.

Q. [Mr. Smiley] The in-car video of Officer Erickson the original is where?

A. We should have an original in the file.

Q. Okay. And that original is given to you on a CD from Goose Creek?

A. Yes, sir.

Q. All right. So that disk of Officer Erickson did you ever watch it?

A. I did watch it.

Q. Okay. When it was played -- so a copy was made of the original for court originally.

A. Correct.

Q. When the suppression hearing was held in March of 2018?

A. Yes, sir.

Q. That's a copy of the original?

A. Yes.

Q. Okay. Then after it was placed into evidence and you made when you were asked to make another copy did you make the original copy that was put into court? Let me

ask it that way.
A. I don't know which copy was placed into evidence during the suppression hearing. I made a -- we get the original ---
Q. --- right ---
A. --- I make you a copy and then when we get prepared for court I would make our office a copy to put into evidence for court.
Q. Okay. So you just testified you don't know what disk was put into evidence that you made a copy of.
A. Correct. I would have to look at the disk.
Q. I understand.
MR. SMILEY: Madame Clerk, do you have the evidence from the suppression hearing?
CLERK OF COURT: I do downstairs. I can get it if that would be helpful.
MR. SMILEY: I need the disk.
THE COURT: It would be helpful. It would be helpful for the Court.
CLERK OF COURT: All right.
MR. SMILEY: Because I need the disk for my next set of questions.
THE COURT: I understand. I follow you.
MR. SMILEY: Yes, sir.
THE COURT: I'm following your train.

CLERK OF COURT: I'll be right back.

[Whereupon, the Clerk of Court exits the courtroom]

THE COURT: Let me just -- so what the Solicitor has today is also -- is that the first copy or the second copy?

THE WITNESS: I would have to look at it, Judge. I would have to look at what he has.

THE COURT: Let him look at it.

MR. SMILEY: Your Honor, may I approach the witness?

THE COURT: Yes.

[Whereupon, the witness is shown disk]

THE WITNESS: That would be a copy that I made from the original.

THE COURT: How many copies ---

THE WITNESS: --- from the original.

THE COURT: How many copies did you make?

THE WITNESS: I don't know, sir. I mean I would make -- normally I would make -- I would get the original and then I would make a copy for the defense attorney.

THE COURT: Right.

THE WITNESS: And we would keep the original in the file.

THE COURT: It's still in the file?

THE WITNESS: It should be. And then when we get

ready to go to court I make a copy so that we always maintain a copy in the file; we always have a video in the file that doesn't get put into evidence and then we're without a video.

THE COURT: And that's what the Solicitor has today.

THE WITNESS: This [indicates] is a copy.

THE COURT: I understand.

THE WITNESS: Yes, sir.

THE COURT: It has to be if the original is in the Clerk's file.

THE WITNESS: Yes, sir. I do not know which one was put into evidence with the suppression hearing.

MR. STEGALL: Well Judge that may be the issue is that the original was in the Clerk's file but if Judge Jefferson misplaced it I don't know if our copy is now the only copy in the file or if our copy and the original is still in the file ---

THE COURT: --- well, we'll find out in about two minutes.

MR. STEGALL: Correct, Your Honor.

THE COURT: Let's do this, and I don't mean to interrupt you, but describe for the record your process of making a copy step-by-step.

THE WITNESS: Yes, sir. I would get the original.

My computer has two drives on it; normally a D and an E drive. I place the original in one of those drives. I use a program called Roxio that makes a duplicate copy. It pulls up a screen. I copy from say drive E to drive D. It makes a copy. It goes through copying it and then it verifies that it is an actual copy and that there are no mistakes with it.

Every now and then we get some and a mistake will pop up that will say you know files do not match or could not copy. When I have that issue I have to take the original, usually place it on my desktop and then move it to the other drive because for whatever reason the Roxio will not copy it.

But we mainly use the Roxio copier. Either way it will give you an error warning if it does not copy correctly.

THE COURT: How do you verify it?

THE WITNESS: I usually go by whether the computer tells me that it's been copied correctly.

THE COURT: So you don't watch it?

THE WITNESS: Some videos I do watch but just because of the sheer volume I can't do that. On this case I did watch it because we were getting ready to go to court. Now I wasn't there at the scene. I can look at the video and say it appears that it has not been

tampered with. And the programs they use are designed so that they cannot be tampered with so much so that sometimes we have people say things on the cameras -- officers might ask people and they might mention stuff about previous arrests or whatever and we have to basically hit the mute button on the computer because we cannot delete the items from it from the system.

THE COURT: And was any deletions made on this?

THE WITNESS: No, sir. I did not make any deletions.

[Off the record momentarily]

[Whereupon, the Clerk of Court enters the courtroom with the disk]

THE COURT: Hand that to the witness.

[Whereupon, the Clerk provides disk to the witness]

THE COURT: Go ahead.

Q. [Mr. Smiley] Mr. Young, is that the copy you made of what y'all had in your file?

A. I do not recognize it. Usually the Goose Creek videos have Goose Creek heading and the case number and the certified copy, which this has. This is not my writing though; I did not make this.

Q. Okay. So you didn’t make that copy?

A. No, sir.

Q. All right.

MR. SMILEY: Well, we've got a problem Your Honor.
THE COURT: That -- what do you have in your hand?
THE WITNESS: It says this is a copy. That is not my writing. It says copy. It's got the case number on it, Officer A. Erickson certified copy 4743 the same as that and disk one of one.
MR. SMILEY: And that's what was replaced -- what was given to Judge Jefferson to replace the original she I guess misplaced. But that wasn't done by Mr. Young. And again, I would move that we could just do the suppression hearing afresh and get rid of all these problems at this point.
THE COURT: Well, let me understand this. What's in your hand? Where did that come from?
THE WITNESS: From her [indicates].
THE COURT: Where do you know it came from?
CLERK OF COURT: It was received directly from Judge Jefferson. It came to the Clerk's Office from Judge Jefferson.
THE COURT: Oh. Where is the original?
CLERK OF COURT: I have no idea.
MR. STEGALL: Judge ---
THE COURT: --- I haven't ruled on anything. I'm just trying -- I'm like Sergeant Friday; I'm trying to get the facts, ma'am.

MR. STEGALL: May I take a look at that video?
THE COURT: Sure you can.
MR. STEGALL: We're not privy to the Court's exhibits.
MR. SMILEY: But they...
THE COURT: I'm going to hear you.
MR. SMILEY: Yes, sir.
[Whereupon, Mr. Stegall views the disk]
THE COURT: So that's what went to Judge Jefferson the second time?
MR. STEGALL: Well...
THE COURT: Of course you don't know.
MR. STEGALL: I don't know which one -- you know I don't know if this was the one she had trouble viewing or you know we made a copy ---
THE COURT: --- well, if she did ---
MR. STEGALL: --- because I guess ---
THE COURT: --- she would have sent back two.
MR. STEGALL: So, our disks Your Honor are you know they are silver. They don't have any white labels on them. When we get disks from law enforcement ---
THE COURT: --- of course you're not saying that came from law enforcement.
MR. STEGALL: I'm not saying it did or didn't come from law enforcement you know.

THE COURT: You frankly don't know where that came from. That's not to throw any authenticity out but as far as an explanation of where it came from.

MR. STEGALL: I don't know if that's the original or if that's the copy that we made per her request ---

THE COURT: --- we keep using this word original.

MR. STEGALL: Well, I shouldn't ---

THE COURT: --- I'm talking about the original that was made at Goose Creek when you took it from the body cam or whatever. Somebody -- am I just out in left field? Somewhere an original disk was created from the body cam or the car cam whatever.

MR. STEGALL: I'm probably misspeaking when I say original; the first copy that we made for our suppression hearing.

THE COURT: That's better.

MR. STEGALL: So I don't know if that's copy number one that we made in March of 2018 or if that's copy number two.

THE COURT: Well, this witness would know.

THE WITNESS: That is ---

THE COURT: --- he said that ---

THE WITNESS: --- that is not a copy I made because that is not my writing. I mean I -- I mean ---

THE COURT: --- and you're the only one that makes

it?

THE WITNESS: No sir; I would not be the only one that makes it. But I made them for this case. But like I said that is not my writing; I did not make that copy.

THE COURT: I accept that.

THE WITNESS: Yes, sir.

THE COURT: Do you know where that came from?

THE WITNESS: No, sir.

THE COURT: Except it came back from Judge Jefferson?

THE WITNESS: Yes sir.

THE COURT: Could that have been the original?

THE WITNESS: Um...

THE COURT: In other words you didn't make a copy for the suppression hearing. Could that original have gone to Judge Jefferson?

THE WITNESS: It could have. Normally Goose Creek prints out their -- prints out a label. They print out a label with the name of the police department on it and with all this information here [indicates]. And then we copy what all that information says. And I do not remember -- I just don't remember. I mean I ---

THE COURT: --- so you don't even know what's on that?

THE WITNESS: On this one?

THE COURT: Yes.

THE WITNESS: No, sir.

THE COURT: All right. What was your -- Solicitor, what was your -- how did you start this discussion?

MR. STEGALL: Judge, we would as far as denying defense's motion to reopen the suppression hearing?

THE COURT: Yes. I assume that the suppression hearing -- and I did not read Judge Benjamin's [sic] order is dependent upon this video?

MR. SMILEY: It was completely based on that video. She quoted the video in her order.

MR. STEGALL: We played the video in court.

THE COURT: For her?

MR. STEGALL: And then entered the video into evidence. She took it in her possession and ---

THE COURT: --- and that could be it ---

MR. STEGALL: --- wrote an opinion. That could be it.

THE COURT: Could be.

MR. STEGALL: That's correct, Your Honor. Like I say when we make copies our disks are silver and they look like the first disk that I provided ---

THE COURT: --- I understand, I understand. So when she returned in the return of evidence from her office she returned that. She could have had two in her

possession and thrown the second one away.

MR. STEGALL: Correct, Your Honor. That's...

THE COURT: Could have.

MR. STEGALL: And we just wouldn't know because like I said we're not privy to the Court's ---

THE COURT: --- I'm going to issue a subpoena for Judge Jefferson.

MR. SMILEY: That'd be fine.

THE COURT: Strike that.

[Laughter]

MR. SMILEY: And strike my response to that.

[Laughter]

MR. SMILEY: Your Honor, at the suppression hearing in March of 2018 this disk wasn't just willy-nilly handed up. It was entered into evidence so it got an evidence sticker. And it's not on that disk. There is not an evidence sticker on that disk so I know it's not the original. The original ---

THE COURT: --- okay. Well...

MR. STEGALL: Judge we've got -- there was a Court's exhibit and there is a white ---

MR. SMILEY: --- it was entered into evidence.

THE COURT: It had to be entered or she wouldn't have taken it.

MR. SMILEY: Right. And just -- the reason I know

there was an exhibit [sic] on it I was asking questions from the police report. And I didn't enter it into evidence but it was given an exhibit number at the time. It was used just to refresh his memory and so it was given Defendant's exhibit number 1 and it was given back to me at the close of the hearing.

So I know we used stickers. And I know and in that hearing Your Honor is Mr. Stegall questioned Officer Erickson. He did not put the video in to begin with if by inadvertence. I got up and needed the video so I was getting ready to put it into evidence because I needed it. And then at that point Mr. Stegall stood up and said oh, I forgot to do that and we got it put into evidence at that point in time and marked as an exhibit.

That's what we based our arguments off of. And it was taken -- it doesn't come back to us because it was into evidence. And then the Clerk of Court and the Judge gets in. And during that time if she misplaced it the proper procedure is bring us back to court ---

THE COURT: --- I understand that ---

MR. SMILEY: --- I don't know what copy she looked at Judge. As I've read her order and I don't agree that everything that's in the order was on the video. She picked out some things that I can't find on the video. But I don't know what she watched. I'm not alleging bad

conduct; I just don't know what happened and that concerns me.

THE COURT: And this does not have an evidence sticker on it?

THE WITNESS: Yes, sir. It just says exhibit State number 1.

THE COURT: Well, that's an evidence sticker isn't it? A Court's exhibit? Hand it up.

[Whereupon, the witness provides CD to the Court]

THE COURT: Have you seen this Mr. Smiley?

MR. SMILEY: No I haven't, Your Honor.

THE COURT: I think you should.

MR. SMILEY: Yes, sir.

[Whereupon, the Court shows CD to Mr. Smiley]

THE COURT: It looks to me like that's a Court's exhibit.

MR. SMILEY: It appears to but I don't know who put that sticker on there, Your Honor, because the sticker I got has the court reporter's initials on it. And that doesn't have any initials. So I'm confused. And even if that was Your Honor she asked for another disk. And so I don't know what she did ---

THE COURT: --- I understand ---

MR. SMILEY: --- yes sir ---

THE COURT: --- I understand that part ---

MR. SMILEY: --- yes sir, yes sir.

MR. STEGALL: I will say that the duplicate disk that we provided we did not put a sticker on it.

THE COURT: But you didn't provide this because it's got a State's 1 and it's a white sticker.

MR. STEGALL: And that's ---

THE COURT: --- that's generally considered a Court's exhibit ---

MR. STEGALL: --- and that looks like Court's exhibit 1 which tells me that that would have been -- let me be careful with my wording -- that would have been copy number 1.

THE COURT: Right. Does she refer to the exhibit in this order?

MR. SMILEY: She does, Your Honor.

THE COURT: And does she refer to it as State's number 1?

MR. SMILEY: I'll look, Your Honor.

[Whereupon, Mr. Smiley reviews document]

MR. SMILEY: On page 9 she quotes where she transcribed part of the disk but she doesn't refer to what disk she was looking at, Your Honor. However, on footnote number 4 on page 10, Your Honor, says that ---

THE COURT: --- you're three pages ahead of me but go ahead ---

MR. SMILEY: --- on footnote number 4 it says: The dash cam video was admitted into the record as State's exhibit number 1 for the sole purpose of the suppression hearing.

The ruling is not intended to be binding on the Court's admissibility of evidence in its sole discretion. The defense objected to the admission of the video. However, it is clear from the defense counsel they intended to admit -- had not sought to...

THE COURT: All right. Well, you've seen this?

MR. STEGALL: The order?

THE COURT: Yes, well ---

MR. STEGALL: --- that's my copy Your Honor that I handed up to you this morning.

THE COURT: All right. Well, it does say the dash-cam video was admitted into the record as State's exhibit number 1. This says exhibit -- State's exhibit number 1. So I'm going to -- I hate to say presume -- I'm going to rule that this is State's exhibit number 1, which it says and that she considered this video.

I don't know anything about the copy that was sent to her but this is identified in her order as State's number 1. Now, it's speculative as to where the duplicate that was sent to her whatever happened to it or whether she ever looked at it. But it's pretty clear to

me that when she says State's exhibit number 1 and I hold in my hand State's exhibit number 1 is this is what she relied on. That's the best I can do.

MR. SMILEY: I understand. It takes presumptions to say that. And I agree with you Your Honor everything you've said appears to be fine. The problem is there was an ex parte communication in which another disk was given to the Judge.

And I don't know which disk she ultimately watched or if they were the same. Again, I don't say that I am alleging foul conduct but I've got a client here that's going whoa, wait a second. What's up with all this?

THE COURT: I understand. What did you make that copy from?

THE WITNESS: It would have been the original I imagine; the original from Goose Creek.

THE COURT: You think this is not the original from Goose Creek? We don't know.

THE WITNESS: We don't know. I'm saying ---

THE COURT: --- this was entered without objection at the suppression hearing?

MR. STEGALL: That's correct, Your Honor.

THE COURT: Okay. Well, that's the best we can do. Any further questions of this witness?

MR. SMILEY: No sir, Your Honor.

THE COURT: You may come down.

[Whereupon, the witness is excused and exits the witness stand]

MR. STEGALL: And Your Honor, may I address the ex parte just for the record?

THE COURT: Yes, please do.

MR. STEGALL: Under Canon, I believe, it's 601 ex parte communication can be allowed when it deals with administrative issues or issues that are not related to the substance of the case, which was the case here. We simply were asked to provide a copy for a disk, which we did.

That rule follows that as long as the other party is notified immediately thereafter, which the State notified Mr. Smiley that the Judge requested a disk which we provided. So we believe that what we did was proper under the Canons, Your Honor.

RULING BY THE COURT

THE COURT: All right. Mr. Smiley, your motion to conduct another suppression hearing is denied, respectfully denied. I understand the problem but what I have in front of me convinces me that Judge Jefferson's order is based on the State's exhibit number 1 and her ruling stands. All right. Any further matters of pretrial nature?

MR. SMILEY: No sir, Your Honor, besides -- I assume that at every stage that I need to I raise my objection to the entry of the evidence because I just don't want to get caught with my pants down, Your Honor.

THE COURT: You may do that certainly.

MR. SMILEY: Yes, sir.

THE COURT: And I'm not worried about a jury getting confused. I've got enough confusion. All right Solicitor, call your first -- you chose not to make an opening statement, is that correct?

MR. STEGALL: Correct, Your Honor.

THE COURT: Does the defense wish to make any opening statement?

MR. SMILEY: No, sir. No opening statement.

THE COURT: All right. Call your first witness.

MR. STEGALL: The State calls Officer Erickson.

[Whereupon, Officer Erickson comes forward]

[Whereupon, the witness is duly sworn by the Clerk of Court]

CLERK OF COURT: Please be seated. State your full name; spell your last name for the record.

THE WITNESS: Alexander Erickson. It's E-R-I-C-K-S-O-N.

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ALEXANDER ERICKSON,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STEGALL:

Q. Officer Erickson, where are you currently employed?

A. The city of Goose Creek Police Department.

Q. And how long have you been employed with the city of Goose Creek Police Department?

A. Roughly seven years.

Q. Okay. Please describe your duties and responsibilities as an officer with Goose Creek?

A. I'm currently assigned to K-9 slash SAO, which is two kind of separate roles.

Q. Okay. What is the K-9 unit?

A. K-9 you are assigned a police K-9. The K-9 is

certified to locate narcotics so we do a lot of narcotics interdiction and criminal trafficking and apprehensions.

Q. And does this K-9 ride along with you?

A. Yes, sir.

Q. Okay. Please discuss any past or continuous training that you receive as a K-9 handler?

A. We train every Tuesday for a minimum of eight hours and that's maintenance training, narcotics training with the K-9.

I've attended several advanced narcotic interdiction classes, body language reading and criminal indicator classes.

THE COURT REPORTER: Could you speak up a little or just get closer.

THE WITNESS: Is that better?

Q. [Mr. Stegall] Were you on duty October 23rd, 2015?

A. I was.

Q. Did you perform a traffic stop on a vehicle in which this Defendant was a passenger that night?

A. Yes, I did.

Q. Okay. Where did you conduct that traffic stop?

A. Red Bank Road near Snake Road in Goose Creek city.

Q. What county is that located in?

A. Berkeley County, South Carolina.

Q. Okay. Please tell the Court the circumstances

surrounding the stop?
A. I observed a Chevy impala approach me from the opposite direction on Red Bank Road. I observed it had a headlight out on it. I then turned around on the vehicle and conducted a traffic stop on it for the equipment violation.
Q. Were you able to make contact with the driver?
A. I was.
Q. Were you able to identify the driver?
A. I did. His name was Sam Carr.
Q. Did Mr. Carr have any passengers with him?
A. He did; one in the front seat.
Q. Were you able to identify the passenger?
A. I did. It was Ricky Dawson.
Q. While speaking to Mr. Carr did you observe anything?
A. When I was standing at the driver's side window on the left side of Mr. Carr's lap area I saw a plastic baggie or what appeared to be like a plastic bag kind of twisted up at the end.
The significance of that to me was I almost immediately suspected that that was a bag containing narcotics.
Q. Was that something you typically see being a K-9 officer that is involved in drug cases ---
A. --- absolutely ---

Q. --- are you able to recognize the difference between a normal baggie and one possibly including narcotics?
A. Absolutely.
Q. When you noticed the baggie what did the driver do?
A. I somewhat confronted him about it. I made it clear that I saw the bag. He then took it and he appeared to shove it back into his pocket, his left pocket. And then we had ---
Q. --- who did?
A. The driver, Sam Carr.
Q. What did you think when that happened?
A. That he was trying to conceal it because he knew it was seen.
Q. What did you do next?
A. I requested a second officer respond because the traffic stop at this point had turned into a narcotics investigation.
Q. And did a second unit respond?
A. One did, yes, at the time Officer Davis, Sergeant Davis at the time.
Q. Okay. When Officer Davis arrived what happened next?
A. We had ended up getting both the driver and passenger out of the vehicle. I believe I conducted a terry frisk of Sam Carr just to make sure he didn't have

any weapons. Then I had a conversation about searching the vehicle with him.

Q. Okay. Please describe that conversation for the Court.

A. Initially I had told Mr. Carr that I was extremely concerned about that bag; that bag that I had seen and called him out on that had magically disappeared. Initially during the conversation I wanted permission to search his area that he was sitting in.

However, prior to doing that I made it very clear that I wanted to search the entire vehicle. Specifically searching for narcotics was the main objective of what I was searching for.

Q. So you were asking for consent?

A. Yes.

Q. Did Mr. Carr give you consent to search?

A. He did.

Q. And did Mr. Carr know that consent meant the entire car; the entire automobile?

A. Yes. I made it very clear I was seeking the entire vehicle.

Q. What would you have done had he denied consent?

A. I would have conducted a free -- air sniff with the police K-9.

THE COURT REPORTER: A what?

THE WITNESS: A free air sniff.
Q. [Mr. Stegall] Was your K-9 with you that night?
A. He was.
Q. So after he provided consent what did you do next?
A. The two subjects, Mr. Carr and Mr. Dawson, were placed with -- they were kind of moved away from the area.

They were still able to see but they were placed with Sergeant Davis and I began a consent search of the vehicle.
Q. Okay. Please discuss your findings from that search to the Court.
A. I started on the driver's side. Like I said I was mostly concerned at the time with that bag that had disappeared. I didn't know if it was in his pocket or stuffed inbetween the seat.

I didn't find it initially, however going through the center console I found a firearm. That firearm was later found in the investigation to belong to Mr. Carr and was legally carried.

I then directed my attention to the passenger side of the vehicle where Mr. Dawson was sitted or seated; excuse me. And there was a black bag that was on the floorboard. I then opened the black bag and observed a Crown Royal style bag inside of it like a green like

alcohol bag. Inside that bag was three bags, I later found it to be three bags of narcotics inside.
Q. Were either of those containers locked?
A. No.
Q. What did you do once you found the narcotics or what you believed to be narcotics?
A. I think I went around to the passenger side of the vehicle and I ended up pulling them out and I put them on the trunk of the vehicle. And then we had ended up detaining both of the subjects.
Q. Okay.
A. Placed them in handcuffs for further investigation.
Q. Okay. Did someone claim ownership of that bag?
A. Yes.
Q. Okay. Who was it that claimed ownership?
A. Mr. Dawson.
Q. Is Mr. Dawson in the courtroom today?
A. Yes, he is.
Q. Can you point him out for the Court please and describe what he is wearing?
A. A reddish pink shirt with a beard.
Q. Did Mr. Dawson admit to you what was in that bag?
A. He did. A post Miranda statement he just divulged it was cocaine.
THE COURT: I couldn't hear you. Speak up a

little bit.

THE WITNESS: Yes, he did. Post Miranda he advised that it was cocaine that was found in the bag.

Q. [Mr. Stegall] Did he tell you anything else about the bag?

A. He did. When we were talking about it he also told me that there was a firearm in the bag, which I had not yet found.

MR. STEGALL: Court's indulgence.

[Whereupon, Mr. Stegall and Mr. Jenkins confer]

MR. STEGALL: Your Honor, we've got a piece of evidence that is being held in the back; it's a firearm.

THE COURT: You got a lock on it?

MR. STEGALL: Yes, sir. It's -- I'll let Officer Erickson testify to its safety.

THE WITNESS: Yes, sir. It's cleared through our evidence; they do it. The slide is locked back. It is unloaded and there is a cable lock running through it.

THE COURT: A pistol lock?

THE WITNESS: Yes, sir.

Q. [Mr. Stegall] Officer Erickson, I am going to --

MR. STEGALL: Your Honor, may I approach the witness?

THE COURT: All right.

Q. [Mr. Stegall] I'm going to hand you what has been

premarked as State's exhibit 3.

MR. SMILEY: May I see it?

MR. STEGALL: Yes.

[Whereupon, Mr. Stegall shows exhibit to Mr. Smiley]

Q. [Mr. Stegall] I'll ask you to take a look at that and tell the Court if it is in a safe position.

[Whereupon, the witness is shown exhibit]

A. Yes. It is safe and clear.

Q. Do you recognize that State's exhibit?

A. Yes, I do.

Q. Okay. What is that?

A. It is the firearm that was located in the backpack of the vehicle that Mr. Dawson claimed ownership to.

MR. STEGALL: Your Honor, at this time the State moves to enter what has been premarked as State's exhibit 3 into evidence.

THE COURT: Any objection?

MR. SMILEY: Subject to my motion to suppress the evidence.

THE COURT: All right. It's admitted into evidence.

MR. STEGALL: Thank you, Your Honor.

THE COURT: Subject to the Defendant's prior objection.

[Whereupon, State's exhibit number 3 is entered into evidence by the Court]

Q. [Mr. Stegall] All right Mr. Erickson, next I'm going to hand you what has been premarked as State's exhibit 4 and see if you recognize this?

[Whereupon, the witness is shown exhibit]

A. This item is a black digital scale that was found inside the green Crown Royal bag which is also inside of here.

THE COURT: You said it is a black what?

THE WITNESS: Digital scale.

THE COURT: Digital scale.

THE WITNESS: And this [indicates] green Crown Royal bag.

MR. STEGALL: Your Honor --

Q. [Mr. Stegall] And were those the items that were recovered from the backpack as well?

A. Yes.

MR. STEGALL: Your Honor, at this time the State moves to enter what has been premarked as State's exhibit 4 into evidence.

THE COURT: Any objection?

MR. SMILEY: Only subject to my prior objection as to the admissibility of the evidence.

THE COURT: All right.

[Whereupon, State's exhibit number 4 is entered into evidence by the Court]

Q. [Mr. Stegall] Next I'm going to --
MR. STEGALL: Your Honor, may I approach the witness?
THE COURT: Yes.
Q. [Mr. Stegall] I'm going to hand you what ---
THE COURT: --- number 4 is admitted.
MR. STEGALL: Thank you, Judge.
Q. [Mr. Stegall] I'm going to hand you what has been premarked as State's exhibit 5.
[Whereupon, the witness is shown exhibit]
A. A box of Ziploc sandwich baggies which was also located inside the backpack or the book bag.
MR. STEGALL: Your Honor, at this time the State moves to enter State's exhibit 5 into evidence.
THE COURT: Any objection?
MR. SMILEY: Subject to prior objection, Your Honor.
THE COURT: All right. Number 5 is admitted.
[Whereupon, State's exhibit number 5 is entered into evidence by the Court]
Q. [Mr. Stegall] Next I'm going to hand you what has been premarked as State's exhibit 6. Take a look at that.
[Whereupon, the witness is shown exhibit]
A. The three previously filled out narcotic baggies

containing narcotics that were recovered from the traffic stop from Mr. Dawson.

Q. That you recovered?

A. Yes.

Q. Okay. Once you recovered them what did you do with them?

A. I later weighed them back at the police station and then I put them in the bags and then they were submitted into the Goose Creek evidence room where the testing is done by an outside agency.

Q. Okay. Thank you. Officer Erickson, is your car equipped with audio video recording?

A. It is.

Q. Was it functioning properly that night?

A. It was.

Q. Was your in-car activated during this incident?

A. It was.

Q. Okay.

MR. STEGALL: At this time, and this is the question I raised earlier Your Honor should I use the in-car for the suppression hearing purposes or?

THE COURT: I wouldn't try anything else.

MR. STEGALL: Yes. I don't have -- I think -- Judge, may we approach?

[Whereupon, an off the record bench conference is

held]

MR. SMILEY: And before we -- I started thinking about that and I'm sorry Judge but the disk itself is not marked as State's exhibit number 1. Only the sleeve that has been put in and I'm not certain...

MR. STEGALL: We never mark disks; we always mark sleeves.

MR. SMILEY: Well, we also ---

THE COURT: --- okay, go ahead.

Q. [Mr. Stegall] Officer Erickson, I'm going ---

THE COURT: --- we have an objection. Put it on the record.

MR. SMILEY: Yes, sir. I would ask that he identify the video that he provided that is in evidence, Your Honor.

THE COURT: Fair enough.

Q. [Mr. Stegall] Officer Erickson, can you identify that video?

A. Other than how it has already been presented in Court?

Q. I mean pull it out and read what's on it; the label on it.

[Whereupon, the witness complies]

A. It says on the disk Goose Creek PD. It says copy and then it says 2015 5134 with my name and it says

certified copy number 4743 disk one of one.

THE COURT: Would you recognize it if you saw it?

THE WITNESS: I would.

MR. STEGALL: Your Honor, permission to publish?

THE COURT: Over the objection of the Defendant, yes.

[Whereupon, State's exhibit number 1, the in-car camera video, plays]

[Not taken down]

THE COURT: Is that all of it?

MR. STEGALL: There was more. They were transporting them at that point, Your Honor so there is some -- Officer Davis transporting after that.

Q. [Mr. Stegall] Did you have any other involvement with this case?

A. Other than drafting arrest warrants, no.

Q. Okay.

MR. STEGALL: Court's indulgence.

[Whereupon, Mr. Stegall and Mr. Jenkins confer]

Q. [Mr. Stegall] Officer Erickson, was that your in-car video from that night?

A. Yes, it was.

Q. Okay. And it has previously been entered as State's exhibit 1 from March, 2018 suppression hearing --

THE COURT: Are you offering it now?

MR. STEGALL: Do I need to reenter it, Your Honor? I'm happy to. I thought that it had...

THE COURT: The trial of the case.

MR. STEGALL: Your Honor, at this point the State moves to enter what has been previously marked as State's exhibit 1 into evidence.

THE COURT: Any objection?

MR. SMILEY: Subject to ---

THE COURT: --- previous objection ---

MR. SMILEY: --- previous objections.

THE COURT: Overruled. What number is that?

MR. STEGALL: Its 1, Your Honor.

THE COURT: Exhibit 1?

MR. STEGALL: Yes, sir.

THE COURT: It's admitted into evidence.

[Whereupon, State's exhibit number 1 is entered into evidence by the Court]

Q. [Mr. Stegall] That's all I have. Please answer anything Mr. Smiley may have for you.

A. Yes, sir.

MR. SMILEY: Your Honor, before I begin cross could we take a restroom break? It's been about an hour and half.

THE COURT: Sure. We'll take a ten minute break.

MR. SMILEY: Thank you very much, Your Honor.

THE COURT: Mr. Smiley?

MR. SMILEY: Yes, sir.

THE COURT: Your client is on bond?

MR. SMILEY: He is.

THE COURT: Well, the bonding company is relieved as of now unless you have some...

MR. SMILEY: I do not ---

THE COURT: --- evidence that they will stay on the bond?

MR. SMILEY: I believe they would but I have not asked for their prior consent ---

THE COURT: --- approval? Well...

MR. SMILEY: Yes, sir.

THE COURT: Mr. Dawson, in effect you are in the custody of the Court at this time. Do you understand?

MR. DAWSON: Yes, sir.

THE COURT: Okay. Just don't leave the building.

MR. DAWSON: Oh, no sir.

[Whereupon, Mr. Smiley confers with the Defendant]

[Whereupon, Court is in recess from 3:40 p.m. until

3:57 p.m.]

THE COURT: Is the State ready to proceed?

MR. STEGALL: The State is ready, Your Honor.

THE COURT: Is the defense ready to proceed?

MR. SMILEY: Yes sir, Your Honor.

THE COURT: All right.

MR. SMILEY: May it please the Court?

THE COURT: Yes, sir. Cross-examination.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Officer Erickson, we've met before but my name is Jim Smiley and I represent Ricky.

A. Yes, sir.

Q. Let's start with some basic stuff. The search of the automobile was a consent search, correct?

A. Yes, sir.

Q. I asked you this a year and a half ago but I'll ask you again. You did not believe you had probable cause at the time that you did the search, correct?

A. Correct.

Q. And then let's talk about your K-9 for a second. That dog's name was?

A. Kron.

Q. Kron?

A. K-R-O-N.

Q. And at the time you had been instructed not to use Kron on cars unless you absolutely had to, correct?

A. To a degree. We had an unwritten rule where it was we had to ask for consent. If the consent was denied then we could go ahead and use our dogs.

Q. And the problem was Kron is an active alert dog?

A. Yes, sir.

Q. And he had damaged a car before and so as an

abundance of caution you didn't want to use him out in the first instance and see if you could get consent first, correct?
A. Correct.
Q. Okay. And the dog was never used in this case.
A. That's correct.
Q. Now you were running traffic enforcement that night?
A. Yes, sir.
Q. And so you were -- were you mobile or sitting still when you first saw Mr. Carr's automobile?
A. Mobile. I was travelling -- we were travelling in opposite directions on Red Bank.
Q. Okay. So he was heading east on Red Bank, I guess that's the best way, and you were heading west and you turned around?
A. I guess. I'd have to rewatch the video. We were literally going like this [indicates]. He was going one way and I was going the other, saw the headlight out, and I turned around.
Q. Okay.
A. And then we ended up pulling towards Howe Hall Road.
Q. All right. And so you saw the light out, you got behind him, you followed him for a short period of time, activated your lights and pulled over as we saw in the video, correct.

A. Correct.
Q. All right. And so this all began over a defective left front headlight?
A. Correct.
Q. All right. And when you made contact with Mr. Carr he was seated behind the driver's wheel of course, right?
A. Correct.
Q. And when you were asking him for his driver's license and I.D. is when you thought you saw -- let me change that -- is when you believed you saw the small baggie, correct?
A. I know I saw a small baggie.
Q. Okay. Well, let me ask the next question. Did you ever find that baggie?
A. No, I did not.
Q. Okay.
A. I also did walk away from the vehicle so there was -- what happened with the baggie is unknown.
Q. Okay. My question was you never found any small baggie?
A. No, I didn't.
Q. Okay. And you asked Mr. Carr for a search and I think you're -- you asked him to search that immediate area to begin with, correct?
A. That's correct, yes.

Q. And he said that you could search that small area to begin with, correct?
A. Correct.
Q. And then you told him but I need to search the whole car.
A. Correct.
Q. Before you'd done any search, right?
A. That's correct.
Q. Okay. So you and Mr. Carr are outside of his automobile discussing the search, correct?
A. Yep.
Q. The ability to search?
A. Yes, sir. That's correct.
Q. And he told you something to the effect of I can talk for my car but I can't talk for my friend, correct?
A. Correct, basically. To me I took it as he wasn't taking any ownership of what his friend had.
Q. Okay. I'm not asking for your interpretation. I'm just asking for what was said at this point. And he said something to the effect of search my car but I can't speak for him, correct?
A. Correct.
Q. All right. Now Mr. Dawson was seated in the passenger seat, correct?
A. That's correct.

Q. And he had a black book bag between his legs, correct?
A. Correct.
Q. And that black book bag was closed, correct?
A. Yes, sir.
Q. And didn't have anything to identify it on the outside.
A. Not that was apparent from looking at it.
Q. All right. You didn't -- and the reason I asked you that is because you didn't take the backpack into evidence did you?
A. I did not.
Q. Okay. At the point that Mr. Carr has given you consent as he stated it to you Mr. Dawson was still sitting in the car, right?
A. Yes, I believe so. He hadn't gotten out until I had ---
Q. --- asked him to get out ---
A. --- correct.
Q. Okay. After you got the consent for Mr. Carr you had Mr. Dawson -- well, let me change that. You were waiting for Officer Davis to arrive, correct?
A. Correct.
Q. Before you did the search?
A. That's correct.

Q. So at the point that you got the consent you got from Mr. Carr and Officer Davis arrived then is when you asked Mr. Dawson to get out the car, correct?
A. Yes. Once we had our conversation and I had my backup officer there.
Q. Well, you had not had a conversation with Mr. Dawson.
A. I'm sorry; the driver of the car ---
Q. --- with Mr. Carr, the driver. Other than asking Mr. Dawson for his I.D. until you had done the search you did not have a conversation with Mr. Dawson did you?
A. That sounds accurate.
Q. All right. And at the point that Mr. Dawson had gotten out you had Officer Davis move Mr. Dawson back away from the car, correct?
A. Yes. I think they were put in front of one of our hoods, one of our vehicles.
Q. Well, it wasn't yours because we've watched that video so it must have been Officer Davis, correct?
A. They were placed away from the vehicle.
Q. Okay. And they are kept separated while you're doing the search, right?
A. I don't know if he separated them or not. You'd have to ask Sergeant Davis.
Q. Okay. And when you went in to search the car you

first went in that driver's compartment, correct?
A. Yes, sir.
Q. And you looked around and ended up opening the console, right?
A. Correct.
Q. And at that point in time you found the Hi-Point pistol.
A. The one that belonged to Mr. Carr, correct.
Q. Correct. In the console?
A. Correct.
Q. And that was a Hi-Point 9 as you pulled that out and called it in to see whether it was stolen or not, correct?
A. That's correct.
Q. And it came back clear?
A. Yes, sir.
Q. All right. Then you moved around to the passenger side and the backpack that was sitting between Mr. Dawson's legs you went in that, right?
A. I was still in the driver's side when I opened ---
Q. --- then you reached over?
A. [Nods affirmatively]
Q. Okay. So you reached over to the -- from the driver's side to the passenger side and unzipped the backpack to look at what was in its contents, correct?

A. Yep. I believe I pulled it up from the floor and placed it on the seat.
Q. Okay.
A. And briefly examined it ---
Q. --- unzipped it. All right. And that's when you discovered the green bag, correct?
A. Correct.
Q. And I believe it's in evidence.
A. Brown bag; the small brown one.
Q. Marked as State's exhibit number 4 it's the green bag that's contained in that, correct?
A. Yes, sir.
Q. All right. At that point in time you retrieved the backpack from the car, correct?
A. I believe so. I don't know if I went and detained them first or grabbed the bag out; I don't know the exact order of it.
Q. At that point in time you walked up to Mr. Dawson and asked him if that was his backpack, right?
A. I believe so. I don't know the exact order of that.
Q. Well, you never asked Mr. Carr if it was his backpack did you?
A. No.
Q. All right. It was between Mr. Dawson's legs. You believed it to be Mr. Dawson's bag, correct?

A. He was in direct control of the bag.
Q. All right. And at no point in time did you ask Mr. Dawson for permission to search his bag did you?
A. I did not.
Q. Mr. Dawson when he got out the car he didn't get out with his backpack did he?
A. No.
Q. And if he had you would have asked him to leave it wouldn't you?
A. I would have asked him to either leave it or set it down or -- I didn't --
Q. --- you wouldn't have him holding that backpack because of what he might have inside, right?
A. Well, there is a concern during a narcotics investigation for the potential of weapons ---
Q. --- right ---
A. --- so we try to separate containers and things like that.
Q. I got you -- and this was the container that was in the car, right?
A. It was a container within the car, yes.
Q. Yes. There weren't a whole bunch of containers in that car. This is the container, correct?
A. I don't remember if there ---
Q. --- did you go through other containers?

A. I don't recall if there were other containers in the car.
Q. And at the point that you asked Mr. Dawson about the backpack and what was in it he told you there was a gun in there too, correct?
A. Yes, he did. He later told me there was a gun in there.
Q. But for what you found in Mr. Dawson's backpack there was nothing -- no other indicia of Mr. Dawson doing anything illegal.
A. Can you repeat that? I kind of lost what you were saying ---
Q. --- okay. I'll try to ask it a little more simple. Before you discovered drugs in the backpack was there anything that Mr. Dawson did that would have made you suspect he was carrying drugs?
A. Absolutely. The entire vehicle at that point had been a target of a narcotics investigation based on what I saw on Mr. Carr's lap upon initial approach.
Q. Okay ---
A. --- the entire ---
Q. --- you didn't have probable cause so you asked for consent, correct?
A. I had reasonable suspicion that there was narcotics in the vehicle.

Q. Based on the baggie that wasn't found, correct?
A. Correct.
Q. All right. Now, I'm going to ask you a couple of questions about the video because you testified about that earlier.
A. Yes, sir. That's fine.
Q. Because when Goose Creek makes a CD of their evidence do they typically put a sticker on it like a preprinted sticker that says Goose Creek Police Department information?
A. I'm aware, I can't speak to all of them, I have seen them where they are like a preprinted label like you're talking about.

I don't know if they do it for all of them. I have seen them like that. I know exactly what you're talking about --

Q. --- okay ---
A. --- I don't know if that's all of them.
Q. Okay. Fair enough. Typically, it has one.
A. I would say -- I can't give you a yes or no.
Q. All right.
A. I've seen them and I've seen them other ways too.
Q. Okay. Did you overhear any conversations between Mr. Carr and Mr. Dawson?
A. Not that I -- they might have been overly talking

but I never heard any detailed part of a conversation of any kind, no.

Q. Any conversations that were going on were certainly recorded by your body cam or your mic, correct?

A. Yes. If I was near a conversation it should have picked it up.

Q. All right.

MR. SMILEY: Beg the court's indulgence.

[Whereupon, Mr. Smiley reviews documents]

MR. SMILEY: That’s all I have, Your Honor.

THE COURT: Redirect?

MR. STEGALL: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. STEGALL:

Q. You just -- that last question Mr. Smiley asked you he asked you if you had heard a conversation between Mr. Carr and Mr. Dawson. Where were they in relation to you while you were searching the car?

A. I don't know the exact location. They were somewhere near mine and Sergeant Davis' vehicle. I don't know if they were in front of Sergeant Davis' or mine.

But they were placed in a position to where I was able to search the vehicle and didn't have to worry about getting ambushed or attacked or whatever. Sergeant Davis ---

Q. --- would your body cam been able to pick it up being that far away from them and inside a vehicle searching it?

A. We didn't have body cameras at the time.

Q. Just in-car?

A. The only officers -- I don't think anybody had body cameras at that time. If my vehicle may have been angled in a different manner it might have picked it up but just the way the traffic stop stopped that's why it's all on camera.

Q. Did Mr. Carr or anybody, Mr. Dawson or anybody withdraw consent?

A. To my knowledge no.

Q. Did you hear anybody say whoa, stop searching?

A. No.

MR. STEGALL: That's all I have, Your Honor.

THE COURT: You can come down. Can the witness be excused or is he your...

MR. STEGALL: He's our case agent. I believe he wants to stay.

THE COURT: That's fine. No problem.

[Whereupon, the witness is excused and exits the witness stand]

MR. STEGALL: The State calls Ted Davis.

[Whereupon, Mr. Davis comes forward]

[Whereupon, the witness is duly sworn by the Clerk of Court]

CLERK OF COURT: Please be seated and state your full name of the record and please spell your last name.

THE WITNESS: Thank you. My name is Ted Davis and my last name is spelled D-A-V-I-S.

- - - - -

TED DAVIS,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STEGALL:

Q. Sergeant Davis, where are you currently employed?

A. The city of Goose Creek Police Department.

Q. And what is your job description with the city of Goose Creek?

A. I am a patrol sergeant.

Q. Were you employed with the city of Goose Creek in October of 2015?

A. Yes sir, I was.

Q. Do you remember being called out to a traffic stop from a fellow officer that night?

A. Yes sir, I do.

Q. Okay. Do you remember which officer called you out?
A. That was Officer Erickson.
Q. And did you respond to Officer Erickson?
A. Yes sir, I did.
Q. What did you do once you arrived?
A. When I arrived on scene I made contact with Officer Erickson who was on a traffic stop. And we pulled the two occupants of the vehicle out of the vehicle and I assisted him with standing by with him while he conducted a ---

THE COURT: --- speak up a little bit please.

THE WITNESS: I'm sorry.

A. So when I arrived on scene I met with Officer Erickson and assisted him with his traffic stop.
Q. [Mr. Stegall] And what was your role?
A. So my role as a secondary officer is just security. I just stand by and make sure that Officer Erickson is safe while he is doing whatever it is that he decides that he needs to do and also to watch over any other occupants or persons that were in the vehicle.
Q. And while you were standing by -- well, let me back up. What did Officer Erickson do once you arrived and had Mr. Carr and Mr. Dawson on scene?
A. Yes. So when I arrived on scene the two occupants of the vehicle were removed from the vehicle and Officer

Erickson conducted a consent search of that vehicle.
Q. And did you assist in that search at any point?
A. I did not.
Q. While he was conducting that search did the two occupants of the vehicle that you were with did anybody at any point attempt to stop the search?
A. No, sir.
Q. What would have happened had either one of those gentlemen asked for the search to be stopped?
MR. SMILEY: Objection, Your Honor.
THE COURT: Sustained.
Q. [Mr. Stegall] What did you do once Erickson finished searching the car?
A. Once Erickson was finished searching the car I believe Officer Erickson conducted some further investigation as to what he located inside the vehicle and subsequently arrested the passenger of that vehicle.
Q. And do you know the passenger's name?
A. Ricky Dawson.
Q. Okay. And is Mr. Dawson in the courtroom today?
A. Yes sir, he is.
Q. Okay. Can you point him out for the Court?
A. Sure. This is him right here [indicates] Your Honor.
THE COURT: The record will reflect that the

Defendant -- I mean the witness identified the Defendant.

MR. STEGALL: Your Honor, may I approach the witness?

Q. [Mr. Stegall] Sergeant Davis, was your car equipped with audio recording that night?

A. Yes, sir.

Q. And was it functioning properly?

A. Yes, sir.

Q. And was it activated during this incident?

A. Yes, sir.

Q. Okay. I'm going to hand you what has been premarked as State's exhibit 2 and see if you recognize that.

[Whereupon, the witness is shown exhibit]

A. Yes, sir.

Q. Do you recognize it?

A. Yes sir, I do.

Q. Okay. What is it?

A. This is a CD containing the video footage from my in-car camera on the night of the incident.

Q. Now have you had a chance to review that?

A. Yes sir, I have.

Q. How do you know that you've had a chance to review it?

A. Because I -- upon reviewing this specific DVD I placed my initials and dated it.

Q. Okay. And is that a fair and accurate representation of the traffic stop from October 23, 2015?
A. Yes sir, it is.
Q. Okay.
MR. STEGALL: Your Honor, at this time the State moves to introduce what has been previously marked as State's exhibit 2 into evidence.
MR. SMILEY: Without objection.
THE COURT: Without objection?
MR. STEGALL: Permission to publish, Your Honor?
THE COURT: Sure.
[Whereupon, State's exhibit number 2 is entered into evidence by the Court]
[Whereupon, State's exhibit number 2, the in-car camera video, plays]
[Not taken down]
Q. [Mr. Stegall] Sergeant Davis, did you have any more involvement in this case?
A. No, sir.
Q. Okay. Answer anything Mr. Smiley may have please.
THE COURT: Cross-Examination.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Sergeant Davis, I'm Jim Smiley. I represent Mr. Dawson. We just watched the video from your in-car camera, correct?

A. Yes, sir.

Q. All right. And that captured everything from the moment you got there with your lights going until you left, right?

A. I think it was a little delay from when I got there but yes, sir.

Q. Okay. And when you got there Officer Erickson -- well, let me ask it this way. Officer Erickson was awaiting you to come as backup, is that correct?

A. Yes, sir.

Q. Okay. And the reason for that is he had two people and he wanted to conduct a search, correct?

A. Yes, sir.

Q. And I think you said that your role was basically that of security, right?

A. That's correct.

Q. And so before the search began the occupants were brought back; one at your car and one at Officer Erickson's, correct?

A. Yes, sir.

Q. And so we see the beginning of the search from your camera, right?
A. I believe so, yes, sir.
Q. And it shows Officer Erickson go directly to that passenger seat and take out the bag, right?
A. Correct.
Q. And the gentleman that was standing next to you when that happened that we could hear talking is Mr. Carr, the driver, right?
A. That's correct. Yes, sir.
Q. All right. And as soon as he took out that backpack the driver said I didn't say he could search the backpack I said the car; he lied to me or something to that effect, correct?
A. Well, it was my -- it was framed more to me as like you know I thought he said he was searching the car.
Q. Right.
A. Kind of...
Q. He protested the backpack; fair enough?
A. I think he was upset that the backpack was getting searched ---
Q. --- was being searched.
A. Yes, sir.
Q. Fair to say that he did not believe his consent extended to that book bag that he had only agreed to the

car, fair enough?
A. Yes ---
MR. STEGALL: --- objection, speculation.
THE COURT: Well, he was there. I'm going to let him answer.
A. He raised a question about the I guess the backpack you could say.
Q. [Mr. Smiley] All right. Now, when Officer Erickson goes through the backpack and discovers whatever he discovered he goes straight to Mr. Dawson, correct?
A. Now, I don't know.
Q. Well, we just watched the video.
A. Well, but I don't know if Officer Erickson opened the backpack while he was in the car or if Officer Erickson discovered what he discovered ---
Q. --- okay ---
A. --- when he was at the back of the car ---
Q. --- then I'm asking ---
A. --- I don't know.
Q. I asked a poor question. When Officer Erickson opened the backpack on the lid of the trunk of the car his next move is directly to Mr. Dawson, correct?
A. I don't recall.
Q. Okay. He didn't come over and talk to you and Mr. Carr did he?

A. I don't believe so, no sir.
Q. Okay. When you were standing -- if I under -- well, let me ask it this way. You've got Mr. Carr's vehicle parked, correct?
A. Yes, sir.
Q. And Officer Erickson's car was parked at an angle behind it, correct?
A. Yes, sir.
Q. And you pulled up parallel to Officer Erickson's car pointing towards the back of Mr. Carr's automobile, correct?
A. I was perpendicular.
Q. Perpendicular.
A. Right.
Q. All right. And you had the gentlemen Mr. Carr and Mr. Dawson back away from the car during the search, correct?
A. Yes, sir.
Q. And Mr. Carr was standing next to you.
A. Yes, sir.
Q. Mr. Dawson was standing over next to Mr. Erickson's car, Officer Erickson's car, correct?
A. I think I was -- yeah, I think that's correct.
Q. All right.
A. I believe so.

Q. At any point was there a conversation that you recall between Mr. Dawson and Mr. Carr prior to the search concerning the search?
A. Not that I recall, no sir.
Q. Okay.
MR. SMILEY: Beg the court's indulgence.
[Whereupon, Mr. Smiley confers with the Defendant]
MR. SMILEY: Nothing further, Your Honor.
THE COURT: Okay. Redirect?
MR. STEGALL: Nothing on redirect, Your Honor.
THE COURT: Okay. You may come down, sir.
THE WITNESS: Thank you, Your Honor.
THE COURT: May the witness be excused?
MR. STEGALL: No objection from the State.
MR. SMILEY: None from the Defendant.
THE COURT: All right. You're free to go, sir.
THE WITNESS: Thank you, Your Honor.
[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Counsel, what's next?

MR. STEGALL: Your Honor, we have three chain witnesses left. The drug analyst was -- well, the testimony and the fact that the drugs were cocaine and crack cocaine was all stipulated on the record and we've got a Court copy. So essentially three chain witnesses left unless Mr. Smiley wants to stipulate on the record as to the chain witnesses but we...

MR. SMILEY: I think they need to testify because he hasn't put the cocaine in yet.

MR. STEGALL: That's true. So just three chain witnesses, Judge.

MR. SMILEY: I mean he can stop now but there are no drugs that have been entered into evidence.

THE COURT: I understand that. Well, he's got until 2 o'clock tomorrow.

MR. SMILEY: Yes, sir.

THE COURT: Are they here or can they be here tomorrow?

MR. STEGALL: I can -- they are here. I can find out if they can be here tomorrow.

THE COURT: Well, it's 5 o'clock of course.

MR. STEGALL: My investigator is going to make sure they are available tomorrow.

[Off the record momentarily]

MR. STEGALL: Judge, it looks like all three are available tomorrow morning.

THE COURT: All right. Where do you live?

MR. SMILEY: Isle of Palms, Your Honor. It's about a little over an hour to get here.

THE COURT: Is 9:30 too early?

MR. SMILEY: No, sir. 9:30 is fine.

THE COURT: All right. We'll start at 9:30.

MR. SMILEY: Can we address my client's situation about bond? I understand your position; if I could just give you a little more information?

THE COURT: Go ahead.

MR. SMILEY: Mr. Dawson was bonded back in 2015 shortly after this incident by a woman named Sharon Thompson. She is no longer a bondsman. He has been on bond for four and a half years. He has shown up at every court case, Your Honor.

THE COURT: Who ---

MR. SMILEY: --- he has no bond ---

THE COURT: --- who's on his bond now?

MR. SMILEY: He doesn't have a bondsman.

THE COURT: Oh.

MR. SMILEY: The bondsman no longer is a bondsman and because the action has taken more than three years there is no bondsman at this point. My client has always

shown up. His mother and significant other and close family friend are here. I assure you he will be here in the morning but I understand if you believe he has to be taken into custody. He certainly would like to be here and he certainly would like to go home tonight but it's your call, Your Honor, and I understand it.

THE COURT: I have -- I've lost a Defendant. I understand your position. I think when people come to court that are on bond they need to expect what is likely to transpire.

MR. SMILEY: He was aware, yes sir.

THE COURT: I've heard many pleas to stay out over night or make final arrangements or stuff like that, which is not -- I understand that is not your argument at this point. I think it's my responsibility at this point so therefore I'm going to have to ask him to stay with us tonight.

MR. SMILEY: Yes, sir. I understand. Thank you, Your Honor.

THE COURT: All right. We'll stand at ease until 9:30.

MR. STEGALL: Thank you, Your Honor.

MR. SMILEY: Thank you.

[Whereupon, Court adjourns at 5:06 p.m.]

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF BERKELEY	)	DOCKET NO. 2016-GS-08-0114
	)	2016-GS-08-0115
	)	2016-GS-08-0116
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
	)	
RICKY MANIGO DAWSON	)	
	)	
Defendant	)	
	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

December 10, 2019
Moncks Corner, S. Carolina

VOLUME 2 (of 2)

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JUDGE

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

BART STEGALL, ESQ.
TYLER JENKINS, ESQ.
Attorneys for the State

JAMES W. SMILEY, IV, ESQ.
Attorney for the Defendant

JOYCE C. RUEGER,
Certified Verbatim Reporter-Master
Circuit Court Reporter

MR. JENKINS: The State calls Wendy Myers.

[Whereupon, Ms. Myers comes forward]

[Whereupon, the witness is duly sworn by the Clerk of Court]

CLERK OF COURT: Please be seated and state your full name and spell your last name for the record.

THE WITNESS: Its Wendy Myers, M-Y-E-R-S.

- - - - -

WENDY MYERS,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JENKINS:

Q. Good morning.

A. Good morning.

Q. Where are you currently employed?

A. With the Goose Creek Police Department.

Q. And what is your position there and how long have you been employed there?

A. I've been there 15 years since December of 2004 and I'm a crime scene and evidence technician.

THE COURT: Could you speak up just a little bit please.

THE WITNESS: Yes, sir.

Q. [Mr. Jenkins] And what are the duties of your

position?
A. To process crime scenes and receive the evidence that is submitted by the officers.
Q. Please describe your education, training and experience.
A. Sure. I graduated the Criminal Justice Academy in 1993 and went to work with North Charleston Police Department where I was in the Warrants division and the Patrol division.

And then in 2004 went to Goose Creek as the crime scene. I've got training in property and evidence management, blood spatter pattern analysis, marijuana analysis, child fatality investigations.
Q. Were you employed with Goose Creek Police Department in October of 2015?
A. Yes, I was.
Q. And what was your position at that time and how long have you worked in that capacity?
A. I was crime scene and evidence and I've been there 11 years.
Q. And how does evidence come to Goose Creek?
A. When the officers submit it through the evidence lockers they are pass through lockers so on one side of the office the officers drop it in. The doors lock and once they've locked they can't access it without a key.

And on the opposite side is the evidence room. We access it via that with a key.
Q. And is that how the evidence is received?
A. Yes, it is.
Q. What are the practices and procedures for checking evidence into Goose Creek Police Department?
A. Once we receive it we verify that all the information is correct on the evidence form, that its sealed the way it's supposed to be and that all the items that are listed on the form are in the package and then we enter it with a handwritten log as well as a --
THE COURT REPORTER: As well as a?
THE WITNESS: Computer log.
Q. [Mr. Jenkins] And who has access to the evidence once it's at Goose Creek Police Department?
A. Myself, CSI Favero, and Captain Soderberg.
Q. And does everyone that handles the evidence document it?
A. Yes, they do.
Q. How do they document it?
A. Via the computer log as well as the handwritten log.
Q. So it's written and electronic?
A. Correct.
Q. Are these records kept for all evidence taken into Goose Creek Police Department?

A. Yes, they are.
Q. Are these records kept in the course of business as a regular practice?
A. Yes.
Q. And where is the evidence stored prior to testing and after testing?
A. Inside the evidence room and drugs specifically are in a separate locked cabinet inside the locked evidence room.
Q. And did you receive evidence related to this case from Goose Creek?
A. Yes, I did.
Q. I'm going to hand you what has been premarked as State's exhibit 6.
MR. JENKINS: Your Honor, may I approach the witness?
THE COURT: Uh Huh.
[Whereupon, the witness is shown exhibit]
Q. [Mr. Jenkins] And what is this?
A. This is the exterior envelope that we store them in. It has our item numbers for the specific items that are in the bags as well as our bar code label with my name on it.
Q. Who did you receive this from?
A. It was submitted by Officer Erickson.

Q. And what date did you receive it on?
A. It would have been the next business day. I believe that was October 23rd.
Q. How did you receive the evidence?
A. It would have been in an evidence locker.
Q. Was the evidence sealed?
A. Yes, it was.
Q. At any time did you open it?
A. I did not.
Q. And what did you do with the evidence after you received it?
A. I would have done the submission receipt or request through the city of Charleston Police Department drug lab and then sealed it up -- or I'm sorry; stored it inside the evidence room until transport.
Q. Was the evidence in your custody and control from the point you received it up until you passed it on to another individual at Goose Creek or placed it under lock and key?
A. Yes, it was.
Q. Did you ever receive the evidence back?
A. We received it in the evidence room. I did not personally receive it back. I didn't pick it up from the lab.
Q. And how did y'all receive the evidence back?

A. It would have been picked up from the Charleston Police lab.
Q. And how was the evidence packaged when Goose Creek Police Department received it back?
A. It was placed back in a heat-seal package so the original packaging was in there and then a heat-seal pouch which is what the city of Charleston uses.
Q. And what did you do with it after you received it back at Goose Creek ---
A. --- stored back in the evidence room.
[Whereupon, Mr. Stegall and Mr. Jenkins confer]
Q. Thank you, Ms. Myers. Answer anything Mr. Smiley may have for you.
MR. SMILEY: No questions, Judge.
THE COURT: You may come down. Thank you very much.
[Whereupon, the witness is excused and exits the witness stand]

MR. JENKINS: The State calls Sandy Favero.

[Whereupon, Ms. Favero comes forward]

[Whereupon, the witness is duly sworn by the Clerk of Court]

CLERK OF COURT: Please be seated and state your full name for the record spelling your last name.

THE WITNESS: Its Sandra Favero, S-A-N-D-R-A F-A-V-E-R-O.

- - - - -

SANDRA FAVERO,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JENKINS:

Q. Good morning, Ms. Favero. Where are you currently employed?

A. The city of Goose Creek Police Department.

Q. And what is your position there and how long have you been employed there?

A. I am in crime scene and evidence and I've been in that position for five years.

THE COURT: You're going to have to speak up just a little bit so I can hear you.

THE WITNESS: Yes, sir.

Q. [Mr. Jenkins] What are the duties of your position?

A. I take in evidence. We secure it, label it. I also do crime scene processing.
Q. Please describe your education, training, and experience.
A. I am certified with the International Association for Property and Evidence. I am a member of the International Association for Identification. I've had some blood stain classes, crime scene processing and evidence collection.
Q. Were you employed with Goose Creek Police Department in October of 2015?
A. Yes, sir.
Q. What was your position at that time and how long had you worked in that capacity?
A. Crime scene and evidence has been five years.
Q. Please tell the jury why and how evidence comes to Goose Creek Police Department.
A. An officer collects it. If it is in connection with their case they submit it into a locker and then I will take it out of the locker, secure it, label it, and store it.
Q. And how is it received by Goose Creek Police Department?
A. They submit it through a pass through locker. Once they close it it is only able to be opened through the

evidence room which we take it out and then we store.
Q. What are the practices and procedures for checking evidence into Goose Creek Police Department?
A. We print up a label, we fill out the form it's in the computer, and then it is packaged correctly and stored.
Q. Once at Goose Creek Police Department what are the procedures for handling the evidence?
A. It's a written -- if it's checked out a chain of custody written and computerized.
Q. And who has access to this evidence once it's at Goose Creek Police Department?
A. Myself, CSI Myers, and Captain --
THE COURT REPORTER: Captain?
THE WITNESS: Soderberg.
Q. [Mr. Jenkins] Is everyone that handles evidence documented?
A. Yes.
Q. And how do they document it?
A. Written or through the computer.
Q. Are these records kept for all evidence taken into Goose Creek Police Department?
A. Yes, sir.
Q. Are these records kept in the course of business as a regular practice?

A. Yes, sir.
Q. And where is the evidence stored prior to testing and after testing?
A. For the drugs it's in a drug storage locker that also has a secondary lock on it.
Q. Did you receive evidence related to this case at Goose Creek Police Department?
A. I did.
Q. I'm going to hand you what has been premarked as State's exhibit 6.
MR. JENKINS: Your Honor, may I approach the witness?
THE COURT: Yes.
[Whereupon, the witness is shown exhibit]
Q. [Mr. Jenkins] What is this?
A. It is going to be a plastic bag containing white powdery substance, a plastic bag containing another white powdery brick substance, and a plastic bag containing a yellowish brick substance.
Q. And who did you receive this from?
A. I would have gotten it from the drug storage locker as CSI Myers took it in originally and stored it.
Q. And what date did you receive it on?
A. 11/2/2015.
Q. How did you receive the evidence?

A. I took it from the storage locker.
Q. Was the evidence sealed?
A. Yes sir, it was.
Q. Did you open it?
A. I did not.
Q. What did you do with the evidence after you received it?
A. I took it down to the City drug lab.
Q. And you said the City drug lab. What City drug lab?
A. I'm sorry; Charleston City drug lab.
Q. Was the evidence in your custody and control from the point you received it up until you passed it on to another individual at CPD or placed under lock and key?
A. Yes, sir.
Q. And did you ever receive the evidence back?
A. I did.
Q. And where did you receive that back from?
A. I received it from the Charleston City drug lab on 12/14/2015.
Q. And how did you receive the evidence back?
A. It was handed to me.
Q. From whom did you receive that evidence back?
A. Susan Payne.
Q. How was the evidence packaged when you received it back?

A. It would have been just like this [indicates]. They heat-seal it and initial the heat-seals.
Q. So it was sealed?
A. It was.
Q. And what did you do with it after you received it back?
A. I returned it to our drug evidence storage locker.
Q. Was the evidence in your custody and control from the point you received it back again up until you passed it on to another individual or placed under lock and key?
A. Yes, sir.
[Whereupon, Mr. Stegall and Mr. Jenkins confer]
Q. What was the purpose of you taking the package to Charleston City?
A. It would be for them to analyze and determine what substance it would be.
Q. Please answer any questions Mr. Smiley may have for you.
MR. SMILEY: No questions, Your Honor.
THE COURT: Okay. You may come down. May this witness be excused without objection?
MR. JENKINS: No objection, Your Honor.
[Whereupon, the witness is excused and exits the witness stand]

MR. JENKINS: The State calls Renee Hilton.

[Whereupon, Ms. Hilton comes forward]

[Whereupon, the witness is duly sworn by the Clerk of Court]

CLERK OF COURT: Please be seated. State your full name for the record and spell your last name.

THE WITNESS: My name is Renee Carter Hilton, H-I-L-T-O-N.

- - - - -

RENEE HILTON,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TYLER:

Q. Good morning, Ms. Hilton. Where are you currently employed?

A. The city of Charleston Police Department.

Q. What is your position there and how long have you been employed there?

A. I am the laboratory manager and I've been there for eight years.

Q. What are the duties of your position?

A. I'm required to maintain the personnel within the laboratory. I maintain instrumentation and equipment. I make sure the laboratory is following accreditation

policies and I also perform drug analysis, fire debris analysis, and serology analysis.

Q. Please describe your education, training, and experience.

A. I have a Bachelor's of Science in chemistry from the University of South Carolina. I have completed CPD's in-house training.

I've gone to SLED several times with regards to training there, GCMS analysis, mass spectral analysis; I mean the list continues for training with regards to drug analysis and all the disciplines I'm competent in.

Q. Were you employed with the Charleston Police Department in November of 2015?

A. I was.

Q. What was your position at that time and how long had you worked in that capacity?

A. I was laboratory manager at that time and I had been in that capacity for about two years.

Q. How does evidence come to the Charleston Police Department?

A. An outer agency will come to the laboratory and they will bring their evidence. Prior to that they have to log into our online portal, put the information in our system with regards to case number, the suspect's name if they would like it to be listed, the evidence

descriptions and then how they would like the evidence to processed. So if they would like drug analysis performed on it, fire debris analysis, or serology analysis they'll check that.

And then they come to the laboratory and bring me -- or the evidence technician who was actually out that day and that's why I stepped in and took the evidence. But they will bring the evidence.

That individual will make sure that the information that is displayed on the actual evidence itself matches what they've put in the system, and they make sure it is packaged properly, sealed properly, initialed properly.

And then once that happens it's then brought into our LIM system, Laboratory Incident Management System and from that point it can then be taken into that person's custody.

Q. What are the practices and procedures for checking evidence into the Charleston Police Department?

A. So as stated earlier we make sure that the evidence that is put in our online portal matches that which they are asking to be tested so we'll check all that information.

We'll make sure the packaging is proper, that it is sealed properly; there is no tears in it, that it is sealed properly. And once all of that matches our

requirements then we will accept the evidence.
Q. Once at Charleston Police Department what are the procedures for handling the evidence?
A. The evidence technician, or me at the time, would accept the evidence into our custody and then we would actually place it into a central storage that is in the laboratory where it is left until the assigned analyst is available to take it and perform the analysis.
Q. And who has access to the evidence once it is at CPD?
A. Once it's in the central safe everyone has access to it but only the person that is assigned to it should remove it from the safe and take it into their personal custody.
Q. Does everyone that handles the evidence document it?
A. Yes.
Q. And how do they document it?
A. Within our LIMS systems we have -- you have to -- each of us have our own user name and password that is unique to us. And they would have to input their password to be able to transfer the evidence from location to location.
Q. Are these records kept for all evidence taken in at the Charleston Police Department?
A. Yes.

Q. Are these records kept in the course of business as a regular practice?
A. Yes.
Q. And where is the evidence stored prior to testing and after testing?
A. Prior to testing it's in our central safe until the analyst takes it into their personal custody. Once it's in their personal custody and they're analyzing it it goes into their personal locker, which they only have access to with a key.

And then after they are done with it it then returns to the central safe awaiting the outer agency to come pick it up.

Q. Did you receive evidence related to this case at the Charleston Police Department?
A. Yes.
Q. I'm going to hand you what has been premarked as State's exhibit 6.

MR. JENKINS: Your Honor, may I approach the witness?

THE COURT: Uh Huh.

[Whereupon, the witness is shown exhibit]

Q. [Mr. Jenkins] And what is this?
A. It is evidence in OCA 20155134 --

THE COURT REPORTER: Read that again a little

slower.

THE WITNESS: OCA 2015-5134.

Q. [Mr. Jenkins] Who did you receive this from?

A. Sandy Favero.

Q. What date did you receive it on?

A. November 2nd of 2015.

Q. And how did you receive the evidence?

A. It was a hand-to-hand transfer.

Q. And was the evidence sealed?

A. Yes.

Q. Did you open it?

A. No.

Q. What did you do with the evidence after you received it?

A. I placed it into our central storage.

Q. Was the evidence in your custody and control from the point you received it up until you passed it on to another individual at Charleston Police Department or placed it under lock and key?

A. Yes.

Q. And did you ever receive the evidence back?

A. No.

[Whereupon, Mr. Stegall and Mr. Jenkins confer]

MR. JENKINS: Your Honor, we intend to enter the State's exhibit 6 into evidence through Ms. Hilton. Mr.

Smiley has stipulated to the drug analysis.

MR. SMILEY: Your Honor, we certainly stipulated so that the analyst would not have to fly from Colorado. And we stipulate that it is in fact cocaine and cocaine base and the weights. It is done as a stipulation to be read into the record, Your Honor -- thank you.

MR. JENKINS: At this time we would move to enter State's exhibit 6 into evidence.

THE COURT: Without objection?

MR. SMILEY: Without objection, Your Honor.

[Whereupon, State's exhibit number 6 is entered into evidence by the Court]

MR. JENKINS: Permission to publish?

THE COURT: Where is the stipulation?

MR. STEGALL: Your Honor, I intend to read it as the next witness.

THE COURT: That’s fine. But the stipulation is to be made part of the record?

MR. STEGALL: That's correct, Your Honor.

Q. [Mr. Jenkins] Please answer any questions Mr. Smiley may have for you.

MR. SMILEY: No questions, Your Honor.

THE COURT: No questions? May this witness be excused without objection?

MR. SMILEY: Without objection, Your Honor.

THE COURT: You're free to go ma'am. Thank you.

[Whereupon, the witness is excused and exits the witness stand]

MR. STEGALL: Your Honor, in light of, well instead of calling the next witness, the drug analyst Kaitlin Schroeder, to the stand as Mr. Smiley stated earlier we have a stipulation as to her expected testimony that I would like to publish for the record.

THE COURT: Go ahead.

MR. STEGALL: As well as make this I'm assuming Court's exhibit 1, Your Honor.

THE COURT: All right. Yes, sir.

MR. STEGALL: A certified copy of the stipulation.

The State of South Carolina County of Berkeley the Court of General Sessions indictment numbers 2016-GS-08-114, 115, 116, the State of South Carolina verses Ricky Dawson this is the stipulation as to the drug evidence.

The State and the Defendant through his attorney James W. Smiley, IV stipulate to the following: Item 1 is 27.19 grams of cocaine, item 2 ---

THE COURT: --- slow -- let me write it. I'll have it but just slow down. 27 what?

MR. STEGALL: 27.19 grams of cocaine.

THE COURT: Okay.

MR. STEGALL: Item 2 is 4.68 grams of cocaine, and item 3 is 1.1 -- or excuse me, 1.31 grams of cocaine base. The Charleston Police Department Forensic Services Division lab report L15-02429 is attached as an exhibit

in support of this stipulation. The analysis was performed by Kaitlin Schroeder formerly of the Charleston Police Department. As such both parties agree that she will not be required to testify at trial. This stipulation serves as her expected testimony.

MR. SMILEY: That is our agreement, Your Honor.

THE COURT: All right.

MR. STEGALL: And I would like to make this a Court's exhibit, Your Honor. It's certified.

[Whereupon, Court's exhibit number 1 is marked by the court reporter]

THE COURT: All right.

MR. STEGALL: The State rests, Your Honor.

THE COURT: Any motions?

MR. SMILEY: Your Honor, I would like to at this time renew my motion to suppress the evidence. And I would like to reargue it but I'm going to -- whatever Your Honor will allow me to do.

THE COURT: I'll allow you to do it.

MR. SMILEY: Yes, sir.

THE COURT: Go ahead. This is your record.

MR. SMILEY: Yes, sir. I believe as Judge Jefferson heard this in pretrial on March 18th -- March 14th, 2018 published her decision on July the 10th, 2019 and at no time since then have I been able to respond to her motion until today, Your Honor.

The motion -- her -- first is her analysis I believe is erroneous in a couple of different ways, Your Honor. This is a consent search. I had Officer Erickson in the pretrial hearing and on the stand yesterday admit he did not believe he had probable cause, that this was purely a consent search which would meet an exception to the Fourth Amendment of the United States as to searches and seizures, Your Honor.

In this case the driver of the car gives limited consent to begin with as then cajoled to expand his consent to the compartment of the car. He just says the car. But the whole time that he is expanding it he is saying but I can't speak for the passenger.

The passenger, Mr. Dawson, is sitting with a backpack closed between his legs. I don't believe there is any suggestion that it is anybody but Mr. Dawson's backpack. You can see from the video that was put into evidence of Officer Davis who was present on the scene before a search was conducted by his testimony and by what his video shows is Officer Erickson goes into the

passenger compartment, immediately removes the backpack and opens it. My client at the time that that happened has been taken out of the car is put over by Officer Erickson's car as Officer Davis is standing with the driver, Mr. Carr.

As the Officer Erickson takes that backpack belonging to Mr. Dawson out Mr. Carr says you lied to me. I said the car. I wasn't -- I won't quote it but something to that effect, he raises his objection. This would have been real easy. Before they did the search all they had to ask is whose backpack was it.

As my client, I'm arguing under the United States Constitution and under that they applied the Rodriguez analysis that has been cited in Judge Jefferson's order and applied in state court through the Supreme Court of Utah and Illinois and Indiana -- Illinois and the Court of Appeals in Indiana that said when a closed container is in a car that does not appear to be one that would be used by more than one; a purse in Indiana, a backpack in Utah that it was reasonable for an officer to ask who owns it.

And my client was never asked if they could search his backpack. As a matter of fact he was taken away from the car at the time of the search and could not see on the passenger side. He was standing, and the reason I

asked where the cars were he was standing over by Officer Erickson's car on the other side of the car. They go into that without any apparent -- well, without -- I don't want to use that word -- without asking for the consent.

Your Honor, Mr. Dawson has an expectation of privacy in his closed container; the container being a backpack, which is not commonly used by others. And the driver Mr. Carr starts from the very beginning trying to limit the amount of consent and expressing that he could not speak for the driver.

Your Honor, in Judge Jefferson's analysis, and one of the reasons I kept bringing up the video and the impropriety or the appearance of impropriety about which video Judge Jefferson watched is because she says that there is a conversation between Mr. Carr and Mr. Dawson that I never could hear or see nor was it testified to about hey, I gave them consent for the car and they're going to search it.

There is not any of that contained in the testimony or the record of what is put there. There is nothing to indicate Mr. Dawson knew that they were going to go into his backpack until it was taken out and opened.

And Your Honor under the Fourth Amendment of the United States it is a due process Fourteenth Amendment

extended to South Carolina says that is an illegal search. While South Carolina Supreme Court has not ruled on it directly is the Supreme Court's of other states applying the dictates of the Constitution have said clearly that that is not permissible.

And I would ask you at this point in time to suppress the evidence in this case as being the product of an illegal search and seizure. That's what I have, Your Honor.

THE COURT: What's the State's position?

MR. STEGALL: Your Honor, the State asks that you deny the defense's motion. The Chief Administrative Judge at the time, Judge Jefferson, ruled on that motion and denied that motion based on several things. Mainly this is -- she concluded that this was a consent search. She stated that the owner or operator of a vehicle has authority to consent as well as limit consent of search of a vehicle, Your Honor.

Also she cited the case of Florida v Jimeno [phonetic] that states that the general consent to search a car included consent to search containers within that car which might bear drugs.

In this case Mr. Sam Carr was the driver, operator and owner of the vehicle. Initially he did sort of attempt to limit the scope of the search but after

discussions with Officer Erickson he absolutely gave permission to search the entirety of the car. Mr. Carr made no mention to Officer Erickson that the book bag in the passenger floorboard was not his. Officer Erickson searched the car as he was allowed to do under the U.S. Constitution and all of its containers which could have narcotics in them and located drugs.

At the time Mr. Dawson was also out of the car. He made no mention of the fact that that was his book bag during the search. At no time did either individual attempt to stop the search. It wasn't until the drugs were actually located and the book bag was placed on the hood of the car that Mr. Carr made his comments.

Once the drugs were located the only thing out of the Defendant's mouth was yes, that's my book bag, yes that's cocaine and by the way there is a gun in the backpack.

We believe based on the facts of the case Your Honor that Mr. Carr did provide consent to search the vehicle, the entire vehicle and that search under the U.S. Constitution and Supreme Court case law includes any containers that may hold narcotics. So we respectfully ask that you deny the Defendant's motion.

MR. SMILEY: If I could respond to his reliance on Jimenez [phonetic] Your Honor. I can distinguish Jimenez

[phonetic] and I'm looking at State v James, the Illinois Supreme Court case that did this exact analysis. It says: The State argues its ruling in Jimenez [phonetic] shows the officer in the incident of the case were justified in searching the purse in that case found in Bowman's [phonetic] car. We disagree. We find Jimenez [phonetic] is significantly different than the present case. And that's what is here.

In Jimenez [phonetic] the Defendant was the driver of the vehicle and in his capacity as driver the Defendant had the ability to consent to the car because he had immediate possession and control of the entire vehicle. It goes on to say: There was no question in Jimenez [phonetic] that the driver also had possession and control over the brown bag and therefore had the authority to permit the police to search that bag.

Although there was a passenger in Jimenez [phonetic] there was no argument the brown bag belonged to the passenger rather than the driver. The question is whether the Defendant having the authority to consent to a search of both the vehicle and paper bag intended for his search to also encompass the search of the bag.

It's obvious in this case I believe that nobody thought that backpack was anybody else's but Mr. Dawson's sitting closed between his legs. So it's not clear that

Mr. Carr had the authority or the control of the bag, number one Your Honor. Number two, is there is evidence that the driver was trying to limit the search. It was then expanded and as soon as the bag was brought out he expressed no, no, no, or something to that effect, you lied to me. I didn't say you could go in the bag.

Your Honor, all he had to do is ask Mr. Dawson for consent to search his bag. They failed to do that. Mr. Dawson was away from the car when the search was being conducted and did not know to the extent that the search was going to be of his bag. He was never asked.

However, when the officer found the backpack he never approached Mr. Carr about it. He approached Mr. Dawson because he knew it was Mr. Dawson's bag, Your Honor. That's all I have.

THE COURT: All right. Mr. Smiley, let me ask you to react to what I am going to read which is from Judge Jefferson's ---

MR. SMILEY: --- yes sir ---

THE COURT: --- concluding pages wherein she says: In this case the State presented sufficient testimony and evidence demonstrating Officer Erickson had probable cause to search the vehicle and its contents. A reasonable and articulable suspicion of an officer will support a finding of probable cause. This Court finds

that Officer Erickson had sufficient probable cause to believe that evidence of a crime or contraband would be found in the vehicle. While Erickson testified at that point in the conversation with Carr he lacked probable cause the totality of the stop supports the State's contention that probable cause existed to extend the stop and likewise search the vehicle for contraband.

What do I do about that regardless of the issue of consent?

MR. SMILEY: Yes, sir. I asked the officer directly at any point did you believe you had probable cause because I was trying to establish whether we're dealing with consent or otherwise and he said I never believed I did.

THE COURT: That's what this says.

MR. SMILEY: Yes, sir. And so it's erroneous to say that he did. He said he had a reasonable suspicion but that doesn't get you into a container without consent.

THE COURT: The confusion is she finds the totality of the circumstances supports probable cause. He says it didn't. What do I do?

MR. SMILEY: Well, objectively looking at the situation I disagree with Judge Jefferson respectfully.

THE COURT: That I understand.

MR. SMILEY: Yes, sir. And the officer who was there on the scene never believed he had it; never even contemplated it because he was trying to get the search. That's all this is about is a search. It's not about probable cause. It's stopped for a defective headlight is he believes he sees -- well, he says he saw a plastic bag in the ---

THE COURT: --- which alerted him to the possibility of...

MR. SMILEY: And he never found the bag, Your Honor.

THE COURT: I understand.

MR. SMILEY: I don't believe they had probable cause looking at the totality of the circumstances. My client sat still with a closed backpack between his legs. He never said anything affirmative or otherwise besides to cooperate with the officers to give them his I.D. period. That's all I have, Your Honor.

THE COURT: All right. Well, what you would be asking me to do would be overrule slash write a contradictory order to a motion -- I mean an order which appears to be well-documented. Judge Jefferson heard the same evidence that I did. And although I might have made a different decision -- wait a minute -- although I may have made a different decision based on your argument I

don't think that I can ignore her finding that the evidence is admissible. What were you about to say before I rule?

MR. SMILEY: Yes, sir. What I was going to say is you've heard more evidence. At the pretrial hearing only Officer Erickson was presented by the State and only one video was put into evidence.

We heard additional testimony from Davis and that's important in this case because it established where Mr. Dawson was and established where Mr. Carr was in relation to the car. And it also provided the audio of Mr. Carr who complained as soon as they removed the backpack, Your Honor.

So you have additional evidence. I wouldn't say that you are overruling or changing the judgment of Judge Jefferson based on the same evidence. I believe you have had the opportunity to hear all of the evidence and therefore it would not be inappropriate for Your Honor to make a ruling based on that. That's all I have, Your Honor.

THE COURT: What's the State's position?

MR. STEGALL: Your Honor, the State would just ask that you -- Officer Davis' testimony you know he was unavailable during the suppression hearing so we were unable to put him on the stand. We tried. But his

testimony alone shouldn't persuade Your Honor to overrule Judge Jefferson's ruling. We do not believe that Sergeant Davis' testimony or his in-car video should be enough for you as you say to contradict an order that was already ruled upon. So we would simply ask that you deny the motion, Your Honor.

THE COURT: All right Mr. Smiley, your motion is respectfully denied.

MR. SMILEY: Thank you, Your Honor.

THE COURT: Are there any other motions?

MR. SMILEY: No sir, besides the suppression no sir. Before I say that in respect to the Suppression Motion I've objected about the evidence that Judge Jefferson looked at because I'm still not sure what disk she saw. And that concerns me that the way the procedure was done on that and be another reason to set it aside.

And lastly Your Honor, the delay of 16 months is it certainly couldn't have been fresh in her mind when she comes back 16 months later to issue a ruling. And for all those reasons I understand the situation Your Honor. I'm trying to make sure my client's rights have been protected and to give him a zealous representation. And that's all I have, Your Honor.

THE COURT: You have to make the record. I understand. Do I interpret your motion as a directed

verdict motion?

MR. SMILEY: Yes sir, a directed verdict motion that given everything in the light most favorable to the State I believe it's a product of an illegal search and will continue to argue that vigorously, Your Honor. And that's all I have.

THE COURT: As to that Motion for Directed Verdict I feel the evidence goes beyond that of mere conjecture or suspicion. There is evidence either direct or circumstantial or some combination of both which reasonably tends to prove the guilt of the Defendant or from which that guilt might be logically and reasonably deduced if that evidence is taken in the light most favorable to the State. So therefore I must respectfully deny your Motion for Directed Verdict.

FIFTH AMENDMENT RIGHTS

THE COURT: Now I would like to advise your client of his Fifth Amendment Rights.

[Whereupon, Mr. Dawson stands]

THE COURT: Mr. Dawson, at this time I am going to explain certain of your rights. If you do not understand anything that I say, please let me know. If you want me to explain anything in more detail, please let me know. Do you understand?

MR. DAWSON: I --

THE COURT REPORTER: Speak up, please.

MR. DAWSON: Yes sir, I do.

THE COURT: We've now reached the stage of the trial where you may present your defense. You have the right to claim the protections given to you by the Fifth Amendment to the Constitution of the United States. This Amendment states in part no person shall be compelled in any criminal case to be a witness against himself. This means you cannot be required to testify in this case.

You have the right to testify on your own behalf however no one can make you testify. This is a personal right and no one can waive this right except you. If you decide to testify you will be subject to the same rules that govern other witnesses and you may be examined and cross-examined on any relevant issue in this case.

In addition, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than one year and this Court determines the probative value of admitting this evidence outweighs it's prejudicial effect to you the Solicitor will have the ability to introduce your record to attack your creditability.

If you decide to testify this decision on your part must be freely, voluntarily and intelligently made with knowledge of the protections given to you by the Fifth Amendment to the Constitution and the consequences of your decision to testify.

If you do not testify I will not and cannot give that fact that you did not testify any consideration whatsoever and there is to be absolutely no prejudice to you because you do not testify. It's left entirely up to you whether or not you testify. You may talk to your attorney, your family and friends or anyone else but the final decision will be left entirely up to you. Do you understand what I have explained to you?

MR. DAWSON: Yes, Your Honor.

THE COURT: Do you have any questions about what I've explained to you?

MR. DAWSON: No, I don't.

THE COURT: Have you discussed with your lawyer

whether or not you should testify?

MR. DAWSON: I haven't.

THE COURT: You have?

MR. SMILEY: We spoke earlier but maybe we need to speak again, Your Honor.

THE COURT: All right. You wish to talk to your lawyer more about this?

MR. DAWSON: Yes, sir.

THE COURT: All right.

MR. SMILEY: Could we go back in the jury room for privacy, Your Honor?

THE COURT: Absolutely. Thirty minutes?

MR. SMILEY: Not that long.

THE COURT: Fifteen minutes? I'll expect your answer in 15 minutes.

MR. SMILEY: Yes, sir. Thank you.

THE COURT: Oh hold on, Mr. Smiley.

MR. SMILEY: Yes, sir.

THE COURT: Just stand right there just a minute. Solicitor, are you aware of any impeachable offenses that could be used to impeach this Defendant were he to take the stand?

MR. STEGALL: Court's indulgence.

[Whereupon, Mr. Stegall reviews documents]

MR. STEGALL: No, Your Honor.

THE COURT: Okay. Thank you.

MR. SMILEY: Yes, sir.

THE COURT: We'll stand at ease for 15 minutes.

[Whereupon, Court is in recess from 10:27 a.m. until 10:40 a.m.]

THE COURT: All right Mr. Dawson, I indicated that I would ask you if you wished to testify. Have you had a chance to talk with your lawyer about this?

MR. DAWSON: Yes sir, I did.

THE COURT: Do you wish to testify?

MR. DAWSON: No, sir.

THE COURT: All right. Thank you. Does the Defendant intend to offer any other evidence?

MR. SMILEY: No, sir. I believe we'll stand on this record.

THE COURT: All right. Any final arguments?

MR. STEGALL: Your Honor, I can briefly ---

THE COURT: --- sure ---

MR. STEGALL: --- give a final closing argument.

CLOSING ARGUMENT

BY MR. STEGALL:

The Defendant is charged with trafficking 28 grams to 100 grams, possession with intent to distribute crack cocaine, and possession of a weapon during a violent crime.

You've heard from several officers this week Judge, one being Officer Erickson who testified that he observed a Chevrolet sedan on October 23, 2015 coming from his opposite direction with a burned out headlight. He turned around and initiated a lawful traffic stop on Red Bank Road in the Goose Creek area of Berkeley County.

He identified the driver as Sam Carr and the passenger as this Defendant Ricky Dawson. While speaking to Carr he observed what he believed to be a small baggie used to package narcotics in or near Carr's pocket, which Carr then quickly tried to conceal.

Having a reasonable suspicion of drug activity Erickson briefly extended the stop and asked Carr to step out for further investigation. He explained what he saw and asked for a consent to search. Carr initially asked for the driver's side to be searched but Erickson explained that the consent to search the car included the entire car. Sam Carr agreed to consent to search the entire car. Erickson also testified that had he not

given consent that he would have employed his K-9 which was standing by in Erickson's cruiser. Sergeant Davis then arrives to provide backup and standby with both Carr and Dawson while Erickson conducts the search.

Erickson locates an unlocked backpack in the passenger floorboard. Inside he locates a Crown Royal bag which is also unlocked. Inside the Crown Royal bag he locates several baggies of presumed narcotics. He also locates a scale and a box of Ziploc bags used for packaging narcotics.

He then places the book bag and its contents on the truck of his car. Due to Dawson being on the passenger side he goes to him first. Dawson admits that the white powder substance is, in fact, cocaine. He also informs Erickson that there is a handgun located in the bag. Erickson then asked Dawson who the bag belongs to to which he admits that the bag and its contents are his.

Erickson takes the evidence to Goose Creek P.D. and turns it over to Wendy Myers who secures it. Sandy Favero then takes the evidence from that locker to CPD, Charleston Police Department for testing where they are turned over to Renee Hilton.

Kaitlin Schroeder then takes the contents, the drugs, from that storage locker and tests each bag and reports her findings via the drug analysis report, which

was submitted as Court's exhibit 1. The item 1 is confirmed to be 21 or 27.19 grams of cocaine. Item 2 is confirmed to be 4.68 grams of cocaine. Item 3 is a rock-like substance confirmed to be 1.31 grams of crack cocaine. The total weight on the cocaine is 31.87 grams, which is over the required 28 gram threshold for trafficking; 28 to 100.

The crack cocaine exceeds 1 gram which is prima facie evidence of a possession with intent to distribute. Also there is further evidence of an intention to distribute with the Ziploc bags, the scale.

The Defendant being in possession of the gun while also being in possession of over 28 grams of trafficking is he should be found guilty of possession of a weapon during a violent crime. Under South Carolina 16-160 trafficking is considered a violent offense.

We ask that you find this Defendant guilty on all three counts, Your Honor.

THE COURT: From the defense?

CLOSING ARGUMENT

BY MR. SMILEY:

No, Your Honor. I don't believe I need to make any argument. I've made my argument. We stand by our argument. I've explained to my client the procedure in this case is he of course will appeal.

He wanted an appeals bond and I explained to him under Rule 246 he had a crime that carries more than ten years that he has to ask from the Appeals Court if that's possible. You want me to hold my mitigation -- I know there is only one sentence but I still want to put mitigation at one point. But I guess you need to make a ruling ---

THE COURT: --- no, we'll do a sentencing hearing in just a moment.

MR. SMILEY: Yes, sir.

RULING BY THE COURT

THE COURT: At this point it becomes my responsibility to render a verdict in this case. And as to indictment 2016-GS-08-00114 trafficking cocaine 10 to 28 grams -- 28 grams or more --

[Whereupon, the Court reviews documents]

THE COURT: All right I see. Solicitor, you've added all the cocaine to get the 28 grams, is that correct?

MR. STEGALL: That's correct, Your Honor.

THE COURT: I find that it is trafficking cocaine 28 grams but less than 100 grams I find the Defendant guilty beyond a reasonable doubt.

As to indictment number 2016-GS-08-00115 possession with intent to distribute crack cocaine, crack cocaine or cocaine base I find the Defendant guilty beyond a reasonable doubt.

And as to indictment 2016-GS-08-1116 [sic] possession of a weapon during the commission of a violent crime I find the Defendant guilty beyond a reasonable doubt; guilty on all charges beyond a reasonable doubt.

SENTENCING

THE COURT: At this point I'm prepared to conduct a sentencing hearing. Any objection?

MR. STEGALL: No objection, Your Honor. May I have two minutes to go down and get the sentencing sheets?

THE COURT: Sure. Anything from the Defendant?

MR. SMILEY: Not -- I'd like to make mitigation but there ---

THE COURT: --- we'll do that. We'll do that.

MR. SMILEY: Okay.

THE COURT: We'll stand at ease.

MR. SMILEY: Yes, sir.

[Whereupon, Mr. Stegall exits the courtroom to get the sentencing sheets]

[Off the record momentarily]

[Whereupon, Mr. Stegall reenters the courtroom]

[Whereupon, Mr. Stegall proffers documents to the Court]

[Whereupon, the Court reviews documents]

[Off the record momentarily]

[Whereupon, the Court confers with the court reporter regarding his remarks when giving his ruling]

[Whereupon, the Court reviews documents]

THE COURT: Approach the bench.

[Whereupon, an off the record bench conference is

held]

THE COURT: All right. We'll now proceed with the sentencing hearing. Does the State have -- wish to proceed?

MR. STEGALL: Your Honor, I have certified convictions for the Defendant.

THE COURT: Put them on the record please.

MR. STEGALL: Yes, sir. This Defendant was convicted in 2007. He pled guilty on January 31, 2007 of the offense of possession with intent to distribute cocaine base reduced to possession of cocaine base.

In April 10th, 2014 the Defendant pled guilty to two separate offenses which occurred on two separate dates; the first date being April 18, 2012. The charge of possession with intent to distribute meth and cocaine base was reduced to possession of meth or cocaine base. He pled guilty.

The second offense occurred on 10-16-13 also charged with possession with intent to distribute meth or cocaine base. He pled to possession of meth or cocaine base. I'd like to make these a Court's exhibit if I could, Your Honor.

THE COURT: Go ahead.

[Whereupon, Court's exhibit number 2 is marked by the court reporter]

MR. STEGALL: Your Honor, under South Carolina Code 44-53-470 this Defendant based on his prior convictions these convictions today, the drug convictions are third offenses.

The trafficking carried a mandatory minimum of 25 years up to 30. The possession with intent to distribute crack cocaine third carries a mandatory minimum of 10 up to 30. We would ask Your Honor to sentence him to 25 years.

THE COURT: Mr. Smiley?

MR. SMILEY: Yes sir, Your Honor. With us is Ricky's mother and significant other are here in the courtroom and have been here throughout, Your Honor. Ricky is 38 years old. He's a licensed barber. He's been plying that trade for quite some time and does quite well at it, Your Honor.

He does have prior convictions. I don't know what they were originally charged with; I can only tell you what he pled to. He pled to possessions and received a probationary sentence from Judge Pieper that he completed. And then in 2014 he pled to two convictions two possessions and received probation again.

I believe that that probation Your Honor has been held for the most part during the pendency of this case, which has taken quite a long time. And he understands

that this is a violation of that probation he was placed on in 2014. Your Honor, I know you don't have the discretion to suspend anything and I've explained that to my client.

My client went into this understanding the possible punishments and his rights and what it took to challenge the search. He's intelligently done that. I think you can see from his demeanor during the videos and in court he's always been an extremely respectful young man.

It is -- I am crushed that he is going to prison. He certainly made a mistake. He owned up to his drugs that day and his situation. He has been -- I've known him for over a decade, Your Honor. And during the time that I've known him he has had a substance abuse problem. I have never known him to do anything other than that; as not to be a dealer. I've always known him to have possession weights or close to it.

He certainly made a mistake, Your Honor. He certainly wanted to make sure I told everybody he wants to continue to appeal and ask for an appeals bond and I told him that was understood but I'd certainly mention that Your Honor.

He did 20 days on this case when he was first arrested and has been out since then. He has been out continuously since 2000 -- late or middle of 2015, Your

Honor. I'd ask you to take that into account. I would ask you to give him a 25 year sentence, to put everything concurrently and terminate his probation. Ricky's still got a productive life. I hope that he finds success in his appeals process. But regardless I know he will be an asset wherever he is. That's all I have, Your Honor.

[Whereupon, Mr. Smiley confers with his client]

MR. SMILEY: My client doesn't wish to address you, Your Honor.

THE COURT: Is that correct, Mr. Dawson?

MR. DAWSON: Yes, sir.

THE COURT: All right. Well, I am certainly one to recognize the severity of the law in this case. But the law gives me no choice; and you understand that Mr. Smiley.

MR. SMILEY: Yes, sir.

[Whereupon, the Court reviews documents]

THE COURT: All right Mr. Dawson, with regard to your trafficking case the sentence of the Court is you be committed to the State Department of Corrections for a period of 25 years. You've given credit for 20 days pretrial incarceration.

With regard to your possession with intent to distribute crack the sentence of the Court is you be committed to the State Department of Corrections for a

period of 10 years. And with regard to the possession of a weapon during the commission of a violent crime the sentence of the Court is you be committed to the State Department of Corrections for a period of five years. All sentences to run concurrent. Good luck to you, sir.

MR. SMILEY: As to the probation, Your Honor?

THE COURT: As to probation terminate probation.

MR. SMILEY: Thank you very much, Your Honor.

MR. STEGALL: Thank you, Your Honor.

MR. SMILEY: Thank you, Your Honor. It was very nice to appear in front of you.

[Whereupon, the bench trial concludes at 11:20 a.m.]

STATE OF SOUTH CAROLINA	)	**IN GENERAL SESSIONS COURT**
	)	**INDICTMENT #S: 2016GS0800114-6**
COUNTY OF BERKELEY	)	**WARRANT #S: 2015A08202008785**
STATE OF SOUTH CAROLINA	)	**MOTION TO SUPPRESS AND**
	)	**FOR A HEARING**
-v-	)	
	)	
RICKY MANIGO DAWSON,	)	
Defendant.	)	
	)	

The Defendant by and through the undersigned attorney hereby moves to suppress any and all evidence obtained as a result of the illegal search and seizure of the Defendant's backpack conducted by the Police on or about October 22, 2015. This Motion is made on the grounds that said search was conducted in violation of the Fourth Amendment of the United States Constitution and Article I, Section 10 of the South Carolina Constitution.

FACTS OF THE CASE

The facts upon which this Motion is made are taken from the video taped recording of the stop of the Driver, Sam Carr that begins at the stop of the vehicle driven by Sam Carr in which the Defendant, Ricky Dawson, is a passenger and the joint report of the Police Department. No supplemental reports, notes, summaries of interviews or any additional information have been supplied to the Defendant and the Defendant specifically reserves the right to challenge any evidence presented by

the State in supplement to or contradiction of the evidence provided in response to the Defendants Rule 5 Discovery Requests.

On October 22, 2015 at approximately 10:25 p.m. the automobile driven By Sam Carr, in which the Defendant, Ricky Dawson, was a passenger was stopped by the Goose Creek Police Department for a defective headlamp. Upon contact with the driver, Patrolman Erickson requested permission to search the car. After some explanation by the Officer to Mr. Carr, the officer obtained permission from the Driver to search the car. The Defendant was the front seat passenger and had his backpack between his legs on the floorboard of the front passenger seat. The driver attempted to limited the search to just his area of the car. The Officer finally was able to obtain consent from the driver for he car. At no point, before the search was the Defendant ask for permission to search his backpack. Before the search was started, the Defendant, was removed from the car and his backpack was left on the floorboard. The driver told the Officer as he pulled the backpack out of the car he had not given consent for the search of the Defendant's backpack. Upon searching the backpack, the Officer found a closed green velvet bag with Cocaine, Crack Cocaine, and drug paraphernalia inside. Additionally, a pistol was located in the backpack. Once the contraband was located, the Officer only then asked Mr. Dawson if the backpack was his property. The Defendant acknowledged ownership and was placed under arrest.

ISSUE:

The sole issue before the Court is whether a police officer may search a backpack belonging to a passenger in an automobile after receiving on the driver's consent to search the vehicle.

As noted in Footnote 5 of *Who has more privacy? State v. Brown and its effect on South Carolina Criminal Defendants,* 62 S.C. L. Rev. 671 (Summer 20011), (citing generally State v. Brown, 389 S.C. 473, 479, 698 S.E.2d 811, 814-15 (Ct. App. 2010): "It is well established that warrantless searches and seizures by the police are per se unreasonable, unless they fall within one of several recognized exceptions. These exceptions include: (1) search incident to a lawful arrest; (2) hot pursuit; (3) stop and frisk; (4) automobile exception; (5) plain view doctrine; (6) consent; and (7) abandonment." (citation omitted) (citing State v. Weaver, 361 S.C. 73, 80-81, 602 S.E.2d 786, 790 (Ct. App. 2004). None of these recognized exceptions apply to the seizure and search of the Defendant in the case at bar.

Defendant herein argues that Officer Erickson violated his Fourth Amendment right to be free from unreasonable searches by searching the backpack, which was located on the front seat passenger floorboard of the automobile in which he was riding, without his consent. He contends that it was unreasonable under the circumstances for Officer Erickson to believe that the driver's consent to search the vehicle extended to the backpack.

Although there is no case on point in the State of South Carolina and this appears to be an issue of first impression for South Carolina, State v. Harding, 282 P.3d 31, 2011 UT 78, (S. Ct. 2011) is directly on point. Further, as Harding was analyzed solely under consideration of principles outlined in the Fourth

Amendment to the United States Constitution, it follows that the reasoning expressed in Harding should apply to the case at bar.

As the Court in Harding articulated so clearly:

"The Fourth Amendment to the United States Constitution prohibits unreasonable searches. See U.S. CONST. amend. IV. A warrantless search is per se unreasonable unless it comes within one of a few recognized exceptions. *Kentucky v. King*, --- U.S. ----, ----, 131 S.Ct. 1849, 1856, 179 L.Ed.2d 865 (2011). One such exception applies where the officer has consent to search the property. *Id.* at 1858. Consent may come from the person whose property is to be searched, *Georgia v. Randolph*, 547 U.S. 103, 109, 126 S.Ct. 1515, 164 L.Ed.2d 208 (2006), from a third party who has common authority over the property, *Id.*,4 or from a third party who has apparent authority to consent to a search of the property, *Illinois v. Rodriguez*, 497 U.S. 177, 186, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990).

Whether a third party has actual common authority over property is determined by the test articulated in *United States v. Matlock*, 415 U.S. 164, 94 S.Ct. 988, 39 L.Ed.2d 242 (1974). The test is whether the third party has mutual use and control of the property such that the other party has "assumed the risk that [the third party] might permit the [property] to be searched." *Id.* at 171 n. 7, 94 S.Ct. 988. 6789. Whether a third party has "apparent authority" to consent to a search of another's property is governed by the standard articulated by the United States Supreme Court in *Rodriguez*, 497 U.S. 177, 110 S.Ct. 2793. Under that standard, a warrantless search is valid where the police reasonably, but mistakenly, believe that a third party consenting to a search has the authority to do so. *Id.* at 186, 110 S.Ct.

2793. The test is an objective one: a police officer's belief is reasonable when "the facts available to the officer at the moment ... warrant a man of reasonable caution in the belief that the consenting party had authority over the" items to be searched. *Id.* at 188, 110 S.Ct. 2793 (alteration in original) (internal quotation marks omitted). This standard leaves room for reasonable mistakes on the part of police officers. The requirement "is not that [officers] always be correct, but that they always be reasonable." *Id.* at 185, 110 S.Ct. 2793. In some circumstances, the facts surrounding a driver's consent to search could "be such that a reasonable person would doubt" the driver's authority "and not act upon it without further inquiry." *Id.* at 188, 110 S.Ct. 2793. But not every possible "doubt" requires further inquiry. The ultimate touchstone is reasonableness, and the ultimate question is therefore whether any doubt an officer may have is sufficient to undermine a reasonable belief that the driver had authority to consent to the search."

The *Harding* Court noted that "[t]he *Rodriguez* apparent authority rule applies only to mistakes of fact; *Rodriguez* cannot "validate ... a search premised upon an erroneous view of the law." *United States v. Brown*, 961 F.2d 1039, 1041 (2d Cir.1992) (per curiam). Reasonableness "is measured ... by examining the totality of the circumstances," *Ohio v. Robinette*, 519 U.S. 33, 39, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996), and the burden is on the State to prove the reasonableness of the officer's actions, see *Rodriguez*, 497 U.S. at 181, 110 S.Ct. 2793."

In the case at bar, as in *Harding*, the State does not contend that the driver had actual common authority to consent to the search of Defendant's backpack, nor is there evidence that the driver possessed such authority. Rather, just as in

Harding, "the State's only argument is that the warrantless search was constitutionally permissible under the *Rodriguez* apparent authority doctrine. Thus, this Court should uphold the search of Defendant's backpack only if Officer Erickson could have reasonably believed that the driver either owned the backpack or had common authority over them." *Id.*

Our Courts, like the Utah Court before *Harding*, have never addressed the applicability of the apparent authority doctrine in the context of a search and seizure case. Further, as *Harding* noted, "although the United States Supreme Court sketched the legal contours of the doctrine in *Rodriguez*, the Court has not applied the apparent authority framework in the automobile context." But, as *Harding* notes, other state and federal courts have. "These courts have engaged in a fact-specific, totality-of-the-circumstances inquiry to determine whether it would have been reasonable for the police officer to believe that the driver had the authority to consent to the search of the passenger's belongings."

As *Harding* notes, "[c]ourts applying *Rodriguez*'s apparent authority doctrine are generally in agreement that an officer's search of a passenger's belongings based only on a driver's consent is unreasonable where the facts clearly indicate the driver has no authority over the items to be searched. For example, courts are unanimous in holding that it is unreasonable for an officer to search a female passenger's purse after obtaining only the consent of a male driver because it is unreasonable to believe that the man has authority over the woman's purse. *See United States v. Welch*, 4 F.3d 761, 765 (9th Cir.1993); *State v. Friedel*, 714 N.E.2d 1231, 1240–41 (Ind.Ct.App.1999); *State v. Caniglia*, 1 Neb.App. 730, 510 N.W.2d 372, 374 (1993);

State v. Zachodni, 466 N.W.2d 624, 628 (S.D.1991), abrogated on other grounds by *State v. Akuba*, 686 N.W.2d 406 (S.D.2004). And a Florida court held that it was unreasonable for an officer to search a passenger's fanny pack based only on the driver's consent where the officer had observed the passenger sitting in the car with the fanny pack on her lap. *Brown v. State*, 789 So.2d 1021, 1021–22 (Fla.Dist.Ct.App.2001). Similarly, a federal court held that it was unreasonable for an officer to search a passenger's briefcase in the trunk of a car without obtaining the passenger's consent after the driver informed the officer the briefcase belonged to the passenger. *United States v. Infante–Ruiz*, 13 F.3d 498, 505 (1st Cir.1994)."

As the *Harding* Court so soundly articulated, "[w]hen ownership of the items searched is more ambiguous, the reasonableness of an officer's reliance upon the driver's consent often presents a closer question." The *Harding* Court analyzed many similar factual situations related to this very issue as follows:

"[I]n *People v. James*, 163 Ill.2d 302, 206 Ill.Dec. 190, 645 N.E.2d 195 (1994), the Illinois Supreme Court considered the reasonableness of an officer's search of a passenger's purse after obtaining the driver's consent to search the vehicle. The driver of the vehicle and two passengers were women. *Id.*, 206 Ill. Dec. 190, 645 N.E.2d at 197. The officer directed the driver and the passengers to exit the car. *Id.* Upon exiting the vehicle, the front seat passenger, Ms. James, left her purse on the seat. *Id.* After obtaining the driver's consent to search the vehicle, the officers opened Ms. James' purse and found cocaine. *Id.* The court concluded that the evidence obtained pursuant to this search must be suppressed because the officer could not reasonably have determined that the driver had authority to consent to a

search of Ms. James' purse. *Id.*, 206 Ill.Dec. 190, 645 N.E.2d at 203. In reaching its conclusion, the court emphasized that the officers should have realized that the purse could have belonged to any one of the three women in the car. *Id.* The court also found it significant that the purse was found on the passenger seat, not on the driver's seat. *Id.* In addition, according to the court, "[i]t would have been unreasonable for the officer to believe that [the driver] shared some common use in the purse with one of the passengers in the vehicle, since a purse is generally not an object for which two or more persons share common use and authority." *Id.* Finally, the court emphasized that Ms. James was unaware of the driver's consent, did not know the purpose for the search, and was unaware that she was being asked to exit the vehicle so that the officers could search the automobile. *Id.* Based on the totality of the circumstances, the court concluded that the officer "should have ascertained who owned the purse he found in the ... vehicle before he opened and searched the contents of the purse." *Id.*"

The *James* case is particularly applicable herein because Defendant herein was also unaware of the driver's consent, did not know the purpose for the search and was unaware that he was being asked to exit the vehicle so that officers could search the automobile.

As the *Harding* Court notes, "[t]he recent case of *United States v. Munoz*, 590 F.3d 916 (8th Cir.2010), presents another example where circumstances surrounding the ownership of the property to be searched were ambiguous. In that case, after being stopped for speeding, the driver provided the officer with a copy of a rental agreement indicating that the vehicle had been rented by the passenger,

Smith. *Id.* at 919. The driver, Munoz, whose license had been suspended, told the officer that he had taken over driving for Smith after Smith had become tired. *Id.* After directing Munoz to the passenger seat of his police cruiser, the officer asked Munoz for permission to search the vehicle and told Munoz that he would also ask Smith because she had rented the vehicle. *Id.* Munoz replied that the officer would have to ask Smith. *Id.* While Munoz remained in the cruiser, the officer returned to the vehicle and asked Smith for permission to search it. *Id.* at 919–20. Smith consented to the search. *Id.* at 920. Upon searching a backpack on the floorboard of the passenger seat, the officer found a firearm, drugs, and drug paraphernalia. The backpack belonged to Munoz. *Id.* The court concluded that Munoz's Fourth Amendment rights were violated when the officer conducted a warrantless search of Munoz's backpack without first obtaining his consent. *Id.* at 923. The court reasoned that "there were two people in the car who each had been sitting in the passenger seat during the trip." *Id.* In such a circumstance, the officer "did not reasonably believe that Smith had authority to consent to the search of the backpack." *Id.* Because the backpack could logically have belonged to either Smith or Munoz, the officer could not reasonably rely on Smith's consent alone; rather, the officer should have determined who owned the backpack before proceeding to search it. See *Id.* Similarly, in *State v. Frank*, 650 N.W.2d 213 (Minn.Ct.App.2002), the Minnesota Court of Appeals concluded that an officer could not reasonably conclude that a driver's consent to search a vehicle extended to the passenger's suitcase located in the trunk. The vehicle contained three occupants, the passenger did not hear the driver give consent to search the vehicle, and the trunk contained

two suitcases. *Id.* at 215. The court held that the evidence obtained pursuant to the search must be suppressed because, under these circumstances, there was "no factual basis for a finding of apparent authority of the driver to consent to the search of [the passenger's] suitcase." *Id.* at 219. In *Norris v. State*, 732 N.E.2d 186 (Ind.Ct.App.2000), the court concluded that a trooper's search of a passenger's backpack was objectively unreasonable. There were three occupants in the vehicle. *Id.* at 187. The trooper obtained the driver's consent to search the vehicle out of the hearing of the passengers. *Id.* The officer found a backpack on the back seat of the car next to where the passenger had been sitting. *Id.* Inside the backpack, the officer found a handgun. *Id.* Because the backpack was located in the back seat of the vehicle, the court concluded that a reasonable trooper would "realize that the backpack might belong to one of the passengers rather than [the driver]." *Id.* at 190. The court also found that "[i]t would have been unreasonable for the trooper to believe that [the driver] shared some common use in the backpack with one of the passengers in the vehicle, since a backpack, like [a] purse ..., is generally not an object for which two or more persons share common use and authority." *Id.* at 191. Finally, the court stressed that the passenger did not know that the driver had given the trooper consent to search the vehicle. *Id."*

Harding also accurately outlines the situations in which the Courts have not resolved ambiguous ownership situations in favor of the Defendant. However, none of those situations are factually similar to the case at bar.

Just as *Harding* notes, "courts measure the reasonableness of an officer's action against a variety of factors when applying the apparent authority doctrine in

the context of a vehicle search. The type of container searched is often significant." As *Harding* concluded, "a backpack, like a suitcase, is a repository for personal items when one wishes to transport them." *United States v. Meier*, 602 F.2d 253, 255 (10th Cir.1979) (internal quotation marks omitted). Thus, though not as personal in nature as a purse, a backpack is a container suggesting individual, not common, ownership. See *Norris*, 732 N.E.2d at 191 (stating that "a backpack, like [a] purse ..., is generally not an object for which two or more persons share common use and authority")." *Id.*

As *Harding* notes, the Courts that have addressed this issue have routinely considered the conduct of the passenger in connection with the search. However, here as noted in *Harding* the reasonableness of the officer's actions is not increased when the passenger's silence "can be attributed to a lack of awareness that his belongings were about to be searched." *Id.*

Other areas Court's addressing the issue have considered are as follows:

(a) Whether there is anything on the exterior of the container, such as identification tags, that would indicate that it does not belong to the driver;

(b) The number of occupants in the vehicle and

(c) The location of the container in the vehicle

In the case at bar, considering the totality of the circumstances, as well as the factors the *Harding* Court and other Courts across the Nation which have considered when analyzing this specific issue, this Court should find that it was unreasonable

for Officer to assume the driver's consent extended to the Defendant's backpack for the following reasons:

(a) There were two people in the vehicle so the probability that the bag in the vehicle belonged to the passengers is high and is was not reasonable for the Officer to believe that all the bags in the vehicle belonged to the driver.

(b) Although the bag lacked identifying labels, as the *Harding* Court noted, although this is a factor for consideration, it is limited in "gauging the reasonableness of the officer's actions because it is hardly commonplace for people to place labels on the exterior of their belongings."

(c) Most significantly, the location in the vehicle of the backpack is also significant. The backpack was located on the passenger floorboard between the Defendant's legs. It is certainly reasonable to assume that the front seat passenger would place his belongings in the floorboard, between his legs, easily accessible to and by him and

(d) It significant that the driver provided the Officer with only general consent to look in the vehicle. He did not represent authority over the personal items in the vehicle belonging to passenger.

Taken together, all the factors in this case, as in *Harding,* weigh in favor of a finding that the Officer could not have reasonably believed that the driver had authority to consent to a search of the Defendant's backpack. Also, in considering the conduct of the Defendant at the time of the search it appears that the Defendant was not aware of the driver's consent before the search and therefore neither

acquiesced to the search nor failed to object to the search. Therefore the search violated the Defendant's rights under the Fourth Amendment of the United States Constitution and Article I, section 10 of the South Carolina Constitution and, as such, all evidence obtained as a result of the illegal search and seizure of the Defendant's backpack should be suppressed.

Respectfully submitted.

Copy

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STATE OF SOUTH CAROLINA	**IN THE COURT OF GENERAL SESSIONS**
	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	Case No(s): 2016-GS-08-114-116
	Warrant No(s): 2015A0820200872-874
STATE OF SOUTH CAROLINA	
vs.	**ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS**
RICKY MANIGO DAWSON	
Defendant	

Presiding Judge:	Hon. Deadra L. Jefferson
State's Attorney:	Bart Stegall, Esq.
Defendant's Attorneys:	James Smiley, Esq.
	Laree Hensley, Esq.
Date of Hearing:	March 14, 2018
Court Reporter:	Ruth Weese

This matter came before the Court on March 14, 2018, pursuant to the Defendant's Motion to Suppress, filed with the Clerk of Court on March 12, 2018, and received by the Court on the same date. Defendant moves the Court to suppress any and all evidence obtained by the State during a search and seizure of Defendant's backpack on October 22, 2015. The State objects to the exclusion of this inculpatory evidence on the basis that the search was within the purview of the Fourth Amendment. Present at the hearing to argue this Motion were the Defendant, Ricky Manigo Dawson, and his attorneys, James Smiley, Esquire and Laree Hensley, Esquire. Bart Stegall, Esquire was also present on behalf of the State of South Carolina. The State called Goose Creek Police Department K-9 Officer Alexander Erickson as its sole witness. The Defense did not call any witnesses.

After reviewing the relevant case law, the testimony, considering the briefs submitted by the parties, and the arguments of counsel, Defendant's Motion to Suppress is DENIED.

FACTUAL BACKGROUND

This case arises out of a traffic stop occurring on October 22, 2015, in the Goose Creek area of Berkeley County, South Carolina. On October 22, 2015, at approximately 10:25 p.m., Officer Alexander Erickson of the Goose Creek Police Department conducted a traffic stop on a vehicle owned and operated by Sam Carr[1] due to a defective headlight. The Defendant, Ricky Manigo Dawson, was a passenger in this vehicle. Upon contact with the vehicle, Officer Erickson informed the driver of the reason for the stop and then proceeded to ask the driver for his license, registration, and insurance information. During this conversation, Officer Erickson observed a plastic sandwich baggie that, based on his rational perception and experience, "resembled a sandwich baggie that contained drugs" on the driver's lap. The driver then appeared to furtively place the "baggie" in his pants pocket when asked for his documentation. Officer Erickson testified the way the baggie was "twisted-up" on one end heightened his suspicion that something was going on in the vehicle.

Officer Erickson attempted to identify the "suspicious" item by asking Mr. Carr, "What's that little bag right there that's hanging out [of] your pocket?" Mr. Carr replied "Hmm..." and eventually produced some of the contents from his pocket. Officer Erickson continued to inquire about the contents of the baggie, specifically observing that the baggie looked like it contained narcotics. Officer Erickson further testified that the baggie coupled with Carr's changing explanations and inability to give clear concise answers raised his suspicions. Mr. Carr, in turn, continued to deny having a plastic baggie or drugs on his person. In the interim Officer Erickson told Carr and Dawson "I know what I saw...but it wasn't any of the wrappers that you pulled out. So we can go about it one of two ways, I can have you come out. I run my dog around the car. My

[1] Sam Carr was not called as a witness. Neither the State nor the Defense offered a reason as to why his presence and testimony was not procured for the hearing.

dog's gone to alert on narcotics." Then Officer Erickson reiterates: "What I am trying to understand what that bag was because it was not any of the stuff that you just threw right there on the side." Carr then replies: "I am telling you here. I'm sorry you can do your traffic stop. You can bring the dog. I didn't do anything. I don't have anything." When the driver continued to give inconsistent answers and exhibited nervous behavior Officer Erickson requested assistance for officer safety. Officer Davis arrived on the scene shortly thereafter.

Upon Officer Davis' arrival, Officer Erickson asked the driver to step out of the vehicle and approach the police cruiser. Mr. Carr complied with this request, and submitted to a Terry frisk of his person. Officer Erickson further testified that consistent with Terry he did not exceed the pat down by going into Carr's pants pockets. Officer Erickson then initiated a conversation with Mr. Carr in which he asked if a search of the vehicle would reveal the presence of narcotics, and asked if Carr minded him "look[ing] in that little front area of the vehicle?" Officer Erickson testified that Carr's initial response imposed no limits but instead he offered to limit the search to put Carr "at ease." Mr. Carr consented to a search or a "personal check of my area" of the vehicle, saying that "I am not going to put him [Defendant] in the situation." However, immediately after Carr gave consent for a search of "that little front area" of the vehicle. Officer Erickson then expanded his request and asked for permission to search the entire vehicle. In speaking with Officer Erickson Mr. Carr stated: "I know there is nothing in my car. In my car I know there are no narcotics in my car." Officer Erickson says to Carr: "So if I pull him out would you consent to having me looking throughout the whole car?" To which Carr responds: "yes". Mr. Carr, after continued conversation with Officer Erickson, gives consent for the officers to search the entire vehicle. Mr. Carr states: "I really don't... I have no objections. I just want to speed up the process."

Accordingly, the officers removed the Defendant from the vehicle and frisked him pursuant to Terry v. Ohio before commencing the search of the vehicle. Mr. Dawson was then told to sit on the hood of Officer Erickson's patrol car with Officer Davis while the search was conducted. During the ensuing search of the vehicle, Officer Erickson located a zipped, black backpack on the front passenger floorboard of the vehicle. Officer Erickson unzipped the backpack and searched its contents pursuant to Mr. Carr's consent to search the entire vehicle. Upon searching the backpack, Officer Erickson found a green, velvet, drawstring bag similar to a "Crown Royal" bag in the backpack. Officer Erickson opened the drawstring bag wherein he observed a white bag with a white, powder-like substance and two additional bags with a yellow, grain-like substance and drug paraphernalia. Officer Erickson testified at the hearing as to his belief that these substances were either cocaine or crack cocaine.

Upon discovery of the drugs Officer Erickson immediately halted his search of the backpack and detained the Defendant. Officer Erickson then proceeded to question the Defendant, about the backpack. Specifically, Officer Erickson notified the Defendant that he had located "a black bag on your side [of the car] directly in front of the seat" and asked whether the Defendant was aware of the item. The Defendant replied in the affirmative, and Officer Erickson followed-up by asking the Defendant if he was the owner of the bag. The Defendant confirmed that the bag did, indeed, belong to him. Officer Erickson then asked the Defendant if he knew what was inside of the bag. Defendant indicated that the backpack contained drugs and a (previously undiscovered) pistol. Upon this admission, Officer Erickson read the Defendant his Miranda rights.

Officer Erickson then resumed his search of the backpack in order to locate the pistol. During this search of the backpack, Officer Erickson inquired as to the location of the pistol and the Defendant advised him it was in the "middle area" of the backpack. Officer Erickson ultimately

located the gun in the backpack, retrieved it, and ran its serial number. After he completed this task, Officer Erickson continued to question the Defendant about the contents of the backpack. The Defendant reiterated that it was his backpack and "his stuff" in the backpack. Mr. Carr, likewise, attributed ownership of the bag to the Defendant, but denied knowledge of its contents. The Defendant was then placed under arrest at the scene.

Defendant was indicted at the January 2016 term of the Berkeley County Grand Jury of the following charges: (1) Trafficking in Cocaine 28-100 grams, Third offense (Indictment #:2016-GS-08-114); (2) Possession with Intent to Distribute Crack Cocaine, Third offense (Indictment #:2016-GS-08-115); and (3) Possession of a Weapon during the Commission of a Violent Crime (Indictment #:2016-GS-08-116)[2]. On March 12, 2018, the Defendant filed a Motion to Suppress the evidence obtained by the State as a result of the search and seizure of the Defendant's backpack on October 22, 2015. This motion seeks relief on the grounds that the search of the Defendant's backpack violated the Fourth Amendment of the United States Constitution and Article I, Section 10 of the South Carolina Constitution.

LAW

The Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." U.S. Const. amend. IV. The fundamental purpose of the Fourth Amendment is to protect the legitimate expectations of privacy that citizens possess in their persons, their homes, and their belongings. Ybarra v. Illinois, 444 U.S. 85, 91, 100 S. Ct. 338, 342 (1979). The principles of the Fourth Amendment are applicable to the States through the due process clause of the Fourteenth Amendment since "the security of one's privacy against arbitrary invasion by the [government] is basic to a free society."

[2] Defendant has previous convictions for the following: Possession of Cocaine Base in 2007 and two (2) counts of Possession of Cocaine Base in 2014.

Stefanelli v. Minard, 342 U.S. 117, 119, 72 S. Ct. 118, 119–20 (1951). The South Carolina Constitution also provides a safeguard against unlawful searches and seizures in parallel with the protection of the Fourth Amendment. See S.C. Const. art. I, § 10; See also State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001).[3]

The Fourth Amendment seeks to balance the individual privacy interests of citizens against the opposing interests of the government in crime prevention and detection and in officer safety. Dunaway v. New York, 442 U.S. 200, 208, 99 S. Ct. 2248, 2254 (1979). Thus, the ultimate measure of the constitutionality of a search under the Fourth Amendment is reasonableness. Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 652, 115 S. Ct. 2386, 2390 (1995). Reasonableness generally requires the obtaining of a judicial warrant, supported by probable cause, before the search or seizure of persons or property. Id. Searches and seizures conducted without a warrant are, therefore, considered presumptively unreasonable absent a recognized exception to the warrant requirement. Kentucky v. King, 563 U.S. 452, 459, 131 S. Ct. 1849, 1856 (2011). There are several exceptions to the warrant requirement currently recognized by the U.S. Supreme Court: "(1) search incident to a lawful arrest; (2) hot pursuit; (3) stop and frisk; (4) automobile exception; (5) plain view doctrine; (6) consent; and (7) abandonment." See, e.g., State v. Dupree, 319 S.C. 454, 456, 462 S.E.2d 279, 281 (1995). The burden of establishing the existence of circumstances constituting an exception to the general prohibition against warrantless searches and seizures is upon the State. State v. Weaver, 361 S.C. 73, 81, 602 S.E.2d 786, 790 (Ct. App. 2004). The State must establish that the search in question comports with the Fourth Amendment since evidence obtained as the

[3] Article I, Section 10 of the South Carolina Constitution provides: "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained."

result of an unconstitutional search is inadmissible by the State at trial in both state and federal court. See Id.

The exclusionary rule, a judicial remedy created by the U.S. Supreme Court, bars the State from introducing evidence obtained in violation of the Fourth Amendment. State v. Brown, 401 S.C. 82, 88, 736 S.E.2d 263, 266 (2012). "Exclusion is not a personal constitutional right, nor is it designed to redress the injury occasioned by an unconstitutional search." Davis v. U.S., 564 U.S. 229, 236, 131 S. Ct. 2419, 2426 (2011). The rule's sole purpose is to deter future Fourth Amendment violations. Id. Because "exclusion enacts a heavy toll on both the judicial system and society at large, the deterrence benefits of suppression must outweigh its heavy costs for exclusion to be deemed appropriate." Brown, 401 S.C. at 88, 736 S.E.2d at 266 (citing Davis, 564 U.S. at 236, 131 S. Ct. at 2427). The admission or exclusion of evidence under the exclusionary rule is left to the sound discretion of the trial court. Id. at 87, 736 S.E.2d at 265.

ANALYSIS

The Defendant, Ricky Dawson, seeks to suppress evidence obtained during a search of his backpack by the Goose Creek Police Department on October 22, 2015. Defendant argues that the Goose Creek Police Department violated his Fourth Amendment and state constitutional right to be free from unreasonable search and seizure by searching his backpack, which was located on passenger floorboard of the vehicle, without his consent. In response, the State argues that the search was constitutional because the owner/driver of the vehicle consented to a police search of the vehicle. The State also contends that the Goose Creek Police Department had probable cause to search the vehicle and the contents therein. The Court must therefore consider two distinct questions in order to determine the overall constitutionality of the search: first, whether the police officer was permitted to search the vehicle and its contents, including those belonging to the

passenger, pursuant to the consent of the owner/driver; and second, whether there was probable cause to search the vehicle regardless of consent.

With regard to the issue of consent, the Defendant disputes whether the owner of the vehicle had the authority to consent to a search of the car's contents inclusive of his property as a passenger contained in the vehicle, namely his backpack. Both parties concede that the driver consented to a search of the entire vehicle; however, they differ in that the State contends that the driver's consent allowed for a search of the entire vehicle and all items therein, including Defendant's possessions, whereas the Defendant argues that the consent of the driver to search did not extend to a search of the passenger's backpack contained in the vehicle. Our Courts have clearly recognized that passengers, no less than drivers, possess a reduced expectation of privacy with regard to the property they transport in cars. U.S. Const. amend. IV.; See Wyoming v. Houghton, 119 S. Ct. 1297, 526 U.S. 295 (1999). Versus the heightened protection that is afforded against searches of one's person. U.S. Const. amend. IV. This necessarily begs the question: who can lawfully consent to a search of property under our Fourth Amendment jurisprudence?

THE ISSUE OF CONSENT

Our courts "have long approved consensual searches because it is no doubt reasonable for the police to conduct a search once they have been permitted to do so." Fla. v. Jimeno, 500 U.S. 248, 250–51, 111 S. Ct. 1801, 1803, 114 L. Ed. 2d 297 (1991) (citing Schneckloth v. Bustamonte, 412 U.S. 218, 219, 93 S. Ct. 2041, 2043, 36 L.E2d 854 (1973)). Furthermore, "[t]he standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of "objective" reasonableness-what would the typical reasonable person have understood by the exchange between the officer and the suspect?" Id. at 251, 111 S. Ct. at 1803-04 (citing Illinois v. Rodriguez, 497 U.S. 177, 183-89, 110 S. Ct. 2793, 111 L.Ed.2d 148 (1990). The exchange that yielded the consent in the present action took place between Mr. Carr, the owner/driver, and Officer Erikson.

According to the Supreme Court in Jimeno, the scope of the authorized consent may be limited by the driver of the vehicle. See Jimeno, 500 U.S. at 252, 111 S. Ct. at 1804 (1991) (holding that a general consent to search the car included consent to search containers within the car since no explicit limitation was placed on the scope of the search). In other words, the driver has the authority to restrict an Officer's search to certain areas or containers within the vehicle, absent probable cause. Here, Mr. Carr, the owner/driver and initial suspect can be heard on the dash cam consenting to the search of the vehicle by Officer Erikson.

The following exchange took place between Officer Erickson and Mr. Carr:

Officer: I am not going to sit here and waste your time my time anybody else's time if that really was that little wrapper that's fine and what it looked like to me was a little baggie that the kind you put like marijuana in .....
Carr: Sir.
Officer:.... Cocaine, etc. and I just saw it sitting right there.
Carr: Sir I...I understand. I wouldn't...you got to understand I wouldn't.
Officer: Do you have any objection to me looking in that little front area of the vehicle?
Carr: What how (inaudible) ...What are you talking about right where I was sitting at?
Officer: Yeah do you mind if I..
Carr: No, no right where I was....listen right where I was sitting at if you.. No, listen you can check where I was sitting at I know.... I am consenting to you, you asked to do a personal check of my area. My passenger like I am saying I am not going to put him in the situation like that is what I am saying.
Officer: Here's the thing man he's in the car, he... How well do you know him?
Carr: We friends, like he cut my hair. Like I said he my barber. He cool. His car is in the shop. I was taking him...giving him a ride home.
Officer: Do you think that it would be good seeing that you're a truck driver, with a CDL...
Carr: No it's not good.
Officer: That you rolling around with someone that might have something on them... so if...
Carr: No, I am not saying that. I am not even putting him...I don't even know...
Officer: Well that's ok. That's what I am saying if there is something that is on his side it's on his side...
Carr: No, No, No there's nothing on his side. I know there is nothing in my car. In my car I know there are no narcotics in my car.
Officer: So if I pull him out would you consent to having me looking throughout the whole car?
Carr: Yes.
Officer: And then whatever is on him is on him.
Carr: No I've already (shakes head).
Officer: That's what the whole thing is.
Carr: ...I am talking about my car. That's the only thing I can account for is my car.

Officer: Ok, that's fine. So I can have him get out and you're allowing me to go into your car right?
Carr: I guess man if this is going to speed up the process. If you're going to search my little area that's what I am referring to that little area… but…
Officer: Well I am asking you for the rest of the car….that's showing that you know…it's your choice.
Carr: …I really don't…I have no objections. I just want to speed up the process.
Officer: Ok as long as there is nothing else in the car and you are allowing me to do it. I will run through the car real quick and then send you on your way.
Carr: (Hands up then pointing both arms beckoning toward the vehicle) I promise…. just the car right.
Officer: Yeap.
Carr: Ok…[4]

Mr. Carr then says to Mr. Dawson: "I gave him permission to search the car where I was sitting at."[5] The dashcam video corroborates that when Carr made this statement to Dawson Officer Erickson had already began the search and was inside the vehicle. Officer Erickson testified that Carr and Dawson were within "eyesight" of one another as he searched the vehicle.

At first, Mr. Carr seems to agree to Officer Erickson's offer to limit the scope of the search to the area where he, the driver, was sitting. Then after an exchange with Officer Erickson Mr. Carr acquiesces to Officer Erickson's request to search the entire vehicle. Mr. Carr makes no mention of the Defendant's backpack, but explicitly authorizes a search of his vehicle.

The Court in Jimeno held that "it was objectively reasonable for [a] police to conclude that [a] general consent to search [a] car included consent to search containers within that car which might bear drugs." Jimeno, 500 U.S. at 251, 111 S. Ct. at 1804. The Supreme Court has made it

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[4] The dashcam video was admitted into the record as State's Exhibit #1 for the sole purpose of the suppression hearing. State v. Pressley, 288 S.C. 128, 341 S.E.2d 626 (1986). This ruling is not intended to be binding on the trial court as the admissibility of evidence is solely in the discretion of the trial court. The Defense objected to the admission of the dashcam video. However, it is clear from defense counsel's statements that he intended to admit Officer Erickson's dashcam video if the State had not sought to introduce it. The State also sought introduction of Officer Davis's dashcam video. However, The Court excluded the dashcam video as Officer Davis was not present or available to testify. The State represented that they had made efforts to locate and procure the attendance of Officer Davis all to no avail.
[5] The Court notes Carr's statement to Dawson is contrary to the consent to search the vehicle given directly to Officer Erickson outside of Dawson's presence.

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abundantly clear that "[p]assengers, no less than drivers, possess a reduced expectation of privacy with regard to the property they transport in cars." Wyoming v. Houghton, 526 U.S. 295, 296, 119 S. Ct. 1297, 1298, 143 L. Ed. 2d 408 (1999) (holding that a search of passenger belongings was proper by police with probable cause). As such the Defendant including his property was subject to a reduced expectation of privacy while occupying Mr. Carr's vehicle. The Defendant contends that even if his expectation is significantly reduced in a vehicle, he argues this Court should expand South Carolina precedent and adopt the "apparent authority" standard for consent articulated in the U.S. Supreme Court's holding in Rodriquez. In essence he argues the standard setting forth the parameters on who may consent to the search in a residence should be applied in the context of an automobile stop. The Court would note, initially, this seems a compelling argument but the Defendant's reliance on Rodriguez in the context of an automobile stop is misplaced. Further the Court can find no precedent supporting the extension of the heightened expectation of privacy recognized by our courts for a residence extending to a vehicle stop.

In Rodriguez the U.S. Supreme Court held in the context of *real* property, that consent to search may be given by: (1) the individual whose property is to be searched; (2) a third party who has common authority over the property; (3) or a third party who has apparent authority to consent to a search of the property. Rodriguez, 497 U.S. at 186, 110 S. Ct. at 2800. Under this standard, a warrantless search is valid upon a *residence* where the police reasonably, but erroneously, believe that a third party consenting to the search has the authority to do so. Id. at 186, 110 S. Ct. at 2800 (emphasis added). In this context, the determination of consent "must be judged against an objective standard: would the facts available to the officer at the moment warrant a man of reasonable caution in the belief that the consenting party had authority over the premises [or property] to be searched?" Id. at 188, 110 S. Ct. at 2801. If the facts and circumstances of the

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search are such that it would be objectively reasonable to conclude that the consenting party had the authority to consent, then the search is valid. See Id. at 188–89, 110 S. Ct. at 2801. However, if it would not be objectively reasonable to conclude that the person who consented to the search had authority to do so, then "warrantless entry without further inquiry is unlawful unless authority actually exists." Id. This standard allows for reasonable mistakes on the part of police officers; indeed, the standard "is not that [officers] always be correct, but that they always be reasonable." Id. at 185, 110 S. Ct. at 2800. Reasonableness is determined from the "totality of the circumstances" of the search, and the burden is on the State to prove the reasonableness of the officer's actions. See Id. at 181, 181 S. Ct. at 2797; See also, State v. Provet, 405 S.C. 101, 113, 747 S.E.2d 453, 460 (2013).

The U.S. Supreme Court's holding is clear that the apparent agency doctrine set forth in Rodriquez applies only to those searches which take place upon *real* property, where precedent has articulated a heightened expectation of privacy. Here, the search took place in a vehicle, where the Supreme Court has clearly articulated that "[a] passenger's privacy interests are...considerably diminished, [and] the governmental interests at stake are substantial." Houghton, 526 U.S. at 304, 119 S. Ct. at 1302. Moreover, "the ready mobility of an automobile creates a risk that the evidence or contraband will be permanently lost while a warrant is obtained." Id. (citing California v. Carney, 471 U.S. 386, 105 S. Ct. 2066, 85 L.Ed.2d 406 (1985)). The Supreme Court is well aware that a passenger may have an interest in concealing evidence of wrongdoing in a "common enterprise" with the driver, or attempt to "hide contraband in a passenger's belongings as readily as in other containers in the car." See Maryland v. Wilson, 519 U.S. 408, 413-414, 117 S. Ct. 882, 137 L.Ed.2d 41 (1997); Rawlings v. Kentucky, 448 U.S. 98, 102, 100 S. Ct. 2556, 65 L.Ed.2d 633 (1980).

The search at issue in this case took place within a motor vehicle owned and driven by Mr. Carr, and not upon any *real* property owned or occupied by him or the Defendant. As stated above, Officer Erickson asked the driver to step out of the vehicle and approach the police cruiser upon Officer Davis' arrival to the scene. Mr. Carr complied with this request, and submitted to a Terry frisk of his person. Officer Erickson then initiated a conversation with Mr. Carr in which he queried whether a search of the vehicle would reveal the presence of narcotics. He asked if he could "look in the little front area of the vehicle." Initially, Mr. Carr consented to a search of "just his area" of the vehicle. After Mr. Carr gave consent for a "driver's side" search of the vehicle, Officer Erickson expanded his request and asked for consent to search the entire vehicle. After a conversation with Officer Erickson, Mr. Carr unequivocally permitted the officers to search the entire vehicle if the Defendant was removed from the vehicle prior to the search. The Defendant was removed, but the backpack remained on the passenger floorboard in Mr. Carr's vehicle after he gave consent to search the car. Officer Erickson testified that prior to the search he made no inquiries of Carr or Dawson as to the ownership of the backpack. He further testified that while the backpack was on the passenger floorboard it had no markings or other identification on it indicating ownership. He further indicated that absent its location he had no definitive way of determining the ownership of the backpack.

Accordingly, the Court finds that the State has met its burden in proving the reasonableness of the officer's actions. The driver/owner of the vehicle gave the officer permission to search the entire vehicle, which includes any containers found within the vehicle in accordance with precedent.

Alternatively, even if the Court were to apply a totality of the circumstances objective standard as articulated by the United States Supreme Court in Illinois v. Rodriguez. A warrantless

search is valid where the police reasonably, but erroneously, believe that a third party consenting to the search has the authority to do so. Rodriguez, 497 U.S. at 186, 110 S. Ct. at 2800. The determination of consent "must be judged against an objective standard: would the facts available to the officer at the moment warrant a man of reasonable caution in the belief that the consenting party had authority over the premises [or property] to be searched?" Id. at 188, 110 S. Ct. at 2801. If the facts and circumstances of the search are such that it would be objectively reasonable to conclude that the consenting party had the authority to consent, then the search is valid. See Id. at 188–89, 110 S. Ct. at 2801. However, if it would not be objectively reasonable to conclude that the person who consented to the search had authority to do so, then "warrantless entry without further inquiry is unlawful unless authority actually exists." Id. This standard allows for reasonable mistakes on the part of police officers; indeed, the standard "is not that [officers] always be correct, but that they always be reasonable." Id. at 185, 110 S. Ct. at 2800. Reasonableness is determined from the "totality of the circumstances" of the search, and the burden is on the State to prove the reasonableness of the officer's actions. See Id. at 181, 110 S. Ct. at 2797; See also, State v. Provet, 405 S.C. 101, 113, 747 S.E.2d 453, 460 (2013). Objectively, under these circumstances it is reasonable for an officer to conclude that the owner/driver of the vehicle had the authority to consent to the search of the vehicle and its contents.

The Defendant argues this Court should extend the law and apply the apparent agency doctrine in the context of vehicle searches which is an issue of first impression in South Carolina. However, other state and federal courts have analyzed and ruled on similar issues. "When there is no case on point in South Carolina, our courts may look to other states to determine if the issue has been decided and if the decision is persuasive authority." See, e.g., Bass v. Isochem, 365 S.C. 454, 478, 617 S.E.2d 369, 381 (Ct. App. 2005). However, there exists ample U.S. Supreme Court

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and South Carolina precedent on the issue of consent searches upon which this Court is able to analyze the issue making it unnecessary for this Court to look to other jurisdictions for guidance.

The Court would note that there is a split in how other jurisdictions have handled this issue. The Defendant has cited jurisdictions which have held that the driver of a vehicle does not have the apparent authority to consent to a search of items in the vehicle belonging solely to the passenger. See, e.g., United States v. Welch, 4 F.3d 761, 765 (9th Cir. 1993) (holding that consent by the defendant's companion to search a shared rental car did not allow for search of the defendant's purse on the basis of either actual or apparent authority); United States v. Infante-Ruiz, 13 F.3d 498 (1st Cir. 1994) (finding that it was improper for law enforcement to search a passenger's briefcase located in the trunk of a car based solely upon the consent of the driver); United States v. Munoz, 590 F.3d 916 (8th Cir. 2010) (concluding that it was not reasonable for officers to believe that the driver of a vehicle had authority to consent to a search of the passenger's backpack where there were two people in the car and, thus, two potential owners of the backpack); People v. James, 645 N.E.2d 195 (Ill. 1994) (holding that a police officer's actions in searching a closed purse found on the passenger side of vehicle with driver's consent were not objectively reasonable and that the search of the purse was therefore unconstitutional); State v. Harding, 282 P.3d 31 (Utah 2011) (noting that the evidence upon remand supports the conclusion that the police could not have reasonably believed that the driver had authority to consent to a search of the passenger's backpack where there were four occupants in the vehicle and the backpack was located directly behind the passenger seat); and Norris v. Indiana, 732 N.E.2d 186 (Ind. Ct. App. 2000) (holding that the officer's search of a passenger's backpack on the driver's consent was unconstitutional where the backpack was found next to where the passenger had been sitting and

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where a reasonable officer would have realized that the backpack might belong to the passenger rather than the driver).

Similarly, the State has cited a number of jurisdictions in which courts have upheld the warrantless search of a vehicle and its contents, including those items belonging to the vehicle's passengers, upon the driver's consent. For example, in State v. Sawyer, the Supreme Court of New Hampshire found that a driver had apparent authority to consent to a search of his passenger's personal effects where the police made it clear they were searching for drugs within the vehicle, "thereby making it logical for the police to then assume that they had permission to search containers inside the car that might contain drugs." 784 A.2d 1208, 1212 (N.H. 2001). In a similar case, State v. Frizzel, the Idaho Court of Appeals concluded that police officers reasonably relied on the driver's apparent authority to consent to a search of a pack owned by the passenger where the passenger remained silent when the driver gave the officer consent to search the vehicle and did not object when the officer searched his pack. 975 P.2d 1187, 1190 (Idaho Ct. App. 1999). Likewise, in State v. Maristanty, the Supreme Court of New Jersey held that an officer was objectively reasonable in his belief that the driver had apparent authority to consent to a search of a gym bag in the vehicle's trunk where the driver possessed keys to both the vehicle and the trunk and voluntarily opened the trunk for inspection and informed the officer that it contained a gym bag, and the gym bag displayed no outward identification tags to suggest that the passenger, rather than the driver, was the bag's owner. 627 A. 2d 1066, 1070 (N.J. 1993).

What is illustrated by all of the above cases, regardless of outcome, is that each court cited by the Defendant has adopted the apparent authority or common authority doctrine as their standard in analyzing the issue of the scope of consent to search.

Viewing the totality of the facts and circumstances of the search in the present case, the Court finds that it was reasonable for the officer to believe, based on prevailing case law, that the driver of the vehicle had the authority to consent to a search of the vehicle. Likewise, he acted reasonably in his belief that the general consent to search the vehicle included consent to search containers within the car which might contain contraband. State v. Funderburk, 367 S.C. 236, 240, 625 S.E.2d 248, 250 (Ct. App. 2006). The Court in Funderburk held that "the trial court did not err in denying the motion to suppress because evidence existed to support the finding that Funderburk's consent included a search of the trunk. First, the record indicates Funderburk imposed no limits on the scope of his consent to a search. Funderburk consented to the search of the vehicle three times: (1) before he exited the vehicle he agreed to "open things up"; (2) as he walked away from the vehicle he pointed at the car and stated "go ahead"; and (3) when Robinson asked about searching the trunk, Funderburk told him 'yes, you can.'"

In the present action, Mr. Carr initially seems to agree to the Officer's offer to limit the scope of the search to the area where he, the driver, was sitting. Subsequently, Mr. Carr makes no mention of the Defendant's backpack, but explicitly authorizes a general search of his vehicle. He also watches as Officer Erickson searches the vehicle, and does not object to the search of the backpack or any other area within the vehicle. Thus, Mr. Carr's general consent and failure to object is a good indicator that the search of Defendant's backpack was within the proper bounds of the consent search. Mr. Carr consents to Officer Erickson's request to expand the search stating: "I don't have any objections. I just want to speed up the process." Mr. Carr makes no mention of the Defendant's backpack, but explicitly authorizes a general search of his vehicle when he said, "Go ahead."

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It is undisputed that Officer Erickson conducted a valid traffic stop on a vehicle owned and operated by Sam Carr on October 22, 2015, for a defective headlight, saw what based on experience he believed to be evidence of narcotic activity, and subsequently searched the vehicle and its contents upon Mr. Carr's consent.

Additionally, there is evidence in the record indicating that the Defendant was aware that Carr had given Officer Erickson consent to search the vehicle. The Defendant although present in close proximity made no attempts to apprise the officers they could not search his backpack. Moreover, when Officer Erickson asked the Defendant to exit the vehicle, The Defendant made no attempt to take the backpack with him as he exited the car. Admittedly, on cross examination, Officer Erickson testified that he could not remember if the Defendant was told to leave his belongings behind. However, the contemporaneous recording of the event does not reflect any such restrictions being placed on the Defendant. The Defendant had the opportunity to either acquiesce or object to the search of his backpack. Nor did the Defendant take an opportunity to retrieve his personal belongings from the vehicle. As are the factual circumstances for several of the cases cited by the Defendant as the foundation for adopting the apparent authority or common authority doctrine.

In light of these factors, it was objectively reasonable for Officer Erickson to believe that the Defendant had given him authority to search the entire vehicle and its contents. The Court, thus, finds that the search of the backpack was justified pursuant to the consent exception to the warrant requirement of the Fourth Amendment. However, in so finding, the Court does recognize and acknowledge the State's argument that the search may nevertheless still be lawful if, the officer had probable cause to search the backpack.

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Law enforcement officers are permitted to conduct warrantless searches of vehicles pursuant to the automobile exception to the warrant requirement. Police may search a vehicle or containers within a vehicle without a warrant where the officers have probable cause to believe that the vehicle contains contraband or evidence of criminal activity. California v. Acevedo, 500 U.S. 565, 580, 111 S. Ct. 1982, 1991 (1991); see also, Wyoming v. Houghton, 526 U.S. 295, 300, 119 S. Ct. 1297, 1300 (1999) ("If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search, without qualification as to ownership and without a showing of individualized probable cause for each container."). Probable cause alone is sufficient to justify a warrantless search under the automobile exception. See, e.g., State v. Cox, 290 S.C. 489, 491, 351 S.E.2d 570, 571 (1986) (citing California v. Carney, 471 U.S. 386, 392, 105 S. Ct. 2066, 2070 (1985)). The bases for this exception to the warrant requirement are: "(1) the ready mobility of vehicles and the potential that evidence may be lost before a warrant is obtained; and (2) the lessened expectation of privacy in motor vehicles which are subject to regulation." Id. The automobile exception has been routinely applied "on a case-by-case basis to various sets of facts" since it first originated as part of U.S. Supreme Court jurisprudence in 1925, and the present case is no exception. See Id.

In this case, the State presented sufficient testimony and evidence demonstrating Officer Erickson had probable cause to search the vehicle and its contents. Officer Erickson testified that he initiated the traffic stop due to a defective headlight on the exterior of the vehicle. During the course of the stop, Officer Erickson observed the driver of the vehicle act furtively removing what appeared to be a "plastic baggie" from his lap and attempting to conceal it in his pants pocket. The officer testified as to his belief, based upon his experience and training, that the "baggie" contained drugs which warranted further inquiry on the issue. Officer Erickson testified he suspected the

driver had drugs in his possession because the driver appeared to have an item (i.e. the plastic baggie) commonly associated with drug activity. A reasonable and articulable suspicion of an officer will support a finding of probable cause, and the Court thus finds that Officer Erickson had sufficient probable cause to believe that evidence of a crime or contraband would be found in the vehicle. See Dupree, 319 S.C. at 458–59, 462 S.E.2d at 282. Officer Erickson testified that in his experience this type of plastic baggie was used to conceal narcotics. He further testified that his suspicions were heightened when Carr attempted to hide the item and pulled other items out of his pocket but failed to produce the "plastic baggie." He further testified that he felt he had sufficient cause to run his K-9 around the car for a "free air sniff" but wanted instead to give Carr the option of consent. He testified that the standard operating procedure for the Goose Creek Police Department is to give the driver this option because of the training of their K-9's. He further testified that their K-9's are "aggressive alert" dogs and that once the K-9 alerts it scratches and bites which may cause significant damage to the vehicle. However, this finding is mitigated in light of Officer Erickson's testimony on re-cross examination that he did not have probable cause to search the vehicle upon his initial contact with Carr; hence his request for consent to search the vehicle. While Erickson testified that at that point in the conversation with Carr he lacked probable cause the totality of the stop supports the State's contention that probable cause existed to extend the stop and likewise search the vehicle for contraband. Thus, the search of the vehicle and its contents were justified under a probable cause standard.

CONCLUSION

In light of the foregoing factors, the Court finds that the search of the Defendant's backpack was lawful under the Fourth Amendment of the United States Constitution and the South Carolina Constitution. As such, the Defendant's Motion to Suppress the evidence obtained as a result of the

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search and seizure of his backpack must be denied. The Court hereby denies the Defendant's Motion to Suppress.

IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina
June 10, 2019

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF BERKELEY	)	Indictment Numbers: 2016-GS-08-00114
	)	2016-GS-08-00115
	)	2016-GS-08-00116
	)	
	)	
	)	
STATE OF SOUTH CAROLINA	)	STIPULATION AS TO THE DRUG EVIDENCE
	)	
	)	
v.	)	
	)	
Ricky Dawson,	)	
Defendant.	)	
	)	

FILED
2019 OCT -7 PM 1:50
LEANNE ANN PRICE
CLERK OF COURT
BERKELEY COUNTY, SC
J&G

The State and the Defendant, through his attorney James W. Smiley IV, stipulate to the following:

1. Item 1 is 27.19 grams of Cocaine
2. Item 2 is 4.68 grams of Cocaine
3. Item 3 is 1.31 grams Cocaine Base

The Charleston Police Department, Forensic Services Division lab report (L15-02429) is attached as an exhibit in support of the stipulation. The analysis was performed by Kaitlin Schroeder, formerly of the Charleston Police Department. As such, both parties agree that she will not be required to testify at trial. This stipulation serves as her expected testimony.

Bart J. Stegall
Assistant Solicitor

James W. Smiley IV
Attorney for the Defendant

October 7, 2019

COURT'S
EXHIBIT NO. 1
IDENTIFICATION/EVIDENCE
DKT.# 16-GS-08-114
DATE: 12-10-19
PENGAD 800-631-6989

CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY
DATE 10-7-19
CLERK OF COURT
C.P. & G.S.
BERKELEY COUNTY, SC

Charleston Police Department
FORENSIC SERVICES DIVISION

ALI-017-T

Lab #: L15-02429 #1

Drug Analysis

Case #: 2015-5134

Goose Creek Police Department
519 North Goose Creek Blvd.
Goose Creek, SC 29445-2962

November 3, 2015

Date Submitted: November 2, 2015

Suspect: Ricky Manigo Dawson

This is an official report of the Charleston Police Department Forensic Services Division and is to be used in conjunction with an official criminal investigation. This report contains the conclusions, opinions and interpretations of the analyst whose signature appears on the report.

Evidence

Item 1: Plastic bag with white powder
Item 2: Plastic bag with white powder
Item 3: Plastic bag with rock-like substance

Items	Weight	+/-	Results	Methods
Item 1	27.19g	0.01	Cocaine	Color Test FTIR
Item 2	4.68g	0.01	Cocaine	Color Test FTIR GC/MS
Item 3	1.31g	0.01	Cocaine base	Color Test FTIR

For items in which an uncertainty is reported, that uncertainty has been assigned based on statistical calculations with a minimum coverage probability of 95%.

End of Report

Kaitlin Schroeder

Kaitlin A Schroeder

DBP/0310328
WITNESSES

Goose Creek Police Department

AGENCY CASE NUMBER

2015-5134

ARREST WARRANT NUMBER

2015A0820200872

DATE OF ARREST

10/23/2015

ACTION OF GRAND JURY

True

Gina M. Marshall 1-12-16
Foreperson of Grand Jury *Date:*

VERDICT

Foreperson of Petit Jury *Date:*

RS# 6

DOCKET NO. 2016-GS-08-00114

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JANUARY TERM 2016

THE STATE

VS.

RICKY MANIGO DAWSON
B/M DOB: [redacted]1981

Indictment for

TRAFF COCAINE 28G BUT < 100G 3RD

SC Code: § 44-53-0370(e)(2)(b)3
CDR Code: 0148

FILED
16 JAN 12 PM 3:20
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened January 2016, the Grand Jurors of Berkeley County present upon their oath:

Trafficking in Cocaine

The defendant, Ricky Manigo Dawson, did on or about October 22, 2015, in Berkeley County, South Carolina, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of twenty-eight (28) grams or more of Cocaine or any mixtures containing cocaine, as provided in 44-53-210(b)(4). All in violation of 44-53-0370(e)(2)(b)3, South Carolina Code of Laws (1976, as amended).

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

DANIEL B. POULOS
ASSISTANT SOLICITOR

R5# 5

DBP/0310328
WITNESSES

Goose Creek Police Department

Cpl M Powell

AGENCY CASE NUMBER

2015-5134

ARREST WARRANT NUMBER

2015A0820200873

DATE OF ARREST

10/23/2015

ACTION OF GRAND JURY

True Bill

Tina M. Marshall 1-12-16
Foreperson of Grand Jury *Date:*

VERDICT

Foreperson of Petit Jury *Date:*

RS#4

DOCKET NO. 2016-GS-08-00115

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JANUARY TERM 2016

THE STATE

VS.

RICKY MANIGO DAWSON
B/M DOB: [redacted]1981

Indictment for

DIST/PWID/MANUF CRACK 3RD

SC Code: § 44-53-0375(B)(3)
CDR Code: 3039

FILED
16 JAN 12 PM 3:20
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened January 2016, the Grand Jurors of Berkeley County present upon their oath:

Possession with Intent to Distribute Crack Cocaine

The defendant, Ricky Manigo Dawson, did on or about October 22, 2015, in Berkeley County, South Carolina, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Crack Cocaine, a cocaine base, in violation of the provisions of Section 44-53-370. All in violation of 44-53-0375(B)(3) of the South Carolina Code of Laws (1976) as amended.

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

DANIEL B. POULOS
ASSISTANT SOLICITOR

R5# 3

DBP/0310328
WITNESSES

Goose Creek Police Department

AGENCY CASE NUMBER

2015-5134

ARREST WARRANT NUMBER

2015A0820200874

DATE OF ARREST

10/23/2015

ACTION OF GRAND JURY

True

Gina M Marshall 1-12-16
Foreperson of Grand Jury *Date:*

VERDICT

Foreperson of Petit Jury *Date:*

R5# 2

DOCKET NO. 2016-GS-08-00116

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JANUARY TERM 2016

THE STATE

VS.

RICKY MANIGO DAWSON
B/M DOB: [redacted]1981

Indictment for

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

SC Code: § 16-23-0490
CDR Code: 0549

FILED
16 JAN 12 PM 3:20
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened January 2016, the Grand Jurors of Berkeley County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Berkeley County, South Carolina, on or about October 22, 2015, the Defendant, Ricky Manigo Dawson, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Trafficking Cocaine; in violation of Section 16-23-490, 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.

DANIEL B. POULOS
ASSISTANT SOLICITOR

250

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF GENERAL SESSIONS

STATE VS.

RICKY MANIGO DAWSON

AKA: Ricky M Dawson

Race: Black/African American Sex: M

DOB: [redacted]1981 SS#: [redacted]

Address: [redacted] Commons Way

City, State, Zip: Goose Creek, SC 29445-5428

DL# [redacted] SID# SC01322045

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2016-GS-08-00114
A/W: 2015A0820200872
Date of Offense: 10/22/2015
S.C. Code §: 44-53-0370(e)(2)(b)3
CDR Code #: 0148

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Traff Cocaine 28g but <100g

In violation of § 44-53-0370(e)(2)(b)2 of the S.C. Code of Laws, bearing CDR Code # 0388

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ §17-25-45

The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Bart J. Stegall, Assistant Solicitor — 101867 SC Bar # | Defendant | Attorney for Defendant — 66312 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,**

for a determinate term of 25 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 Service 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. 20 DAYS

☐ The Defendant is to be placed on 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing**

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 (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25
§14-1-213 (Drug Court Surcharge)	$150	$ 150
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	$	$ 8.25
TOTAL		$ 283.25

☐ **Ordered** 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: _____

FILED DEC 10 2019 NO LEAH GUERRY DUPREE CLERK OF COURT BERKELEY COUNTY, SC CASE

☐ Appointed PD or appointed other counsel,

Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: _____

Judge Code: 2126

Sentence Date: 12-10-19

Clerk of Court/Deputy Clerk: _____

Court Reporter: Joyce Bugel

SCCA/217 (04/2018)

JR

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF GENERAL SESSIONS

STATE VS.

RICKY MANIGO DAWSON

AKA: Ricky M Dawson

Race: Black/African American Sex: M

DOB: [redacted]/1981 SS#: [redacted]

Address: [redacted] Commons Way

City, State, Zip: Goose Creek, SC 29445-5428

DL# [redacted] SID# SC01322045

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2016-GS-08-00115
A/W: 2015A0820200873
Date of Offense: 10/22/2015
S.C. Code §: 44-53-0375(B)(3)
CDR Code #: 3039

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: **Dist/PWID/Manuf Cocaine Base or Meth**
In violation of § 44-53-0375(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3014

☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ §17-25-45

The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Bart J. Stegall, Assistant Solicitor 101867 SC Bar # | Defendant | Attorney for Defendant 66312 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 10 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 Service 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.

☐ The Defendant is to be placed on 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing**
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	$25
Proviso (Public Def/Probation)	$500	$_____
§14-1-212 (Law Enforce. Funding)	$25	$25
§14-1-213 (Drug Court Surcharge)	$150	$150
§50-21-114 (BUI Breath Test Fee)	$50	$_____
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$_____
3% to County (if paid in installments)	$	$8.25
TOTAL		$283.25

☐ **Ordered** 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: _____

FILED DEC 10 2019 LEAH GUERRY DUPREE CLERK OF COURT BERKELEY COUNTY, SC

☐ Appointed PD or appointed other counsel,
Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: A. Milligan
Court Reporter: Joyce Hayes

Presiding Judge: G. I. Coony
Judge Code: 2126
Sentence Date: 12-10-19

SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF GENERAL SESSIONS

STATE VS.

RICKY MANIGO DAWSON

AKA: Ricky M Dawson
Race: Black/African American Sex: M
DOB: [redacted]1981 SS#: [redacted]
Address: [redacted] Commons Way
City, State, Zip: Goose Creek, SC 29445-5428
DL# [redacted] SID# SC01322045
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2016-GS-08-00116
A/W: 2015A0820200874
Date of Offense: 10/22/2015
S.C. Code §: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: **Possession Of A Weapon During The Commission Of A Violent Crime**
In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ §17-25-45

The charge is: ☐ As indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Bart J. Stegall, Assistant Solicitor 101867 SC Bar # | Defendant | Attorney for Defendant 66312 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 5 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 Service 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.

☐ The Defendant is to be placed on 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing**
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 (Public Def/Probation)	$500	$_____
§14-1-212 (Law Enforce. Funding)	$25	$25
§14-1-213 (Drug Court Surcharge)	$150	$_____
§50-21-114 (BUI Breath Test Fee)	$50	$_____
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$_____
3% to County (if paid in installments)	$	$ 3.75
TOTAL		$ 128.75

☐ **Ordered** **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: _____

FILED
DEC 1 2019
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY SC
ND
CASE

☐ Appointed PD or appointed other counsel.
Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: G. Mencer
Judge Code: 2126
Sentence Date: 12-10-19

Clerk of Court/Deputy Clerk: A. Mulligan
Court Reporter: Joyce Bueser

SCCA/217 (04/2018)

ATM

ARREST WARRANT

2015A0820200872

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of Goose Creek, SC

THE STATE

against

DAWSON, RICKY MANIGO

Address: [redacted] COMMONS WAY
GOOSE CREEK, SC 29445

Phone: (843) 000-0000 SSN: [redacted]

Sex: M Race: B Height 5 ft. 11 in. Weight 198

DL State: SC DL#: [redacted]

DOB: [redacted]/1981 Agency ORI#: SC0080300

Prosecuting Agency: GCPD Team 5 ~ Traffic

Prosecuting Officer: Erickson, A.

Offense: Trafficking Cocaine, 28g to 100g - 1st Offense

Offense Code: 2359

Code/Ordinance Sec. 44-53-0370 (e) (2) (b) 1

This warrant is **CERTIFIED FOR SERVICE** in the

☒ County/ ☒ Municipality of Goose Creek, SC

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant DAWSON, RICKY MANIGO

On October 23rd 2015

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
BERKELEY CO. GENERAL SESSIONS
300 CALIFORNIA AVE.
MONCKS CORNER, SC 29461
Court date/Time 12-11-2015 @ 1430
Bond Amount ____ Type ____ PR/Surety
OCA Number 2015-5134
Evidence: Yes X No ____

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality)
Goose Creek)

Form approved by S.C. attorney General April 21, 2003 SCCA 618

AFFIDAVIT

Personally appeared before me the affiant A. Erickson who being duly sworn deposes and says that defendant DAWSON, RICKY MANIGO did within this county and state on 10/22/2015 Violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Goose Creek) in the following particulars:

DESCRIPTION OF OFFENSE:
Trafficking Cocaine, 28g to 100g - 1st Offense

SCANNED

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 10-22-2015 while near Red Bank Rd and Old State Rd within the city and state aforesaid, the defendant Ricky Dawson did knowingly, willfully, and unlawfully, violate Section 44-53-0370(e)(2)(b)(1) Trafficking cocaine 28g-100g 1st offense of The South Carolina Code of Laws, as Amended, 1976 and that probable cause is based upon the following facts: 1. That the affiant conducted a legal traffic stop of a vehicle that Dawson was passenger in 2. The affiant conducted a consent search of the vehicle which was granted by the driver of the vehicle and located a black backpack on the passager floor board where Dawson was seated 3. The affiant located a green Crown Royal bag inside which contained two plastic baggies containing a white powdery substance presumed to be cocaine 4. The affiant advised Dawson of his Miranda warnings and questioned Dawson about the suspected narcotics 5. Dawson admitted to the suspected narcotics being cocaine and being his 6. The affiant also located inside the backpack a cardboard box with numerous plastic bags, a digital scale and a vacuum seal bag and a loaded firearm 7. The affiant the weighed each bag of white powdery substance, one of which was 28.3g and the other being 5.5g. 8. The affiant located and seized $1181.50 in cash from Dawson's person in a search incident to arrest. All against the form of the statute in such case made and provided for and against the peace, law, and dignity of the City of Goose Creek and State of Sout

Signature of Affiant

STATE OF SOUTH CAROLINA)

☐ County/ ☒ Municipality of Goose Creek)

Affiant's address 519 North Goose Creek Blvd.
Goose Creek, SC 29445

Affiant's Telephone (843) 863-5200

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 10/22/2015 defendant DAWSON, RICKY MANIGO did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Goose Creek) as set forth below.

DESCRIPTION OF OFFENSE:
Trafficking Cocaine, 28g to 100g - 1st Offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
On 10-23-15)
Shirley L Johnson)
Signature of Issuing Judge)
Judge Code: 6158)

Judge's Address 519 N. Goose Creek Blvd.
Goose Creek, SC 29445
Judge's telephone (843) 569-4230
Issuing court: ☐ Magistrate ☒ Municipal ☐ Circuit

CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY
DATE 3-19-2020
CLERK OF COURT C.P. & G.S.
BERKELEY COUNTY, SC

** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL

BAIL set by

Judge Paula McDougue

On 10-23-15

Type and Amount: $50000.00 surety

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

On _____

Defense Attorney: _____

Decision: _____

_____

DISPOSITION before

Judge _____

On _____

By _____
(indicate jury trial, bench trial, plea, nol. Pros, etc)

Disposition: _____

Sentence: _____

JURORS

_____ _____

_____ _____

_____ _____

WITNESSES

Name: _____
Address: _____
_____
Telephone _____

Name: _____
Address: _____
_____
Telephone _____

Name: _____
Address: _____
_____
Telephone _____

Name: _____
Address: _____
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Telephone _____

Name: _____
Address: _____
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Telephone _____

Name: _____
Address: _____
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Telephone _____

Name: _____
Address: _____
_____
Telephone _____

Name: _____
Address: _____
_____
Telephone _____

Name: _____
Address: _____
_____
Telephone _____

CODEFENDANTS

_____

_____

CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY
Jean Murray Dupree
DATE 3-19-2020
CLERK OF COURT
C.P. & G.S.
BERKELEY COUNTY, SC

ARREST WARRANT

2015A0820200873

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of Goose Creek, SC

THE STATE

against

DAWSON, RICKY MANIGO
Address: [redacted] COMMONS WAY
GOOSE CREEK, SC 29445
Phone: (843) 000-0000 SSN: [redacted]
Sex: M Race: B Height 5 ft. 11 in. Weight 198
DL State: SC DL#: [redacted]
DOB: [redacted]1981 Agency ORI#: SC0080300
Prosecuting Agency: GCPD Team 5 – Traffic
Prosecuting Officer: Erickson, A.
Offense: Manufacture, Distribution, etc. of Cocaine Base
Offense Code: 3014
Code/Ordinance Sec. 44-53-0375 (B) (1)

This warrant is CERTIFIED FOR SERVICE in the
☒ County/ ☒ Municipality of Goose Creek, SC

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant DAWSON, RICKY MANIGO
On. October 13th 2015

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
BERKELEY CO. GENERAL SESSIONS
300 CALIFORNIA AVE.
MONCKS CORNER, SC 29461
Court date/Time 12-11-15 @ 1430
Bond Amount _____ Type _____ PR/Surety
OCA Number 2015-5134
Evidence: Yes X No _____

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality)
Goose Creek)

Form approved by S.C. attorney General April 21, 2003 SCCA 618

AFFIDAVIT

Personally appeared before me the affiant A. Erickson who being duly sworn deposes and says that defendant DAWSON, RICKY MANIGO did within this county and state on 10/22/2015 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Goose Creek) in the following particulars:

DESCRIPTION OF OFFENSE:
Manufacture, Distribution, etc. of Cocaine Base - 1st Offense

SCANNED

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 10-22-2015 while near Red Bank Rd and Old State Rd within the city and state aforesaid, the defendant, Ricky Dawson, did knowingly, willfully, and unlawfully, violate Section 44-53-0375(b)(1) Distribution of crack cocaine of the South Carolina Code of Laws as Amended 1976 and that probable cause is based upon the following facts:1. That the affiant conducted a legal traffic stop of a vehicle that Dawson was a passenger in 2. The affiant conducted a consent search of the vehicle which was granted by the driver, and located a black backpack on the passager floor board where Dawson was seated 3. The affiant located a green bag inside the backpack which contained a ziplock baggie containing a yellowish brick like substance presumed to be crack cocaine 4. The affiant advised Dawson of his Miranda warnings and questioned Dawson about the suspected narcotics 5. Dawson admitted to the suspected narcotics being cocaine and being his. The affiant located inside the backpack a cardboard box with numerous plastic bags, a digital scale and a vacuum seal bag 7. The affiant then weighed the bag of yellowish brick like substance which was 2.1g 8. During a search incident to arrest of Dawson $1181.50 was located on his person in various denominations consistent with selling narcotics all which was seized. All against the form of the statute in such case made and provided for and against the peace, law, and dignity of the City of Goose Creek and State of South carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of Goose Creek)

Affiant's address 519 North Goose Creek Blvd.
Goose Creek, SC 29445
Affiant's Telephone (843) 863-5200

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 10/22/2015 defendant DAWSON, RICKY MANIGO did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Goose Creek) as set forth below:

DESCRIPTION OF OFFENSE:
Manufacture, Distribution, etc. of Cocaine Base - 1st Offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
On 10-23-15
Shirley L Johnson
Signature of Issuing Judge
Judge Code: 6158

Judge's Address 519 N. Goose Creek Blvd.
Goose Creek, SC 29445
Judge's telephone (843) 569-4230
Issuing court: ☐ Magistrate ☒ Municipal ☐ Circuit

CERTIFIED TRUE COPIES OF RECORD IN THIS COURT
DATE 3-19-2020
CLERK OF COURT C.P. & G.S.
BERKELEY COUNTY, SC

*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL

BAIL set by

Judge Paula M. Edinger

On 10-23-15

Type and Amount: $50,000.00 Surety

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

On _____

Defense Attorney: _____

Decision: _____

_____

DISPOSITION before

Judge _____

On _____

By _____
(indicate jury trial, bench trial, plea, nol. Pros, etc)

Disposition: _____

Sentence: _____

JURORS

_____ _____

_____ _____

_____ _____

WITNESSES

Name: _____
Address: _____
_____
Telephone _____

Name: _____
Address: _____
_____
Telephone _____

Name: _____
Address: _____
_____
Telephone _____

Name: _____
Address: _____
_____
Telephone _____

Name: _____
Address: _____
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Telephone _____

Name: _____
Address: _____
_____
Telephone _____

Name: _____
Address: _____
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Telephone _____

Name: _____
Address: _____
_____
Telephone _____

Name: _____
Address: _____
_____
Telephone _____

CODEFENDANTS

_____

_____

CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY
Jean Murray Dupree
DATE 3-19-2020
CLERK OF COURT
C.P. & G.S.
BERKELEY COUNTY, SC

ARREST WARRANT

2015A0820200874

STATE OF SOUTH CAROLINA

County/ [X] Municipality of Goose Creek, SC

THE STATE

against

DAWSON, RICKY MANIGO
Address: [redacted] COMMONS WAY
GOOSE CREEK, SC 29445
Phone: (843) 000-0000 SSN: [redacted]
Sex: M Race: B Height 5 ft. 11 in. Weight 198
DL State: SC DL#: [redacted]
DOB: [redacted]/1981 Agency ORI#: SC0080300
Prosecuting Agency: GCPD Team 5 – Traffic
Prosecuting Officer: Erickson, A.
Offense: Poss. Weapon During Violent Crime
Offense Code: 549
Code/Ordinance Sec. 16-23-0490

This warrant is **CERTIFIED FOR SERVICE** in the
[X] County/ [X] Municipality of Goose Creek, SC
The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant DAWSON, RICKY MANIGO
On October 23rd 2015

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
BERKELEY CO. GENERAL SESSIONS
300 CALIFORNIA AVE.
MONCKS CORNER, SC 29461
Court date/Time 2015-12-11 @ 1430
Bond Amount _____ Type _____ PR/Surety
OCA Number 2015-5134
Evidence: Yes X No _____

STATE OF SOUTH CAROLINA)
[ ] County/ [X] Municipality)
Goose Creek)

AFFIDAVIT

Form approved by S.C. Attorney General April 21, 2003 SCCA 618

Personally appeared before me the affiant A. Erickson who being duly sworn deposes and says that defendant DAWSON, RICKY MANIGO did within this county and state on 10/22/2015 Violate the criminal laws of the State of South Carolina (or ordinance of [ ] County/ [X] Municipality of Goose Creek) in the following particulars:

DESCRIPTION OF OFFENSE:
Poss. Weapon During Violent Crime

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 10-22-2015 while near Red Bank Rd and Old State Rd within the city and state aforesaid, the defendant, Ricky Dawson, did knowingly, willfully, and unlawfully, violate Section 16-13-0490 Possession of a weapon during a violent crime of the South Carolina Code of Laws, as Amended, 1976 and that probable cause is based upon the following facts:1. That the affiant conducted a legal traffic stop of a vehicle that Dawson was passenger in 2. The affiant conducted a consent search of the vehicle which was granted by the driver of the vehicle and located a black backpack on the passenger floor board where Dawson was seated 3. The affiant located a green Crown Royal bag inside which contained numerous plastic baggies containing a white powdery substance presumed to be cocaine 4. The affiant advised Dawson of his Miranda warnings and questioned Dawson about the suspected narcotics 5. Dawson admitted to the suspected narcotics being cocaine and also advised there is a gun in the backpack as well 6. The affiant located a Makarov 9mm pistol loaded with 8 rounds of ammo, which had a round chambered. The firearm was nearly touching the narcotics in the bag where it was located 7. The affiant established probable cause to charge Dawson with trafficking cocaine and distribution of crack. All against the form of the statute in such case made and provided for and against the peace, law, and dignity of the City of Goose Creek and State of South Carolina.

Signature of Affiant

FILED
2015 OCT 23 AM 3:37
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
[ ] County/ [X] Municipality of)
Goose Creek)

Affiant's address 519 North Goose Creek Blvd.
Goose Creek, SC 29445
Affiant's Telephone (843) 863-5200

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that on 10/22/2015 defendant DAWSON, RICKY MANIGO did violate the criminal laws of the State of South Carolina (or ordinance of [ ] County/ [X] Municipality of Goose Creek) as set forth below:

DESCRIPTION OF OFFENSE:
Poss. Weapon During Violent Crime

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
On 10-23-15)
Shirley L Johnson)
Signature of Issuing Judge)
Judge Code: 6158)

Judge's Address 519 N. Goose Creek Blvd.
Goose Creek, SC 29445
Judge's telephone (843) 569-4230
Issuing court: [ ] Magistrate [X] Municipal [ ] Circuit

CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY
DATE 3-9-2020
CLERK OF COURT C.P. & G.S. BERKELEY COUNTY, SC

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** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL

BAIL set by

Judge Paula McElveen

On 10-23-15

Type and Amount: $2000.00 Surety

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

On _____

D[illegible]e Attorney: _____

Decision: _____

_____

DISPOSITION before

Judge _____

On _____

By _____

(indicate jury trial, bench trial, plea, nol. Pros. etc)

Disposition: _____

Sentence: _____

JURORS

_____

_____

_____

WITNESSES

Name: _____
Address: _____

Telephone _____

Name: _____
Address: _____

Telephone _____

Name: _____
Address: _____

Telephone _____

Name: _____
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Name: _____
Address: _____

Telephone _____

Name: _____
Address: _____

Telephone _____

CODEFENDANTS

_____

_____

CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY
Jean Murry Superee
DATE 3-19-2020
CLERK OF COURT
C.P. & G.S.
BERKELEY COUNTY, SC

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,

RECEIVED
May 12 2021
SC Court of Appeals

Wanda H. Carter
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

This 12th day of May, 2021.