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May 14 2021

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

AMENDED RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE’S EXHIBIT NO. 1 (ERICKSON DASH CAM VIDEO)
STATE’S EXHIBIT NO. 2 (DAVIS DASH CAM VIDEO)

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

3
 4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
 5 PLAINTIFF,) OF
 6 VS.) RECORD
 7 RICKY MANIGO DAWSON,) 2016-GS-08-114 - 116
 8 DEFENDANT.)

9
 10 March 14th, 2018
 11 Goose Creek, South Carolina
 12

13 B E F O R E:

14 THE HONORABLE DEADRA L. JEFFERSON, Judge.

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

16 BART JACKSON STEGALL
 17 ASSISTANT SOLICITOR
 18 Attorney for the State

19 JAMES WATSON SMILEY, IV
 20 ESQ.
 Attorney for the Defendant

21
 22 RUTH C. WEESE
 23 Circuit Court Reporter

24 Transcribed by Pamela E. Green, Circuit Court Reporter
 25

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E X H I B I T S

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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.

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

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

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

10 THE COURT: Uh-huh. (Affirmative).

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

12 THE COURT: When was that?

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

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

21 MR. SMILEY: I don't---

22 SOLICITOR STEGALL: Judge Brown.

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

1 for child support --

2 THE COURT: Uh-huh. (Affirmative).

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

13 THE COURT: You rejected the --?

14 MR. SMILEY: The plea without a suppression hearing.

15 THE COURT: And what was the---

16 MR. SMILEY: Seven years.

17 THE COURT: Wow.

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

19 MR. SMILEY: He did it with my advice.

20 THE COURT: Okay.

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

23 THE COURT: Let me deal with something real quick.

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

25 (Pause.)

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

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

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

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

19 SOLICITOR STEGALL: Yes, Your Honor.

20 State calls officer Erickson.

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

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

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

Alexander Erickson - Direct examination
by Solicitor Stegall

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

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

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

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

6 THE COURT: Thank you.

7 You may proceed.

8 SOLICITOR STEGALL: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 DIRECT EXAMINATION

11 BY SOLICITOR STEGALL:

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

13 A The City of Goose Creek Police Department.

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

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

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

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

22 THE COURT: Thank you.

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

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

Alexander Erickson - Direct examination
by Solicitor Stegall

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

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

5 A Approximately three years.

6 Q Okay.

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

9 THE COURT: It is -- he's a little soft spoken.
10 Could you speak directly into the microphone, sir?

11 THE WITNESS: Better?

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

13 THE WITNESS: Better.

14 MR. SMILEY: A little---

15 THE COURT: I don't know.

16 Is the mic on?

17 SOLICITOR STEGALL: It might not be on.

18 THE CLERK: Tap, tap the mic.

19 SOLICITOR STEGALL: Yeah, it's on.

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

22 A I was.

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

25 A Yes, sir.

1 Q Did you have your K-9 with you that night?

2 A Yes, sir.

3 Q Okay. All right. Do you remember performing a traffic
4 stop where the Defendant was a passenger in the auto -- in
5 the car that night?

6 A Yes, sir.

7 Q Okay. Please describe that traffic stop to the Court.

8 A On the evening in question, I observed a -- it was a
9 Chevrolet vehicle drive on Red Bank Road. The vehicle had a
10 headlight out. I got behind the vehicle, got the traffic
11 stop on -- for it for that violation. During the course of
12 the investigation, the Defendant was identified as the
13 passenger within the vehicle.

14 Q Okay. Do you remember who the driver was?

15 A I believe his name was Sam Carr.

16 Q Okay. All right.

17 THE COURT: Did you say Carr or Clark?

18 THE WITNESS: Carr.

19 Q And, and, going back, I think you answered it, but, but
20 what was the violation?

21 A Defective headlight.

22 Q Okay. All right.

23 A And, just for clarification, it was at nighttime
24 obviously.

25 Q Okay. All right. Okay. When you approached the

1 vehicle, what did you observe?

2 A I made a driver's side approach on the vehicle, which
3 put me at the window with Mr. Carr, who was the driver.
4 Immediately upon contact, I observed a plastic baggy on, on
5 Carr's lap. The baggy, based on my experience and seeing
6 narcotics, especially being in the role that I'm in all the
7 time, it resembled a bag that contained narcotics. It
8 looked like a sandwich baggy, which was twisted up on one
9 end. I, I couldn't say for certain what was it, but it
10 heightened my suspicion immediately that there was something
11 going on in the vehicle.

12 Q And why would that -- why would you determine that that
13 may be what that baggy was?

14 A Specifically the way that it was packaged. Time and
15 time and time again, again, based on my personal experiences
16 and training classes I've been to, that's almost always how
17 I find narcotics, rolled up in a sandwich baggy, tied up at
18 one end.

19 Q Okay. Okay. And you said you saw what appeared to be
20 that baggy?

21 A Correct. And then when I had called the attention
22 about it, he proceeded to -- it looked like he put it back
23 in his pocket. And when I asked him about what it was, I
24 couldn't get a clear, concise answer of what it was that --
25 it kept changing, and it just even raised my suspicion even

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

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

5 Is that what you're referring to?

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

8 MR. SMILEY: Objection, Your Honor. Hearsay.

9 Q Okay.

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

11 Q So---

12 THE COURT: Is this being offered for its truth?

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

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

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

18 THE COURT: That he had about Mr. Carr?

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

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

23 Q Go ahead and answer the question.

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

1 Q Okay. Okay. So, what did you do based on his answers
2 and, and what you saw?

3 A After I got a different answer a couple times, it was
4 just the general nervousness that I observed. I asked for a
5 second officer to respond with the intention of getting them
6 to step out of the car to speak with him separate from one
7 another, and to try to get to the bottom of what that bag
8 was, which I already believed to be narcotics.

9 Q Is that common to, to call for backup?

10 A Absolutely.

11 Q Okay. Okay. So, you got Mr. Carr out of the vehicle.
12 What did you do next?

13 A Yes. After my backup officer got there, I got the --
14 Mr. Carr out of the vehicle. I spoke with him a separate
15 distance away from the Defendant, and I asked for consent to
16 search the vehicle. Initially, my biggest concern was that
17 bag. I did ask for a smaller scope of the search
18 additionally, but I was very clear, before proceeding with
19 that smaller scope search, which the smaller scope was I was
20 asking for that general area of the car where I observed the
21 bag. However, I fully explained to the driver that that
22 scope of the search, it needed to be extended to the entire
23 vehicle, and it turned it to a verbal consent from him to do
24 so.

25 Q So -- okay. I want to, I want to back up and make sure

1 I understand you.

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

4 A Yes.

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

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

17 Q Okay.

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

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

22 MR. SMILEY: Objection, Your Honor.

23 THE COURT: Basis?

24 MR. SMILEY: It's gonna be hearsay.

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

Alexander Erickson - Direct examination
by Solicitor Stegall

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

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

6 MR. SMILEY: Yes.

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

13 MR. SMILEY: well, neither do I.

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

18 MR. SMILEY: They called Mr. Carr.

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

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

21 THE COURT: Case law---

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

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

24 MR. SMILEY: Yes, ma'am.

25 THE COURT: Case law says that an officer can testify

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

3 MR. SMILEY: And that --.

4 THE COURT: According to the Supreme Court.

5 MR. SMILEY: Yes, ma'am.

6 THE COURT: Uh-huh. (Affirmative).

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

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

10 MR. SMILEY: Okay.

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

13 MR. SMILEY: Okay.

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

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

17 THE COURT: It's noted and overruled.

18 MR. SMILEY: Thank you.

19 THE COURT: You may proceed.

20 SOLICITOR STEGALL: Thank you, Your Honor.

21 THE COURT: Uh-huh. (Affirmative).

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

24 A I was.

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

1 when, when you got Mr. Carr out of the, the automobile,
2 did you search him?

3 A I did not search him. I did a Terry Frisk for his
4 outer clothing for weapons and only weapons. That's all I
5 was searching for or all I was checking for---

6 Q okay.

7 A ---was weapons.

8 Q okay. Did you find any weapons?

9 A Not on his person.

10 Q okay. All right. So, once you were given consent,
11 where was the passenger?

12 A The passenger, I believe, was with -- I believe it's
13 PFC Kevin -- PFC Davis, and they were off to the side.

14 Q okay. Did the passenger -- well, was -- where was Mr.
15 Carr?

16 were they, were they both with PFC Davis?

17 A When I was actually searching the vehicle?

18 Q Correct.

19 A He would of been within the eyesight of both. I'm not
20 sure exactly where he had been standing.

21 Q okay. But, at some point, was Mr. Dawson asked to get
22 out of the car so you could conduct a search?

23 A Yes.

24 Q okay. And he under -- was it your belief that he
25 understood that the car was about to be searched?

1 A I, I don't know.

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

4 THE COURT: Speculation.

5 MR. SMILEY: ---speculation.

6 SOLICITOR STEGALL: Okay. I'm --.

7 THE COURT: Lack of foundation---

8 SOLICITOR STEGALL: Withdraw.

9 THE COURT: ---speculation and rephrase.

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

12 THE COURT: Uh-huh. (Affirmative).

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

14 A I did.

15 Q Okay. Please describe your search for the Court.

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

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

1 where a black backpack was located on the passenger
2 floorboard.

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

4 were there any identifying marks on the backpack?

5 A Not that I recall.

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

8 A Other than its position, no.

9 Q Okay. Go ahead.

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

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

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

22 Q Was that backpack locked in any way?

23 A No, sir.

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

1 A No, sir.

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

5 SOLICITOR STEGALL: Okay.

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

9 SOLICITOR STEGALL: Okay.

10 THE COURT: The objection's sustained.

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

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

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

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

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

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

25 A I immediately stopped what I was doing due to realizing

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

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

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

8 Q Okay.

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

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

13 A Yes.

14 Q Okay. Who was that?

15 A The Defendant.

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

17 A He did.

18 Q What did he say?

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

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

1 A I went, removed the bag from the car, and carried it
2 with me to remove the contents until I found the firearm.

3 Q And where did that happen?

4 A On the trunk of the vehicle.

5 Q Okay. But you'd already found the drugs at that point?

6 A Yes, sir.

7 Q Okay. Did you find a firearm?

8 A Yes, sir.

9 Q Okay. Now, you've testified that you were given
10 consent by Mr. Carr.

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

13 MR. SMILEY: Objection, Your Honor.

14 THE COURT: Basis?

15 MR. SMILEY: The speculation.

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

18 MR. SMILEY: Hypothetical.

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

24 MR. SMILEY: Yes, ma'am.

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

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

3 You may answer the question, sir.

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

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

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

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

19 A I did.

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

22 A Yes, sir.

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

25 THE COURT: Any questions for the witness?

1 MR. SMILEY: Yes, ma'am.

2 THE COURT: You may proceed.

3 CROSS-EXAMINATION

4 BY MR. SMILEY:

5 Q Did you have video that night?

6 A Yes, sir, I did.

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

8 A Just in-car. Not a body.

9 Q In-car?

10 A Correct.

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

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

14 Q Right.

15 A Correct.

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

18 A Yes, sir.

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

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

22 Q Right.

23 So you turned on the lights, and it basically backs up
24 30 seconds?

25 A Yes, sir.

Alexander Erickson - Cross-examination
by Mr. Smiley

1 Q So, my point is this is being videotaped before the
2 car's even stopped, correct?

3 A Yes.

4 Q Okay. All right. So, there's the videotape of all
5 your interactions with Mr. Carr, correct?

6 A Yes, sir.

7 Q Is -- and you've, you've had a chance to review the
8 video?

9 A Yes, sir.

10 Q All right. And after reviewing it, is it a fair and
11 accurate, accurate representation of what went on that
12 night?

13 A Yes, sir.

14 Q Okay. Now, as -- I believe, and, and I'm gonna, gonna
15 correct something for the record, is I believe you initially
16 testified, testified that this stop was on October 23rd,
17 but it was actually the 22nd, wasn't it?

18 A I --.

19 Q Would it help you to refresh your memory from your
20 notes and report?

21 A Yeah, if I could see my report --

22 Q Yeah.

23 A -- that would be great, sir.

24 Q Okay. I'll give you my copy.

25 How about that?

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

3 THE COURT: Yes, sir.

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

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

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

12 A It's a General Sessions prep sheet.

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

14 A Uh-huh. (Affirmative).

15 Q Yeah.

16 would you take a moment to refresh your memory on the
17 date of the stop?

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

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

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

23 A Yes.

24 Q Okay.

25 A According to all my paperwork.

Alexander Erickson - Cross-examination
by Mr. Smiley

1 Q All right. Now, when you approached the car, it, it
2 has Mr. Carr in the driver's seat, correct?

3 A Uh-huh. (Affirmative).

4 Q And it has Mr. Dawson in the passenger seat, right?

5 A Yes, sir.

6 Q Mr. Dawson had a backpack between his legs, correct, on
7 the floorboard?

8 A Yes, sir.

9 Q Did you -- when you first approached Mr. Carr, did you
10 get his driver's license, registration, insurance
11 information?

12 A I don't remember exactly if I got it in that order or
13 how I had got it.

14 Q Okay. I -- and I understand that. It, it would be
15 captured on the video, correct?

16 A (WHEREUPON, there was no audible response.)

17 Q All right. As -- but that was, when you approached the
18 car, that was your purpose of going up to talk to him about
19 the defective headlamp, right?

20 A Right.

21 Q And I believe your testimony is, while you were
22 standing at the driver's door, you looked down in Mr. Carr's
23 lap and thought you saw a plastic baggy.

24 Is that right?

25 A Yes, sir.

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

3 where exactly did you see it?

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

7 Q okay. All right.

8 A -- and it all happened extremely fast.

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

11 A Yes, sir.

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

13 A No, sir.

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

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

18 A Correct.

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

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

24 A No, sir.

25 Q ---came.

Alexander Erickson - Cross-examination
by Mr. Smiley

1 No -- he stayed in the car the whole time?

2 A Yes, sir.

3 Q All right. So, they were both sitting there, Mr. Carr
4 and Mr. Dawson.

5 You saw this baggy and then questioned Mr. Carr about
6 it?

7 A I -- can you repeat it?

8 Q Okay.

9 A You're kind of tripping me up here.

10 Q All right. Easy question.

11 When you were speaking with Mr. Carr---

12 A Uh-huh. (Affirmative).

13 Q -- did you ask him about this alleged baggy you saw?

14 A Yes, I did.

15 Q All right. What was his response?

16 A He gave me a -- an answer. Something along the lines
17 of a candy wrapper I think is what he said at first.

18 Q Okay.

19 A And then I believe he said a cigarette wrapper the
20 second time.

21 Q Okay. At what point did you call for backup?

22 A I think while I was still speaking with him about the
23 bag.

24 Q Okay. All right. Once Officer Davis, your backup
25 arrived, then you took Mr. Carr out of the car?

1 A Yes, sir.

2 Q All right. And, and, at that point, you began talking
3 to him about searching the car, correct?

4 A Yes, sir.

5 Q And when you were having this discussion, the two of
6 y'all were standing back away from his car?

7 A Yeah, I -- we were -- I, I took Mr. Carr and kind of
8 separate and create a distance between the Defendant and---

9 Q Right.

10 A ---Mr. Carr.

11 Q Cause you didn't want them hearing each other, right?

12 A Right.

13 Q Okay.

14 A I believe I had Mr. Carr somewhere near the front end
15 of my car.

16 Q Okay. And it would of been recorded, of course.

17 All right. Mr. Carr, in talking to him, he wanted to
18 limit the search, correct?

19 A No, I actually offered---

20 Q To limit it.

21 A ---a limited search---

22 Q All right.

23 A ---at first.

24 Q So, he wasn't concerned about what you were searching?

25 A No. Essentially how I brought it up to him was I

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

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

9 A No.

10 Q Correct?

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

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

18 A Sure.

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

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

1 Q Uh-huh. (Affirmative).

2 A ---of the car.

3 Q I---

4 A But, yeah, he was---

5 Q Upon Mr.---

6 A I don't remember the exact time---

7 Q I---

8 A ---that all this happened.

9 Q I understand.

10 At, at some point you get Mr. Carr to give you consent
11 to search the automobile?

12 A Correct.

13 Q All right. At that point, Mr. Dawson was gotten out of
14 the car for sure, right?

15 A Yes, sir.

16 Q And was back with Patrolman Davis, right?

17 A Yes, sir.

18 Q All right. You then searched starting on the driver's
19 side, correct?

20 A Yes, sir.

21 Q All right. And, and you were looking, you were
22 looking, at that point, for the small baggy that you thought
23 you had seen, correct?

24 A Yes, sir.

25 Q Now, did you -- and this is sort of important.

Alexander Erickson - Cross-examination
by Mr. Smiley

1 Do you remember whether you got Mr. Dawson out of the
2 car or whether it was Patrolman or Officer Davis?

3 A I don't remember off the top of my head.

4 Q All right.

5 A I'm sure it's on the video we did.

6 Q Okay. When Mr. Dawson was asked to get out of the car,
7 was he told to leave his belongings behind or to bring them
8 with him?

9 A Again, I don't remember who got him out of the car.
10 So, I don't remember if that was --.

11 Q All right. So, you're searching the compartment of the
12 car -- of Mr. Carr's car based on the consent you had been
13 given, correct?

14 A I'm searching the side with Mr. Dawson?

15 Is that what you said?

16 Q No. Maybe I'm not speaking very well this morning.
17 So, I'll start again.

18 As, as -- you were searching the car, Mr. Carr's car,
19 based on the consent that you had been given by Mr. Carr,
20 correct?

21 A Correct.

22 Q All right.

23 A There's a lot of cars there. So, it's---

24 Q Yeah, I know. That's why I slowed it down.

25 okay. As -- at the point that you come across this

1 backpack, all right, it's still on the floorboard of the
2 front seat, right?

3 A The front passenger floorboard.

4 Q Okay. And it's zipped up, right?

5 A Yes, sir.

6 Q All right. You did not ask Mr. Dawson if he owned the
7 backpack, did you?

8 A No.

9 Q You didn't ask Mr. Carr if he owned the backpack, did
10 you?

11 A No.

12 Q It's at that point, based on the consent of Mr. Carr,
13 you opened the backpack?

14 A Absolutely.

15 Q All right. And you went through Mr. Dawson's backpack
16 while it was located on the floorboard of the car, right?

17 A Yes, sir.

18 Q And upon unzipping it and looking into his bag, you saw
19 a green velvet bag similar to a Crown Royal bag, correct?

20 A Yes, sir, it might of been a Crown Royal bag.

21 Q Right.

22 It, it was a green velvet bag with a drawstring,
23 correct?

24 A Yes, sir.

25 Q And that bag was closed also, right?

Alexander Erickson - Cross-examination
by Mr. Smiley

1 A Yes, sir.

2 Q And you opened it up inside the backpack of Mr.
3 Dawson's, and, at that point, saw what you believed to be
4 narcotics, right?

5 A Yes, sir.

6 Q All right. And that was all done on -- where the
7 backpack laid on the front floorboard of Mr. Carr's vehicle,
8 right?

9 A Correct.

10 Q While that was going on, Mr. Dawson was back with
11 Patrolman Davis, right?

12 A Yes, sir.

13 Q All right. All right. So, at this point, you find the
14 drugs.

15 So, you have Mr. Dawson and Mr. Carr cuffed?

16 A Yes, sir.

17 Q All right. So, they're both detained, right?

18 A (WHEREUPON, there was no audible response.)

19 Q And is then you approached, make sure, make sure I get
20 this right, you approached Mr. Dawson and ask him about his
21 backpack, right?

22 A Yes, sir.

23 Q All right. As -- and you ask him if -- what was in his
24 backpack, right?

25 You didn't tell him you had found drugs?

1 You asked him what was in it, right?

2 A I read him his rights.

3 Q You read him his rights, but you told him he was under
4 arrest?

5 He's detained---

6 A I didn't tell him he was under arrest.

7 Q Well---

8 A I read him his rights.

9 Q Okay. He is cuffed, correct?

10 A Yes.

11 Q All right. He's being detained?

12 A Well, I told him he was being detained. I didn't---

13 Q All right.

14 A ---tell him he was under arrest. There's a difference
15 between me telling somebody they're detained, and that
16 they're under arrest. He was told he was detained.

17 Q All right. As -- at the point you read, read him his
18 Miranda rights, right?

19 A Uh-huh. (Affirmative).

20 Q You have Mr. Dawson in custody, right?

21 A (WHEREUPON, there was no audible response.)

22 Q And you want to ask him questions concerning his
23 backpack, right?

24 A Yes, sir.

25 Q So, before you did that, you, you read him his Miranda

Alexander Erickson - Cross-examination
by Mr. Smiley

1 rights?

2 A Yes, sir.

3 Q Okay. After you read him his Miranda rights, you asked
4 him what was in his backpack, correct?

5 A Yes, sir.

6 Q Okay. And he told you there was drugs in it.
7 He further told you that there were a gun in it, right?

8 A Yes, sir.

9 Q So, did you ask Mr. Carr what was in his backpack?

10 A No.

11 Q Mr. Carr didn't have a backpack?

12 A No.

13 Q Mr. Dawson---

14 A I---

15 Q ---had a backpack, right?

16 A Sure.

17 Q Okay. And based on the fact that the backpack was a --
18 was between Mr. Dawson's legs and that he had acknowledged
19 that there were -- drugs inside where his, right?

20 He said there's drugs in my backpack, is -- you elected
21 to charge only him and not Mr. Carr, correct?

22 A There was no question of who the narcotics belonged to.

23 Q Right.

24 Because it was Mr. Dawson's backpack, right?

25 A Uh-huh. (Affirmative).

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

3 You agree with that?

4 A Absolutely.

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

7 A Correct.

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

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

11 A Correct.

12 Q And the car had not been impounded.

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

15 A Correct.

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

18 A Correct.

19 MR. SMILEY: Beg the court's indulgence.

20 THE COURT: Uh-huh. (Affirmative).

21 (Pause.)

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

23 THE COURT: Uh-huh. (Affirmative).

24 (Pause.)

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

Alexander Erickson - Cross-examination
by Mr. Smiley

1 K-9 officer, correct?

2 A Yes, sir.

3 Q And you had a K-9 dog with you that night?

4 A Correct.

5 Q What's his name?

6 A Kron. K-R-O-N.

7 Q Okay. Is -- however, Kron really doesn't have anything
8 to do with this case cause he was not used, was he?

9 A No.

10 Q All right. Never even threatened to be used by you?
11 You didn't say I'm gonna get out the dog or anything
12 like that, did you?

13 A I actually think I said something about it then in the
14 initial contact.

15 Q And, and a dog---

16 A I didn't---

17 Q The dog though is, is -- was never brought out before
18 or after finding the drugs?

19 A He was never brought out of the car.

20 Q All right. And I think you answered this, but just
21 want to make sure I understand, is the thing that heightened
22 your awareness or suspicion was never found, right?

23 A Correct.

24 MR. SMILEY: All right. At this point, Your Honor, I
25 don't have any questions. I may have some recross after

1 redirect.

2 THE COURT: You may proceed.

3 SOLICITOR STEGALL: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY SOLICITOR STEGALL:

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

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

10 A I did not.

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

13 A Yes, sir.

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

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

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

19 A No, sir.

20 Q Okay.

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

23 Q Okay.

24 A So --.

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

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

2 THE COURT: You may.

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

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

7 A Yes.

8 Q Okay.

9 A It appears to be a video that I have.

10 Q Have you had a chance to review it?

11 A I have.

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

14 A Yes.

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

18 THE COURT: Any objection?

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

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

23 MR. SMILEY: Yes, ma'am.

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

1 MR. SMILEY: Yes, ma'am.

2 THE COURT: ---questioned what happened in the video.

3 MR. SMILEY: Yes, ma'am.

4 THE COURT: I guess I'm trying to figure out how does
5 that prejudice your client in seeing what actually
6 contemporaneously happened.

7 MR. SMILEY: well, because there's a confrontation
8 clause problem in that, while there's an allegation and some
9 video that Mr. Carr gave consent, I have not been given the
10 opportunity to confront Mr. Carr about what he meant by
11 consent what, whatsoever. I'm just told---

12 THE COURT: But is that even on the video?

13 MR. SMILEY: The consent?

14 THE COURT: Uh-huh. (Affirmative).

15 MR. SMILEY: Yes, ma'am.

16 THE COURT: See I haven't seen the video.

17 MR. SMILEY: Yes, ma'am.

18 THE COURT: So, I don't know what's on it.

19 MR. SMILEY: I gotcha. I, I thought we would of
20 already seen it by this point.

21 THE COURT: No.

22 MR. SMILEY: We're getting ready to.

23 THE COURT: Oh, I don't know.

24 Are we?

25 MR. SMILEY: Yes, ma'am.

Alexander Erickson - Redirect examination
by Solicitor Stegall

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

3 MR. SMILEY: Yes, ma'am.

4 THE COURT: ---watch them alone.

5 MR. SMILEY: I, I gotcha.

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

8 MR. SMILEY: well, but I---

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

11 THE COURT: How long is it?

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

14 MR. SMILEY: About---

15 SOLICITOR STEGALL: Twenty---

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

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

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

21 Aren't they self-authenticating?

22 Don't they speak for themselves?

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

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

1 MR. SMILEY: well, I do.

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

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

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

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

16 THE COURT: You just wanted to play it?

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

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

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

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

7 Does that make sense, what I'm saying?

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

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

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

18 THE COURT: I've admitted it.

19 SOLICITOR STEGALL: Okay. Then no.

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

1 search was accomplished.

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

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

5 THE COURT: Uh-huh. (Affirmative).

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

8 THE COURT: Uh-huh. (Affirmative).

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

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

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

13 THE COURT: The Supreme Court says that---

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

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

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

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

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

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

1 MR. SMILEY: No, I---

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

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

14 MR. SMILEY: Yes, ma'am.

15 THE COURT: Yeah.

16 MR. SMILEY: Apparent authority.

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

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

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

1 give it much weight.

2 MR. SMILEY: Yes, ma'am.

3 THE COURT: Yeah, if that helps you.

4 MR. SMILEY: Um.

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

6 MR. SMILEY: I---

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

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

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

13 MR. SMILEY: Yes, ma'am.

14 THE COURT: That's his crime.

15 MR. SMILEY: Yes, ma'am.

16 THE COURT: They were in a car together.

17 MR. SMILEY: I---

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

22 MR. SMILEY: well, it wasn't about the dog. It was
23 about consent.

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

1 of consent---

2 MR. SMILEY: Okay.

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

7 MR. SMILEY: I, I agree.

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

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

10 THE COURT: -- of your argument.

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

14 THE COURT: I know that.

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

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

17 MR. SMILEY: I'll sit down.

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

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

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

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

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

1 look for myself.

2 MR. SMILEY: I understand.

3 THE COURT: Yeah.

4 MR. SMILEY: I understand.

5 THE COURT: Four eyes are better than two.

6 MR. SMILEY: Yes, ma'am.

7 THE COURT: Who knows?

8 We might find something.

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

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

16 MR. SMILEY: Yes, ma'am.

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

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

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

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

7 MR. SMILEY: I specifically---

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

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

21 THE COURT: Let's proceed.

22 MR. SMILEY: Yes, ma'am.

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

25 THE COURT: You may.

1 SOLICITOR STEGALL: ---from the --?

2 THE COURT: Uh-huh. (Affirmative).

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

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

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

10 His---

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

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

15 You put in Davis---

16 SOLICITOR STEGALL: No, but---

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

18 THE COURT: I was only aware of one video.

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

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

22 MR. SMILEY: No.

23 THE COURT: Is there something different?

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

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

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

3 SOLICITOR STEGALL: Okay.

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

9 SOLICITOR STEGALL: We've---

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

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

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

13 What number is that, No. 1?

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

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

17 So that would be this witness' video?

18 SOLICITOR STEGALL: That's correct.

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

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

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

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

6 SOLICITOR STEGALL: Okay.

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

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

11 THE COURT: You may proceed.

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

15 okay. And I can set up my equipment if I need to. I'd
16 ask the solicitor, since they have the equipment already
17 hooked up, if they could play it, Your Honor.

18 Is that okay?

19 SOLICITOR STEGALL: Yeah.

20 RECROSS EXAMINATION

21 BY MR. SMILEY:

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

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1 in-car cameras that night.

2 Is that right?

3 A Yes, sir.

4 Q Okay.

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

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

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

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

14 THE COURT: Sure.

15 MR. SMILEY: Okay.

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

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

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: You're welcome.

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

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

24 You may be seated.

25 You have the technical issues resolved?

1 UNIDENTIFIED SPEAKER: Yes, ma'am.

2 THE COURT: All right. Let's proceed.

3 SOLICITOR STEGALL: You ready?

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

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

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

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

12 A It's right around here.

13 Q Okay.

14 A Yes, it is.

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

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

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

21 A Yes.

22 Q The, the driver?

23 A Correct.

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

25 A Yes.

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1 Q okay.

2 All right. If we could continue.

3 (WHEREUPON, another portion of the video was played at
4 this time, and the following was asked while the video was
5 still playing.)

6 Q Officer, you're asking for Mr. Dawson's ID there.

7 Are you asking for Mr. Dawson's ID?

8 A (WHEREUPON, there was no audible response.)

9 Q Okay. Before we move into the next part, at that point
10 in time, that's where you're getting Mr. Carr out of the
11 car, right?

12 A Yes, sir.

13 Q Is -- and that is -- what you've put on the hood is his
14 information that you gathered.

15 Is that right?

16 A I, I'm assuming so.

17 Q Okay. I'm, I'm just trying to place everything.

18 So, at this point, he's getting out of the car, and
19 this is where you're going to talk about consent, correct?

20 A I believe I'm doing a Terry Frisk of him right now.

21 Q Right.

22 First and then -- okay.

23 A Yeah.

24 MR. SMILEY: We could play it further.

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

1 this time.)

2 Q Now, Officer Erickson, if I can ask you a couple of
3 questions right in here is -- I believe this is where you
4 introduced a limited search to him, right, talking about
5 that, of the car, correct?

6 A Yes, sir.

7 Q And, at that point, he said that he would give you some
8 level of consent, but he also said that he couldn't talk
9 about the passenger, right?

10 Did he just say that?

11 A Yes.

12 Q Okay.

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

15 Q And, Officer Erickson, if I could ask you a couple of
16 questions about your perception at this point is y'all
17 obviously were having a discussion about -- to determine if
18 he was giving consent, but also about how much of the car
19 was gonna be searched, correct?

20 A Yes, sir.

21 Q All right. And he is telling you you're welcome to
22 search for the car, but it is -- your perception is he is
23 also telling you that he can't speak for Mr. Dawson,
24 correct, to something to that?

25 Maybe not those words, but that's what he's implying.

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1 A Yeah, I'll give you some on that, but, yeah, he's
2 basically, in my perception---

3 Q Yeah.

4 A ---if that's what you really want to know --

5 Q Yeah.

6 A -- he's basically saying that well, I don't know what
7 he has on him.

8 Q Right.

9 A To me, that's a red flag. well, if you don't want to
10 speak for what he has, he's probably the one that has
11 whatever on him.

12 Q Okay.

13 A That's my perception of it.

14 Q But it certainly didn't rise to probable cause. You've
15 already testified to that. That's why you're asking for
16 consent.

17 Correct?

18 A Uh-huh. (Affirmative).

19 Q All right.

20 THE COURT: You need to answer yes or no please. Sir,
21 I need you to answer yes or no.

22 THE WITNESS: Yes.

23 Q Okay. So, is even though you're talking about
24 asserting Constitutional rights, and that raises red flags,
25 is, is there is -- this is about consent.

1 You did not have probable cause, correct?

2 A Correct. I did not---

3 Q All right.

4 A ---have probable cause to search the car.

5 MR. SMILEY: All right. We can continue.

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

8 Q Officer Erickson, is that Officer Davis that's arrived
9 at this point in time?

10 A He arrived a little while ago.

11 Q Okay.

12 A But, yes.

13 Q But it's the first time we've seen him.

14 That's Officer Davis, correct?

15 A Yes, sir.

16 Q All right. And Mr. Carr is out of the car at this
17 point, but I, I haven't seen or heard anything about Mr.
18 Dawson being taken out of the car.

19 Has he been taken out of the car at this point?

20 A It sounds like he -- it sounds like I did -- just did a
21 pat---

22 Q Okay.

23 A ---Terry Frisk of her person.

24 Q Okay. So, you patted him down for safety, correct?

25 A Yes, sir.

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1 MR. SMILEY: All right. Please continue.

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

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

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

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

11 A Yes, sir.

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

14 A No.

15 Q Right?

16 A Not yet.

17 MR. SMILEY: Okay. We can continue.

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

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

22 A Yes, sir.

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

1 the drugs?

2 A Yes, sir.

3 Q And that's why we can hear on the tape you -- when you
4 found that, you stopped immediately to back up and detain
5 Mr. Dawson and, at that point, you restrained Mr. Carr,
6 correct?

7 A Yes, sir.

8 Q All right.

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

11 Q Okay. That's Mr. Dawson, correct?

12 A Yes, sir.

13 Q All right. And, and I'm sorry if I'm boring you by
14 going over these details, but I think they're important.

15 Is -- at this point, you told Officer Davis to place
16 Mr. Carr in the back of his car, right, while you dealt with
17 Mr. Dawson, right?

18 A Yes, sir.

19 Q And this is right after you had found the drugs in the
20 backpack, had detained Mr. Dawson and Mr. Carr, as you're
21 going straight to Mr. Dawson to ask him about his backpack,
22 right?

23 A Yes, sir.

24 MR. SMILEY: All right. If we can continue.

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

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1 this time.)

2 Q Now, you're asking, you're asking Mr. Dawson questions.

3 At any point does your mic -- your mic's on the whole
4 time, right?

5 You, you don't turn it off and on?

6 It's on, right?

7 A Correct.

8 Q Okay. And you -- have you read him Miranda at this
9 point?

10 A I don't know if I have at this point or---

11 Q well, it's been playing since the beginning of the
12 video, and your mic's been on the whole time, right?

13 A Yes.

14 Q So, if you had read him Miranda at this point, we would
15 of heard it on the video, correct?

16 A Presumably, yes.

17 MR. SMILEY: All right. If we could continue.

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

20 Q At this point in time you've executed your consent
21 search, you've found the drugs, you Mirandized Mr. Dawson,
22 and he's told you that the drugs were his, right?

23 A Yes.

24 Q And the gun?

25 THE COURT: Sir, if you can say yes or no.

1 THE WITNESS: Yes. Excuse me.

2 Q And the gun was his also, correct?

3 A Yes.

4 Q All right. As -- at -- before the bag was gone into,
5 had you asked either Mr. Carr or Mr. Dawson who owned the
6 backpack?

7 A No.

8 Q As -- when you found the items in the backpack is you
9 went directly to Mr. Dawson to question him about the
10 contents of the backpack, correct?

11 A Yes.

12 Q Cause you did not believe it was Mr. Carr's backpack?

13 A No.

14 Q Okay.

15 A I believed it was who was sitting in the passenger
16 seat.

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

18 THE COURT: Any questions for the witness?

19 SOLICITOR STEGALL: None, Your Honor.

20 THE COURT: Any objection to the witness being excused?

21 MR. SMILEY: Not, not from defense, Your Honor.

22 SOLICITOR STEGALL: No objection, Your Honor.

23 THE COURT: Sir, you're excused.

24 THE WITNESS: Thank you.

25 THE COURT: You're welcome.

1 State may call its next witness.

2 SOLICITOR STEGALL: State rests, Your Honor.

3 THE COURT: Any witnesses from the defense?

4 MR. SMILEY: No, ma'am.

5 THE COURT: Be glad to hear any argument.

6 MR. SMILEY: Yes, ma'am.

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

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

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

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

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

1 car.

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

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

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

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

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

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

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

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

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

10 Let me see. Beg the Court's indulgence.

11 (Pause.)

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

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

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

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

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

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

16 THE COURT: Would you like to respond?

17 SOLICITOR STEGALL: Thank you, Your Honor.

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

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

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

23 THE COURT: Do you?

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

1 they did.

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

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

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

15 That's like---

16 SOLICITOR STEGALL: It's---

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

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

22 SOLICITOR STEGALL: Okay.

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

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

6 SOLICITOR STEGALL: well---

7 THE COURT: ---criminal activity was afoot.

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

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

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

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

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

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

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

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

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

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

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

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

25 SOLICITOR STEGALL: well, and, you know, and this is

1 sort of leaving this---

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

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

12 SOLICITOR STEGALL: I---

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

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

25 SOLICITOR STEGALL: No.

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

5 SOLICITOR STEGALL: well---

6 THE COURT: ---type of search.

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

10 THE COURT: Yeah.

11 SOLICITOR STEGALL: ---because the dogs --

12 THE COURT: Uh-huh. (Affirmative).

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

15 THE COURT: Uh-huh. (Affirmative).

16 SOLICITOR STEGALL: And---

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

19 SOLICITOR STEGALL: well, I believe---

20 THE COURT: ---probable cause.

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

23 THE COURT: Uh-huh. (Affirmative).

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

1 THE COURT: Uh-huh. (Affirmative).

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

4 THE COURT: Uh-huh. (Affirmative).

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

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

17 SOLICITOR STEGALL: well---

18 THE COURT: Consent has limitations.

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

21 THE COURT: No.

22 SOLICITOR STEGALL: Oh.

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

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

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

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

1 SOLICITOR STEGALL: I---

2 THE COURT: -- on point.

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

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

10 SOLICITOR STEGALL: Okay.

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

13 SOLICITOR STEGALL: Okay.

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

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

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

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

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

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

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

23 SOLICITOR STEGALL: Nothing further, Your Honor.

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

1 a brief.

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

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

7 SOLICITOR STEGALL: Thank you.

8 THE COURT: I assume you have another copy?

9 SOLICITOR STEGALL: I do, Your Honor.

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

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

15 MR. SMILEY: Yes, ma'am.

16 SOLICITOR STEGALL: Thank you.

17 THE COURT: You're welcome.

18

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

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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 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

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1 PROCEEDINGS

2 THE COURT: All right, Mr. Smiley. Are we ready to

3 hear from your client?

4 MR. SMILEY: Yes, sir.

5 THE COURT: All right.

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

7 his rights.

8 [Whereupon, the Defendant enters the courtroom]

9 MR. SMILEY: Your Honor, this is my client, Mr.

10 Ricky Dawson. And after a long discussion with Mr.

11 Dawson he has elected to waive his right to a jury trial

12 and present with a bench trial and I believe the State

13 has agreed to also.

14 THE COURT: All right. Mr. Dawson, raise your

15 right hand please?

16 [Whereupon, the Defendant complies]

17 [Whereupon, the Defendant is duly sworn by the

18 Court]

19 THE COURT: Mr. Dawson, your attorney tells me that

20 you are waiving your rights to a jury trial. Is that

21 correct?

22 MR. DAWSON: Correct.

23 THE COURT: You understand that if you ask for a

24 jury trial the State would give you a trial; you

25 understand that?

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1 MR. DAWSON: Yes, sir.

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

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

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

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

21 MR. DAWSON: Yes sir, I do.

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

24 MR. DAWSON: Yes, sir.

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

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

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

3 MR. SMILEY: Very good.

4 THE COURT: 2 o'clock everyone.

5 [Whereupon, Court is in recess from 1:00 p.m. until
6 2:07 p.m.]

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

10 THE COURT: That'll be fine.

11 MR. STEGALL: A question ---

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

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

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

17 MR. SMILEY: We are, Your Honor.

18 THE COURT: Thank you. Go ahead.

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

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

3 MR. SMILEY: Partially, yes sir.

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

6 MR. SMILEY: Yes, sir.

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

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

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

19 MR. STEGALL: Correct, Your Honor.

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

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State v Ricky Manigo Dawson
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1 MR. SMILEY: Yes, sir. His position is -- should I
2 lay out the procedure before I get to it?

3 THE COURT: You're on the record.

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

10 He was indicted for those charges. And
11 subsequently even though the arrest was on October 22,
12 2015 a suppression hearing was scheduled March 14th of
13 2018. At that point in time the State produced Officer
14 Erickson to testify as to the reasonableness after I had
15 filed a Motion to Suppress and he had filed a brief to
16 answer it.

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

20 THE COURT: Without objection?

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

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

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

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

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

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

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

15 MR. STEGALL: Your Honor, the State asks that you
16 deny the defense's motion to reopen and us have another
17 suppression hearing. As to the delay at the time Judge
18 Jefferson heard the suppression hearing on March 14th,
19 2018 she was the Chief Admin Judge for Berkeley County.

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

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

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

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State v Ricky Manigo Dawson
Motion-New Suppression Hearing-David Young-Direct Examination by Mr. Stegall
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1 MR. STEGALL: Thank you, Your Honor. The State
2 calls David Young.

3 [Whereupon, Mr. Young comes forward]

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

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

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

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

11 - - - - -

12 DAVID YOUNG,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. STEGALL:

17 Q. Investigator Young, where are you currently
18 employed?

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

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

23 A. Seven years.

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

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1 and responsibilities?

2 A. I assist the solicitors in preparing for trial. I
3 collect evidence for them. I obtain copies of in-cars
4 and body camera videos and make copies of those for Rule
5 5's and for court.

6 Q. Okay. Were you an employee of the Ninth Circuit
7 Solicitor's Office during October of 2015?

8 A. Yes, I was.

9 Q. Okay. Did you obtain audio video recordings from
10 Goose Creek Police Department related to the case that we
11 are here for today being Ricky Dawson?

12 A. I did.

13 Q. Okay. Do you remember the names of the officers who
14 provided the in-car video?

15 A. I would have gotten the videos from the Goose Creek
16 records office. The videos would have been of Officer
17 Erickson and Officer Ted Davis.

18 Q. Early in 2019 did -- were you approached and asked
19 to provide a copy of a disk?

20 A. Yes.

21 Q. A duplicate copy?

22 A. Yes.

23 Q. Okay. Do you remember what the reason for the
24 request was?

25 A. I believe you told me that the Judge had misplaced

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

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

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

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

11 A. Officer Erickson.

12 Q. Okay.

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

16 MR. STEGALL: Jefferson.

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

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

20 THE COURT: --- to her?

21 MR. STEGALL: To the court.

22 THE COURT: So where is the original?

23 MR. STEGALL: We still have the original.

24 THE COURT: That came from the officer?

25 MR. STEGALL: Correct.

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1 THE COURT: So she had a copy?
2 MR. STEGALL: She had a copy.
3 THE COURT: Okay. I'm with you now. Go forward.
4 MR. STEGALL: Thank you, Your Honor.
5 Q. [Mr. Stegall] So just to reiterate whose in-car
6 video did you copy when approached about making a
7 duplicate for Judge Jefferson?
8 A. Officer Erickson's.
9 Q. Okay. And did you make copies of any other
10 officer's video?
11 A. No.
12 Q. For the purpose of...
13 A. To return to the Judge?
14 Q. Correct.
15 A. No.
16 Q. Okay.
17 MR. STEGALL: No further questions, Your Honor.
18 THE COURT: Cross-Examination?
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December 9, 2019

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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

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1 ask it that way.

2 A. I don't know which copy was placed into evidence
3 during the suppression hearing. I made a -- we get the
4 original ---

5 Q. --- right ---

6 A. --- I make you a copy and then when we get prepared
7 for court I would make our office a copy to put into
8 evidence for court.

9 Q. Okay. So you just testified you don't know what
10 disk was put into evidence that you made a copy of.

11 A. Correct. I would have to look at the disk.

12 Q. I understand.

13 MR. SMILEY: Madame Clerk, do you have the evidence
14 from the suppression hearing?

15 CLERK OF COURT: I do downstairs. I can get it if
16 that would be helpful.

17 MR. SMILEY: I need the disk.

18 THE COURT: It would be helpful. It would be
19 helpful for the Court.

20 CLERK OF COURT: All right.

21 MR. SMILEY: Because I need the disk for my next
22 set of questions.

23 THE COURT: I understand. I follow you.

24 MR. SMILEY: Yes, sir.

25 THE COURT: I'm following your train.

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1 CLERK OF COURT: I'll be right back.

2 [Whereupon, the Clerk of Court exits the courtroom]

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

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

8 THE COURT: Let him look at it.

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

11 THE COURT: Yes.

12 [Whereupon, the witness is shown disk]

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

15 THE COURT: How many copies ---

16 THE WITNESS: --- from the original.

17 THE COURT: How many copies did you make?

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

21 THE COURT: Right.

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

24 THE COURT: It's still in the file?

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

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

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

7 THE WITNESS: This [indicates] is a copy.

8 THE COURT: I understand.

9 THE WITNESS: Yes, sir.

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

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

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

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

21 MR. STEGALL: Correct, Your Honor.

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

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

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

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

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

17 THE COURT: How do you verify it?

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

20 THE COURT: So you don't watch it?

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

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

8 THE COURT: And was any deletions made on this?

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

11 [Off the record momentarily]

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

14 THE COURT: Hand that to the witness.

15 [Whereupon, the Clerk provides disk to the witness]

16 THE COURT: Go ahead.

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

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

23 Q. Okay. So you didn't make that copy?

24 A. No, sir.

25 Q. All right.

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1 MR. SMILEY: Well, we've got a problem Your Honor.

2 THE COURT: That -- what do you have in your hand?

3 THE WITNESS: It says this is a copy. That is not
4 my writing. It says copy. It's got the case number on
5 it, Officer A. Erickson certified copy 4743 the same as
6 that and disk one of one.

7 MR. SMILEY: And that's what was replaced -- what
8 was given to Judge Jefferson to replace the original she
9 I guess misplaced. But that wasn't done by Mr. Young.
10 And again, I would move that we could just do the
11 suppression hearing afresh and get rid of all these
12 problems at this point.

13 THE COURT: Well, let me understand this. What's
14 in your hand? Where did that come from?

15 THE WITNESS: From her [indicates].

16 THE COURT: Where do you know it came from?

17 CLERK OF COURT: It was received directly from
18 Judge Jefferson. It came to the Clerk's Office from
19 Judge Jefferson.

20 THE COURT: Oh. Where is the original?

21 CLERK OF COURT: I have no idea.

22 MR. STEGALL: Judge ---

23 THE COURT: --- I haven't ruled on anything. I'm
24 just trying -- I'm like Sergeant Friday; I'm trying to
25 get the facts, ma'am.

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1 MR. STEGALL: May I take a look at that video?

2 THE COURT: Sure you can.

3 MR. STEGALL: We're not privy to the Court's
4 exhibits.

5 MR. SMILEY: But they...

6 THE COURT: I'm going to hear you.

7 MR. SMILEY: Yes, sir.

8 [Whereupon, Mr. Stegall views the disk]

9 THE COURT: So that's what went to Judge Jefferson
10 the second time?

11 MR. STEGALL: Well...

12 THE COURT: Of course you don't know.

13 MR. STEGALL: I don't know which one -- you know I
14 don't know if this was the one she had trouble viewing or
15 you know we made a copy ---

16 THE COURT: --- well, if she did ---

17 MR. STEGALL: --- because I guess ---

18 THE COURT: --- she would have sent back two.

19 MR. STEGALL: So, our disks Your Honor are you know
20 they are silver. They don't have any white labels on
21 them. When we get disks from law enforcement ---

22 THE COURT: --- of course you're not saying that
23 came from law enforcement.

24 MR. STEGALL: I'm not saying it did or didn't come
25 from law enforcement you know.

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

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

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

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

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

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

16 THE COURT: That's better.

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

20 THE COURT: Well, this witness would know.

21 THE WITNESS: That is ---

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

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

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

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1 it?

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

5 THE COURT: I accept that.

6 THE WITNESS: Yes, sir.

7 THE COURT: Do you know where that came from?

8 THE WITNESS: No, sir.

9 THE COURT: Except it came back from Judge
10 Jefferson?

11 THE WITNESS: Yes sir.

12 THE COURT: Could that have been the original?

13 THE WITNESS: Um...

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

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

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

25 THE WITNESS: On this one?

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1 THE COURT: Yes.

2 THE WITNESS: No, sir.

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

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

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

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

12 MR. STEGALL: We played the video in court.

13 THE COURT: For her?

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

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

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

19 THE COURT: Could be.

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

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

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1 possession and thrown the second one away.

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

3 THE COURT: Could have.

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

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

8 MR. SMILEY: That'd be fine.

9 THE COURT: Strike that.

10 [Laughter]

11 MR. SMILEY: And strike my response to that.

12 [Laughter]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 [Whereupon, the witness provides CD to the Court]

10 THE COURT: Have you seen this Mr. Smiley?

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

12 THE COURT: I think you should.

13 MR. SMILEY: Yes, sir.

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

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

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

23 THE COURT: --- I understand ---

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

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

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

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

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

6 MR. STEGALL: And that's ---

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

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

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

15 MR. SMILEY: She does, Your Honor.

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

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

19 [Whereupon, Mr. Smiley reviews document]

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

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

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

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

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

11 MR. STEGALL: The order?

12 THE COURT: Yes, well ---

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

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

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

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

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

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

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

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

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

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

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

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

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

25 MR. SMILEY: No sir, Your Honor.

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1 THE COURT: You may come down.

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

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

6 THE COURT: Yes, please do.

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

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

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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.

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1 MR. STEGALL: The State calls Officer Erickson.

2 [Whereupon, Officer Erickson comes forward]

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

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

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

9 - - - - -

10 ALEXANDER ERICKSON,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. STEGALL:

15 Q. Officer Erickson, where are you currently employed?

16 A. The city of Goose Creek Police Department.

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

19 A. Roughly seven years.

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

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

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

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

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

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

4 A. Yes, sir.

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

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

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

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

15 THE WITNESS: Is that better?

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

17 A. I was.

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

20 A. Yes, I did.

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

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

23 Q. What county is that located in?

24 A. Berkeley County, South Carolina.

25 Q. Okay. Please tell the Court the circumstances

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1 surrounding the stop?

2 A. I observed a Chevy impala approach me from the
3 opposite direction on Red Bank Road. I observed it had a
4 headlight out on it. I then turned around on the vehicle
5 and conducted a traffic stop on it for the equipment
6 violation.

7 Q. Were you able to make contact with the driver?

8 A. I was.

9 Q. Were you able to identify the driver?

10 A. I did. His name was Sam Carr.

11 Q. Did Mr. Carr have any passengers with him?

12 A. He did; one in the front seat.

13 Q. Were you able to identify the passenger?

14 A. I did. It was Ricky Dawson.

15 Q. While speaking to Mr. Carr did you observe anything?

16 A. When I was standing at the driver's side window on
17 the left side of Mr. Carr's lap area I saw a plastic
18 baggie or what appeared to be like a plastic bag kind of
19 twisted up at the end.

20 The significance of that to me was I almost
21 immediately suspected that that was a bag containing
22 narcotics.

23 Q. Was that something you typically see being a K-9
24 officer that is involved in drug cases ---

25 A. --- absolutely ---

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1 Q. --- are you able to recognize the difference between
2 a normal baggie and one possibly including narcotics?

3 A. Absolutely.

4 Q. When you noticed the baggie what did the driver do?

5 A. I somewhat confronted him about it. I made it clear
6 that I saw the bag. He then took it and he appeared to
7 shove it back into his pocket, his left pocket. And then
8 we had ---

9 Q. --- who did?

10 A. The driver, Sam Carr.

11 Q. What did you think when that happened?

12 A. That he was trying to conceal it because he knew it
13 was seen.

14 Q. What did you do next?

15 A. I requested a second officer respond because the
16 traffic stop at this point had turned into a narcotics
17 investigation.

18 Q. And did a second unit respond?

19 A. One did, yes, at the time Officer Davis, Sergeant
20 Davis at the time.

21 Q. Okay. When Officer Davis arrived what happened
22 next?

23 A. We had ended up getting both the driver and
24 passenger out of the vehicle. I believe I conducted a
25 terry frisk of Sam Carr just to make sure he didn't have

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

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

5 A. Initially I had told Mr. Carr that I was extremely
6 concerned about that bag; that bag that I had seen and
7 called him out on that had magically disappeared.

8 Initially during the conversation I wanted permission to
9 search his area that he was sitting in.

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

14 Q. So you were asking for consent?

15 A. Yes.

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

17 A. He did.

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

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

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

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

25 THE COURT REPORTER: A what?

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1 THE WITNESS: A free air sniff.

2 Q. [Mr. Stegall] Was your K-9 with you that night?

3 A. He was.

4 Q. So after he provided consent what did you do next?

5 A. The two subjects, Mr. Carr and Mr. Dawson, were
6 placed with -- they were kind of moved away from the
7 area.

8 They were still able to see but they were placed
9 with Sergeant Davis and I began a consent search of the
10 vehicle.

11 Q. Okay. Please discuss your findings from that search
12 to the Court.

13 A. I started on the driver's side. Like I said I was
14 mostly concerned at the time with that bag that had
15 disappeared. I didn't know if it was in his pocket or
16 stuffed inbetween the seat.

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

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

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1 alcohol bag. Inside that bag was three bags, I later
2 found it to be three bags of narcotics inside.

3 Q. Were either of those containers locked?

4 A. No.

5 Q. What did you do once you found the narcotics or what
6 you believed to be narcotics?

7 A. I think I went around to the passenger side of the
8 vehicle and I ended up pulling them out and I put them on
9 the trunk of the vehicle. And then we had ended up
10 detaining both of the subjects.

11 Q. Okay.

12 A. Placed them in handcuffs for further investigation.

13 Q. Okay. Did someone claim ownership of that bag?

14 A. Yes.

15 Q. Okay. Who was it that claimed ownership?

16 A. Mr. Dawson.

17 Q. Is Mr. Dawson in the courtroom today?

18 A. Yes, he is.

19 Q. Can you point him out for the Court please and
20 describe what he is wearing?

21 A. A reddish pink shirt with a beard.

22 Q. Did Mr. Dawson admit to you what was in that bag?

23 A. He did. A post Miranda statement he just divulged
24 it was cocaine.

25 THE COURT: I couldn't hear you. Speak up a

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1 little bit.

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

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

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

9 MR. STEGALL: Court's indulgence.

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

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

13 THE COURT: You got a lock on it?

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

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

19 THE COURT: A pistol lock?

20 THE WITNESS: Yes, sir.

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

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

24 THE COURT: All right.

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

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1 premarked as State's exhibit 3.

2 MR. SMILEY: May I see it?

3 MR. STEGALL: Yes.

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

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

7 [Whereupon, the witness is shown exhibit]

8 A. Yes. It is safe and clear.

9 Q. Do you recognize that State's exhibit?

10 A. Yes, I do.

11 Q. Okay. What is that?

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

14 MR. STEGALL: Your Honor, at this time the State
15 moves to enter what has been premarked as State's exhibit
16 3 into evidence.

17 THE COURT: Any objection?

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

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

22 MR. STEGALL: Thank you, Your Honor.

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

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

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

4 [Whereupon, the witness is shown exhibit]

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

8 THE COURT: You said it is a black what?

9 THE WITNESS: Digital scale.

10 THE COURT: Digital scale.

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

13 MR. STEGALL: Your Honor --

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

16 A. Yes.

17 MR. STEGALL: Your Honor, at this time the State
18 moves to enter what has been premarked as State's exhibit
19 4 into evidence.

20 THE COURT: Any objection?

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

23 THE COURT: All right.

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

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1 Q. [Mr. Stegall] Next I'm going to --

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

4 THE COURT: Yes.

5 Q. [Mr. Stegall] I'm going to hand you what ---

6 THE COURT: --- number 4 is admitted.

7 MR. STEGALL: Thank you, Judge.

8 Q. [Mr. Stegall] I'm going to hand you what has been
9 premarked as State's exhibit 5.

10 [Whereupon, the witness is shown exhibit]

11 A. A box of Ziploc sandwich baggies which was also
12 located inside the backpack or the book bag.

13 MR. STEGALL: Your Honor, at this time the State
14 moves to enter State's exhibit 5 into evidence.

15 THE COURT: Any objection?

16 MR. SMILEY: Subject to prior objection, Your
17 Honor.

18 THE COURT: All right. Number 5 is admitted.

19 [Whereupon, State's exhibit number 5 is entered into
20 evidence by the Court]

21 Q. [Mr. Stegall] Next I'm going to hand you what has
22 been premarked as State's exhibit 6. Take a look at
23 that.

24 [Whereupon, the witness is shown exhibit]

25 A. The three previously filled out narcotic baggies

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

3 Q. That you recovered?

4 A. Yes.

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

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

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

13 A. It is.

14 Q. Was it functioning properly that night?

15 A. It was.

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

17 A. It was.

18 Q. Okay.

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

22 THE COURT: I wouldn't try anything else.

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

25 [Whereupon, an off the record bench conference is

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1 held]

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

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

8 MR. SMILEY: Well, we also ---

9 THE COURT: --- okay, go ahead.

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

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

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

16 THE COURT: Fair enough.

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

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

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

23 [Whereupon, the witness complies]

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

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1 certified copy number 4743 disk one of one.

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

3 THE WITNESS: I would.

4 MR. STEGALL: Your Honor, permission to publish?

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

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

9 [Not taken down]

10 THE COURT: Is that all of it?

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

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

16 A. Other than drafting arrest warrants, no.

17 Q. Okay.

18 MR. STEGALL: Court's indulgence.

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

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

22 A. Yes, it was.

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

25 THE COURT: Are you offering it now?

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

3 THE COURT: The trial of the case.

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

7 THE COURT: Any objection?

8 MR. SMILEY: Subject to ---

9 THE COURT: --- previous objection ---

10 MR. SMILEY: --- previous objections.

11 THE COURT: Overruled. What number is that?

12 MR. STEGALL: Its 1, Your Honor.

13 THE COURT: Exhibit 1?

14 MR. STEGALL: Yes, sir.

15 THE COURT: It's admitted into evidence.

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

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

20 A. Yes, sir.

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

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

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

6 THE COURT: Mr. Smiley?

7 MR. SMILEY: Yes, sir.

8 THE COURT: Your client is on bond?

9 MR. SMILEY: He is.

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

12 MR. SMILEY: I do not ---

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

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

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

18 MR. SMILEY: Yes, sir.

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

21 MR. DAWSON: Yes, sir.

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

23 MR. DAWSON: Oh, no sir.

24 [Whereupon, Mr. Smiley confers with the Defendant]

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

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1 3:57 p.m.]

2 THE COURT: Is the State ready to proceed?

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

4 THE COURT: Is the defense ready to proceed?

5 MR. SMILEY: Yes sir, Your Honor.

6 THE COURT: All right.

7 MR. SMILEY: May it please the Court?

8 THE COURT: Yes, sir. Cross-examination.

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1 CROSS-EXAMINATION

2 BY MR. SMILEY:

3 Q. Officer Erickson, we've met before but my name is

4 Jim Smiley and I represent Ricky.

5 A. Yes, sir.

6 Q. Let's start with some basic stuff. The search of

7 the automobile was a consent search, correct?

8 A. Yes, sir.

9 Q. I asked you this a year and a half ago but I'll ask

10 you again. You did not believe you had probable cause at

11 the time that you did the search, correct?

12 A. Correct.

13 Q. And then let's talk about your K-9 for a second.

14 That dog's name was?

15 A. Kron.

16 Q. Kron?

17 A. K-R-O-N.

18 Q. And at the time you had been instructed not to use

19 Kron on cars unless you absolutely had to, correct?

20 A. To a degree. We had an unwritten rule where it was

21 we had to ask for consent. If the consent was denied

22 then we could go ahead and use our dogs.

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

24 A. Yes, sir.

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

1 abundance of caution you didn't want to use him out in
2 the first instance and see if you could get consent
3 first, correct?

4 A. Correct.

5 Q. Okay. And the dog was never used in this case.

6 A. That's correct.

7 Q. Now you were running traffic enforcement that night?

8 A. Yes, sir.

9 Q. And so you were -- were you mobile or sitting still
10 when you first saw Mr. Carr's automobile?

11 A. Mobile. I was travelling -- we were travelling in
12 opposite directions on Red Bank.

13 Q. Okay. So he was heading east on Red Bank, I guess
14 that's the best way, and you were heading west and you
15 turned around?

16 A. I guess. I'd have to rewatch the video. We were
17 literally going like this [indicates]. He was going one
18 way and I was going the other, saw the headlight out, and
19 I turned around.

20 Q. Okay.

21 A. And then we ended up pulling towards Howe Hall Road.

22 Q. All right. And so you saw the light out, you got
23 behind him, you followed him for a short period of time,
24 activated your lights and pulled over as we saw in the
25 video, correct.

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1 A. Correct.

2 Q. All right. And so this all began over a defective
3 left front headlight?

4 A. Correct.

5 Q. All right. And when you made contact with Mr. Carr
6 he was seated behind the driver's wheel of course, right?

7 A. Correct.

8 Q. And when you were asking him for his driver's
9 license and I.D. is when you thought you saw -- let me
10 change that -- is when you believed you saw the small
11 baggie, correct?

12 A. I know I saw a small baggie.

13 Q. Okay. Well, let me ask the next question. Did you
14 ever find that baggie?

15 A. No, I did not.

16 Q. Okay.

17 A. I also did walk away from the vehicle so there was
18 -- what happened with the baggie is unknown.

19 Q. Okay. My question was you never found any small
20 baggie?

21 A. No, I didn't.

22 Q. Okay. And you asked Mr. Carr for a search and I
23 think you're -- you asked him to search that immediate
24 area to begin with, correct?

25 A. That's correct, yes.

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1 Q. And he said that you could search that small area to
2 begin with, correct?

3 A. Correct.

4 Q. And then you told him but I need to search the whole
5 car.

6 A. Correct.

7 Q. Before you'd done any search, right?

8 A. That's correct.

9 Q. Okay. So you and Mr. Carr are outside of his
10 automobile discussing the search, correct?

11 A. Yep.

12 Q. The ability to search?

13 A. Yes, sir. That's correct.

14 Q. And he told you something to the effect of I can
15 talk for my car but I can't talk for my friend, correct?

16 A. Correct, basically. To me I took it as he wasn't
17 taking any ownership of what his friend had.

18 Q. Okay. I'm not asking for your interpretation. I'm
19 just asking for what was said at this point. And he said
20 something to the effect of search my car but I can't
21 speak for him, correct?

22 A. Correct.

23 Q. All right. Now Mr. Dawson was seated in the
24 passenger seat, correct?

25 A. That's correct.

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1 Q. And he had a black book bag between his legs,
2 correct?

3 A. Correct.

4 Q. And that black book bag was closed, correct?

5 A. Yes, sir.

6 Q. And didn't have anything to identify it on the
7 outside.

8 A. Not that was apparent from looking at it.

9 Q. All right. You didn't -- and the reason I asked you
10 that is because you didn't take the backpack into
11 evidence did you?

12 A. I did not.

13 Q. Okay. At the point that Mr. Carr has given you
14 consent as he stated it to you Mr. Dawson was still
15 sitting in the car, right?

16 A. Yes, I believe so. He hadn't gotten out until I had
17 ---

18 Q. --- asked him to get out ---

19 A. --- correct.

20 Q. Okay. After you got the consent for Mr. Carr you
21 had Mr. Dawson -- well, let me change that. You were
22 waiting for Officer Davis to arrive, correct?

23 A. Correct.

24 Q. Before you did the search?

25 A. That's correct.

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1 Q. So at the point that you got the consent you got
2 from Mr. Carr and Officer Davis arrived then is when you
3 asked Mr. Dawson to get out the car, correct?

4 A. Yes. Once we had our conversation and I had my
5 backup officer there.

6 Q. Well, you had not had a conversation with Mr.
7 Dawson.

8 A. I'm sorry; the driver of the car ---

9 Q. --- with Mr. Carr, the driver. Other than asking
10 Mr. Dawson for his I.D. until you had done the search you
11 did not have a conversation with Mr. Dawson did you?

12 A. That sounds accurate.

13 Q. All right. And at the point that Mr. Dawson had
14 gotten out you had Officer Davis move Mr. Dawson back
15 away from the car, correct?

16 A. Yes. I think they were put in front of one of our
17 hoods, one of our vehicles.

18 Q. Well, it wasn't yours because we've watched that
19 video so it must have been Officer Davis, correct?

20 A. They were placed away from the vehicle.

21 Q. Okay. And they are kept separated while you're
22 doing the search, right?

23 A. I don't know if he separated them or not. You'd
24 have to ask Sergeant Davis.

25 Q. Okay. And when you went in to search the car you

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1 first went in that driver's compartment, correct?
2 A. Yes, sir.
3 Q. And you looked around and ended up opening the
4 console, right?
5 A. Correct.
6 Q. And at that point in time you found the Hi-Point
7 pistol.
8 A. The one that belonged to Mr. Carr, correct.
9 Q. Correct. In the console?
10 A. Correct.
11 Q. And that was a Hi-Point 9 as you pulled that out and
12 called it in to see whether it was stolen or not,
13 correct?
14 A. That's correct.
15 Q. And it came back clear?
16 A. Yes, sir.
17 Q. All right. Then you moved around to the passenger
18 side and the backpack that was sitting between Mr.
19 Dawson's legs you went in that, right?
20 A. I was still in the driver's side when I opened ---
21 Q. --- then you reached over?
22 A. [Nods affirmatively]
23 Q. Okay. So you reached over to the -- from the
24 driver's side to the passenger side and unzipped the
25 backpack to look at what was in its contents, correct?

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1 A. Yep. I believe I pulled it up from the floor and
2 placed it on the seat.

3 Q. Okay.

4 A. And briefly examined it ---

5 Q. --- unzipped it. All right. And that's when you
6 discovered the green bag, correct?

7 A. Correct.

8 Q. And I believe it's in evidence.

9 A. Brown bag; the small brown one.

10 Q. Marked as State's exhibit number 4 it's the green
11 bag that's contained in that, correct?

12 A. Yes, sir.

13 Q. All right. At that point in time you retrieved the
14 backpack from the car, correct?

15 A. I believe so. I don't know if I went and detained
16 them first or grabbed the bag out; I don't know the exact
17 order of it.

18 Q. At that point in time you walked up to Mr. Dawson
19 and asked him if that was his backpack, right?

20 A. I believe so. I don't know the exact order of that.

21 Q. Well, you never asked Mr. Carr if it was his
22 backpack did you?

23 A. No.

24 Q. All right. It was between Mr. Dawson's legs. You
25 believed it to be Mr. Dawson's bag, correct?

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1 A. He was in direct control of the bag.

2 Q. All right. And at no point in time did you ask Mr.

3 Dawson for permission to search his bag did you?

4 A. I did not.

5 Q. Mr. Dawson when he got out the car he didn't get out

6 with his backpack did he?

7 A. No.

8 Q. And if he had you would have asked him to leave it

9 wouldn't you?

10 A. I would have asked him to either leave it or set it

11 down or -- I didn't --

12 Q. --- you wouldn't have him holding that backpack

13 because of what he might have inside, right?

14 A. Well, there is a concern during a narcotics

15 investigation for the potential of weapons ---

16 Q. --- right ---

17 A. --- so we try to separate containers and things like

18 that.

19 Q. I got you -- and this was the container that was in

20 the car, right?

21 A. It was a container within the car, yes.

22 Q. Yes. There weren't a whole bunch of containers in

23 that car. This is the container, correct?

24 A. I don't remember if there ---

25 Q. --- did you go through other containers?

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1 A. I don't recall if there were other containers in the
2 car.

3 Q. And at the point that you asked Mr. Dawson about the
4 backpack and what was in it he told you there was a gun
5 in there too, correct?

6 A. Yes, he did. He later told me there was a gun in
7 there.

8 Q. But for what you found in Mr. Dawson's backpack
9 there was nothing -- no other indicia of Mr. Dawson doing
10 anything illegal.

11 A. Can you repeat that? I kind of lost what you were
12 saying ---

13 Q. --- okay. I'll try to ask it a little more simple.
14 Before you discovered drugs in the backpack was there
15 anything that Mr. Dawson did that would have made you
16 suspect he was carrying drugs?

17 A. Absolutely. The entire vehicle at that point had
18 been a target of a narcotics investigation based on what
19 I saw on Mr. Carr's lap upon initial approach.

20 Q. Okay ---

21 A. --- the entire ---

22 Q. --- you didn't have probable cause so you asked for
23 consent, correct?

24 A. I had reasonable suspicion that there was narcotics
25 in the vehicle.

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1 Q. Based on the baggie that wasn't found, correct?

2 A. Correct.

3 Q. All right. Now, I'm going to ask you a couple of
4 questions about the video because you testified about
5 that earlier.

6 A. Yes, sir. That's fine.

7 Q. Because when Goose Creek makes a CD of their
8 evidence do they typically put a sticker on it like a
9 preprinted sticker that says Goose Creek Police
10 Department information?

11 A. I'm aware, I can't speak to all of them, I have seen
12 them where they are like a preprinted label like you're
13 talking about.

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

17 Q. --- okay ---

18 A. --- I don't know if that's all of them.

19 Q. Okay. Fair enough. Typically, it has one.

20 A. I would say -- I can't give you a yes or no.

21 Q. All right.

22 A. I've seen them and I've seen them other ways too.

23 Q. Okay. Did you overhear any conversations between
24 Mr. Carr and Mr. Dawson?

25 A. Not that I -- they might have been overly talking

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

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

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

7 Q. All right.

8 MR. SMILEY: Beg the court's indulgence.

9 [Whereupon, Mr. Smiley reviews documents]

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

11 THE COURT: Redirect?

12 MR. STEGALL: Just briefly, Your Honor.

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Alexander Erickson-Redirect Examination by Mr. Stegall
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1 REDIRECT EXAMINATION

2 BY MR. STEGALL:

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

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

10 But they were placed in a position to where I was
11 able to search the vehicle and didn't have to worry about
12 getting ambushed or attacked or whatever. Sergeant Davis
13 ---

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

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

18 Q. Just in-car?

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

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

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1 A. To my knowledge no.

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

3 A. No.

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

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

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

9 THE COURT: That's fine. No problem.

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

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State v Ricky Manigo Dawson
Ted Davis-Direct Examination by Mr. Stegall
December 9, 2019

1 MR. STEGALL: The State calls Ted Davis.

2 [Whereupon, Mr. Davis comes forward]

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

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

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

9 - - - - -

10 TED DAVIS,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. STEGALL:

15 Q. Sergeant Davis, where are you currently employed?

16 A. The city of Goose Creek Police Department.

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

19 A. I am a patrol sergeant.

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

22 A. Yes sir, I was.

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

25 A. Yes sir, I do.

State v Ricky Manigo Dawson
Ted Davis-Direct Examination by Mr. Stegall
December 9, 2019

1 Q. Okay. Do you remember which officer called you out?

2 A. That was Officer Erickson.

3 Q. And did you respond to Officer Erickson?

4 A. Yes sir, I did.

5 Q. What did you do once you arrived?

6 A. When I arrived on scene I made contact with Officer
7 Erickson who was on a traffic stop. And we pulled the
8 two occupants of the vehicle out of the vehicle and I
9 assisted him with standing by with him while he conducted
10 a ---

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

12 THE WITNESS: I'm sorry.

13 A. So when I arrived on scene I met with Officer
14 Erickson and assisted him with his traffic stop.

15 Q. [Mr. Stegall] And what was your role?

16 A. So my role as a secondary officer is just security.
17 I just stand by and make sure that Officer Erickson is
18 safe while he is doing whatever it is that he decides
19 that he needs to do and also to watch over any other
20 occupants or persons that were in the vehicle.

21 Q. And while you were standing by -- well, let me back
22 up. What did Officer Erickson do once you arrived and
23 had Mr. Carr and Mr. Dawson on scene?

24 A. Yes. So when I arrived on scene the two occupants
25 of the vehicle were removed from the vehicle and Officer

State v Ricky Manigo Dawson
Ted Davis-Direct Examination by Mr. Stegall
December 9, 2019

1 Erickson conducted a consent search of that vehicle.

2 Q. And did you assist in that search at any point?

3 A. I did not.

4 Q. While he was conducting that search did the two
5 occupants of the vehicle that you were with did anybody
6 at any point attempt to stop the search?

7 A. No, sir.

8 Q. What would have happened had either one of those
9 gentlemen asked for the search to be stopped?

10 MR. SMILEY: Objection, Your Honor.

11 THE COURT: Sustained.

12 Q. [Mr. Stegall] What did you do once Erickson
13 finished searching the car?

14 A. Once Erickson was finished searching the car I
15 believe Officer Erickson conducted some further
16 investigation as to what he located inside the vehicle
17 and subsequently arrested the passenger of that vehicle.

18 Q. And do you know the passenger's name?

19 A. Ricky Dawson.

20 Q. Okay. And is Mr. Dawson in the courtroom today?

21 A. Yes sir, he is.

22 Q. Okay. Can you point him out for the Court?

23 A. Sure. This is him right here [indicates] Your
24 Honor.

25 THE COURT: The record will reflect that the

State v Ricky Manigo Dawson
Ted Davis-Direct Examination by Mr. Stegall
December 9, 2019

1 Defendant -- I mean the witness identified the Defendant.

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

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

6 A. Yes, sir.

7 Q. And was it functioning properly?

8 A. Yes, sir.

9 Q. And was it activated during this incident?

10 A. Yes, sir.

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

13 [Whereupon, the witness is shown exhibit]

14 A. Yes, sir.

15 Q. Do you recognize it?

16 A. Yes sir, I do.

17 Q. Okay. What is it?

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

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

21 A. Yes sir, I have.

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

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

State v Ricky Manigo Dawson
Ted Davis-Direct Examination by Mr. Stegall
December 9, 2019

1 Q. Okay. And is that a fair and accurate
2 representation of the traffic stop from October 23, 2015?

3 A. Yes sir, it is.

4 Q. Okay.

5 MR. STEGALL: Your Honor, at this time the State
6 moves to introduce what has been previously marked as
7 State's exhibit 2 into evidence.

8 MR. SMILEY: Without objection.

9 THE COURT: Without objection?

10 MR. STEGALL: Permission to publish, Your Honor?

11 THE COURT: Sure.

12 [Whereupon, State's exhibit number 2 is entered into
13 evidence by the Court]

14 [Whereupon, State's exhibit number 2, the in-car
15 camera video, plays]

16 [Not taken down]

17 Q. [Mr. Stegall] Sergeant Davis, did you have any more
18 involvement in this case?

19 A. No, sir.

20 Q. Okay. Answer anything Mr. Smiley may have please.

21 THE COURT: Cross-Examination.

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State v Ricky Manigo Dawson
Ted Davis-Cross-Examination by Mr. Smiley
December 9, 2019

1 CROSS-EXAMINATION

2 BY MR. SMILEY:

3 Q. Sergeant Davis, I'm Jim Smiley. I represent Mr.

4 Dawson. We just watched the video from your in-car

5 camera, correct?

6 A. Yes, sir.

7 Q. All right. And that captured everything from the

8 moment you got there with your lights going until you

9 left, right?

10 A. I think it was a little delay from when I got there

11 but yes, sir.

12 Q. Okay. And when you got there Officer Erickson --

13 well, let me ask it this way. Officer Erickson was

14 awaiting you to come as backup, is that correct?

15 A. Yes, sir.

16 Q. Okay. And the reason for that is he had two people

17 and he wanted to conduct a search, correct?

18 A. Yes, sir.

19 Q. And I think you said that your role was basically

20 that of security, right?

21 A. That's correct.

22 Q. And so before the search began the occupants were

23 brought back; one at your car and one at Officer

24 Erickson's, correct?

25 A. Yes, sir.

State v Ricky Manigo Dawson
Ted Davis-Cross-Examination by Mr. Smiley
December 9, 2019

1 Q. And so we see the beginning of the search from your
2 camera, right?

3 A. I believe so, yes, sir.

4 Q. And it shows Officer Erickson go directly to that
5 passenger seat and take out the bag, right?

6 A. Correct.

7 Q. And the gentleman that was standing next to you when
8 that happened that we could hear talking is Mr. Carr, the
9 driver, right?

10 A. That's correct. Yes, sir.

11 Q. All right. And as soon as he took out that backpack
12 the driver said I didn't say he could search the backpack
13 I said the car; he lied to me or something to that
14 effect, correct?

15 A. Well, it was my -- it was framed more to me as like
16 you know I thought he said he was searching the car.

17 Q. Right.

18 A. Kind of...

19 Q. He protested the backpack; fair enough?

20 A. I think he was upset that the backpack was getting
21 searched ---

22 Q. --- was being searched.

23 A. Yes, sir.

24 Q. Fair to say that he did not believe his consent
25 extended to that book bag that he had only agreed to the

State v Ricky Manigo Dawson
Ted Davis-Cross-Examination by Mr. Smiley
December 9, 2019

1 car, fair enough?

2 A. Yes ---

3 MR. STEGALL: --- objection, speculation.

4 THE COURT: Well, he was there. I'm going to let

5 him answer.

6 A. He raised a question about the I guess the backpack

7 you could say.

8 Q. [Mr. Smiley] All right. Now, when Officer Erickson

9 goes through the backpack and discovers whatever he

10 discovered he goes straight to Mr. Dawson, correct?

11 A. Now, I don't know.

12 Q. Well, we just watched the video.

13 A. Well, but I don't know if Officer Erickson opened

14 the backpack while he was in the car or if Officer

15 Erickson discovered what he discovered ---

16 Q. --- okay ---

17 A. --- when he was at the back of the car ---

18 Q. --- then I'm asking ---

19 A. --- I don't know.

20 Q. I asked a poor question. When Officer Erickson

21 opened the backpack on the lid of the trunk of the car

22 his next move is directly to Mr. Dawson, correct?

23 A. I don't recall.

24 Q. Okay. He didn't come over and talk to you and Mr.

25 Carr did he?

State v Ricky Manigo Dawson
Ted Davis-Cross-Examination by Mr. Smiley
December 9, 2019

1 A. I don't believe so, no sir.

2 Q. Okay. When you were standing -- if I under -- well,
3 let me ask it this way. You've got Mr. Carr's vehicle
4 parked, correct?

5 A. Yes, sir.

6 Q. And Officer Erickson's car was parked at an angle
7 behind it, correct?

8 A. Yes, sir.

9 Q. And you pulled up parallel to Officer Erickson's car
10 pointing towards the back of Mr. Carr's automobile,
11 correct?

12 A. I was perpendicular.

13 Q. Perpendicular.

14 A. Right.

15 Q. All right. And you had the gentlemen Mr. Carr and
16 Mr. Dawson back away from the car during the search,
17 correct?

18 A. Yes, sir.

19 Q. And Mr. Carr was standing next to you.

20 A. Yes, sir.

21 Q. Mr. Dawson was standing over next to Mr. Erickson's
22 car, Officer Erickson's car, correct?

23 A. I think I was -- yeah, I think that's correct.

24 Q. All right.

25 A. I believe so.

State v Ricky Manigo Dawson
Ted Davis-Cross-Examination by Mr. Smiley
December 9, 2019

1 Q. At any point was there a conversation that you
2 recall between Mr. Dawson and Mr. Carr prior to the
3 search concerning the search?
4 A. Not that I recall, no sir.
5 Q. Okay.
6 MR. SMILEY: Beg the court's indulgence.
7 [Whereupon, Mr. Smiley confers with the Defendant]
8 MR. SMILEY: Nothing further, Your Honor.
9 THE COURT: Okay. Redirect?
10 MR. STEGALL: Nothing on redirect, Your Honor.
11 THE COURT: Okay. You may come down, sir.
12 THE WITNESS: Thank you, Your Honor.
13 THE COURT: May the witness be excused?
14 MR. STEGALL: No objection from the State.
15 MR. SMILEY: None from the Defendant.
16 THE COURT: All right. You're free to go, sir.
17 THE WITNESS: Thank you, Your Honor.
18 [Whereupon, the witness is excused and exits the
19 witness stand]
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State v Ricky Manigo Dawson
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1 THE COURT: Counsel, what's next?

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

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

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

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

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

17 MR. SMILEY: Yes, sir.

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

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

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

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

25 [Off the record momentarily]

State v Ricky Manigo Dawson
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1 MR. STEGALL: Judge, it looks like all three are
2 available tomorrow morning.

3 THE COURT: All right. Where do you live?

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

6 THE COURT: Is 9:30 too early?

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

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

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

12 THE COURT: Go ahead.

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

18 THE COURT: Who ---

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

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

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

22 THE COURT: Oh.

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

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

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

11 MR. SMILEY: He was aware, yes sir.

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

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

20 THE COURT: All right. We'll stand at ease until
21 9:30.

22 MR. STEGALL: Thank you, Your Honor.

23 MR. SMILEY: Thank you.

24 [Whereupon, Court adjourns at 5:06 p.m.]
25

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

State v Ricky Manigo Dawson
Wendy Myers-Direct Examination by Mr. Jenkins
December 10, 2019

1 MR. JENKINS: The State calls Wendy Myers.

2 [Whereupon, Ms. Myers comes forward]

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

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

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

8 - - - - -

9 WENDY MYERS,

10 Having been first duly sworn,

11 Was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. JENKINS:

14 Q. Good morning.

15 A. Good morning.

16 Q. Where are you currently employed?

17 A. With the Goose Creek Police Department.

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

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

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

24 THE WITNESS: Yes, sir.

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

State v Ricky Manigo Dawson
Wendy Myers-Direct Examination by Mr. Jenkins
December 10, 2019

1 position?

2 A. To process crime scenes and receive the evidence
3 that is submitted by the officers.

4 Q. Please describe your education, training and
5 experience.

6 A. Sure. I graduated the Criminal Justice Academy in
7 1993 and went to work with North Charleston Police
8 Department where I was in the Warrants division and the
9 Patrol division.

10 And then in 2004 went to Goose Creek as the crime
11 scene. I've got training in property and evidence
12 management, blood spatter pattern analysis, marijuana
13 analysis, child fatality investigations.

14 Q. Were you employed with Goose Creek Police Department
15 in October of 2015?

16 A. Yes, I was.

17 Q. And what was your position at that time and how long
18 have you worked in that capacity?

19 A. I was crime scene and evidence and I've been there
20 11 years.

21 Q. And how does evidence come to Goose Creek?

22 A. When the officers submit it through the evidence
23 lockers they are pass through lockers so on one side of
24 the office the officers drop it in. The doors lock and
25 once they've locked they can't access it without a key.

State v Ricky Manigo Dawson
Wendy Myers-Direct Examination by Mr. Jenkins
December 10, 2019

1 And on the opposite side is the evidence room. We access
2 it via that with a key.

3 Q. And is that how the evidence is received?

4 A. Yes, it is.

5 Q. What are the practices and procedures for checking
6 evidence into Goose Creek Police Department?

7 A. Once we receive it we verify that all the
8 information is correct on the evidence form, that its
9 sealed the way it's supposed to be and that all the items
10 that are listed on the form are in the package and then
11 we enter it with a handwritten log as well as a --

12 THE COURT REPORTER: As well as a?

13 THE WITNESS: Computer log.

14 Q. [Mr. Jenkins] And who has access to the evidence
15 once it's at Goose Creek Police Department?

16 A. Myself, CSI Favero, and Captain Soderberg.

17 Q. And does everyone that handles the evidence document
18 it?

19 A. Yes, they do.

20 Q. How do they document it?

21 A. Via the computer log as well as the handwritten log.

22 Q. So it's written and electronic?

23 A. Correct.

24 Q. Are these records kept for all evidence taken into
25 Goose Creek Police Department?

State v Ricky Manigo Dawson
Wendy Myers-Direct Examination by Mr. Jenkins
December 10, 2019

1 A. Yes, they are.

2 Q. Are these records kept in the course of business as
3 a regular practice?

4 A. Yes.

5 Q. And where is the evidence stored prior to testing
6 and after testing?

7 A. Inside the evidence room and drugs specifically are
8 in a separate locked cabinet inside the locked evidence
9 room.

10 Q. And did you receive evidence related to this case
11 from Goose Creek?

12 A. Yes, I did.

13 Q. I'm going to hand you what has been premarked as
14 State's exhibit 6.

15 MR. JENKINS: Your Honor, may I approach the
16 witness?

17 THE COURT: Uh Huh.

18 [Whereupon, the witness is shown exhibit]

19 Q. [Mr. Jenkins] And what is this?

20 A. This is the exterior envelope that we store them in.
21 It has our item numbers for the specific items that are
22 in the bags as well as our bar code label with my name on
23 it.

24 Q. Who did you receive this from?

25 A. It was submitted by Officer Erickson.

State v Ricky Manigo Dawson
Wendy Myers-Direct Examination by Mr. Jenkins
December 10, 2019

1 Q. And what date did you receive it on?

2 A. It would have been the next business day. I believe
3 that was October 23rd.

4 Q. How did you receive the evidence?

5 A. It would have been in an evidence locker.

6 Q. Was the evidence sealed?

7 A. Yes, it was.

8 Q. At any time did you open it?

9 A. I did not.

10 Q. And what did you do with the evidence after you
11 received it?

12 A. I would have done the submission receipt or request
13 through the city of Charleston Police Department drug lab
14 and then sealed it up -- or I'm sorry; stored it inside
15 the evidence room until transport.

16 Q. Was the evidence in your custody and control from
17 the point you received it up until you passed it on to
18 another individual at Goose Creek or placed it under lock
19 and key?

20 A. Yes, it was.

21 Q. Did you ever receive the evidence back?

22 A. We received it in the evidence room. I did not
23 personally receive it back. I didn't pick it up from the
24 lab.

25 Q. And how did y'all receive the evidence back?

State v Ricky Manigo Dawson
Wendy Myers-Direct Examination by Mr. Jenkins
December 10, 2019

1 A. It would have been picked up from the Charleston
2 Police lab.

3 Q. And how was the evidence packaged when Goose Creek
4 Police Department received it back?

5 A. It was placed back in a heat-seal package so the
6 original packaging was in there and then a heat-seal
7 pouch which is what the city of Charleston uses.

8 Q. And what did you do with it after you received it
9 back at Goose Creek ---

10 A. --- stored back in the evidence room.

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

12 Q. Thank you, Ms. Myers. Answer anything Mr. Smiley
13 may have for you.

14 MR. SMILEY: No questions, Judge.

15 THE COURT: You may come down. Thank you very
16 much.

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

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State v Ricky Manigo Dawson
Sandra Favero-Direct Examination by Mr. Jenkins
December 10, 2019

1 MR. JENKINS: The State calls Sandy Favero.

2 [Whereupon, Ms. Favero comes forward]

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

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

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

9 - - - - -

10 SANDRA FAVERO,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. JENKINS:

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

17 A. The city of Goose Creek Police Department.

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

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

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

24 THE WITNESS: Yes, sir.

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

State v Ricky Manigo Dawson
Sandra Favero-Direct Examination by Mr. Jenkins
December 10, 2019

1 A. I take in evidence. We secure it, label it. I also
2 do crime scene processing.

3 Q. Please describe your education, training, and
4 experience.

5 A. I am certified with the International Association
6 for Property and Evidence. I am a member of the
7 International Association for Identification. I've had
8 some blood stain classes, crime scene processing and
9 evidence collection.

10 Q. Were you employed with Goose Creek Police Department
11 in October of 2015?

12 A. Yes, sir.

13 Q. What was your position at that time and how long had
14 you worked in that capacity?

15 A. Crime scene and evidence has been five years.

16 Q. Please tell the jury why and how evidence comes to
17 Goose Creek Police Department.

18 A. An officer collects it. If it is in connection with
19 their case they submit it into a locker and then I will
20 take it out of the locker, secure it, label it, and store
21 it.

22 Q. And how is it received by Goose Creek Police
23 Department?

24 A. They submit it through a pass through locker. Once
25 they close it it is only able to be opened through the

State v Ricky Manigo Dawson
Sandra Favero-Direct Examination by Mr. Jenkins
December 10, 2019

1 evidence room which we take it out and then we store.

2 Q. What are the practices and procedures for checking
3 evidence into Goose Creek Police Department?

4 A. We print up a label, we fill out the form it's in
5 the computer, and then it is packaged correctly and
6 stored.

7 Q. Once at Goose Creek Police Department what are the
8 procedures for handling the evidence?

9 A. It's a written -- if it's checked out a chain of
10 custody written and computerized.

11 Q. And who has access to this evidence once it's at
12 Goose Creek Police Department?

13 A. Myself, CSI Myers, and Captain --

14 THE COURT REPORTER: Captain?

15 THE WITNESS: Soderberg.

16 Q. [Mr. Jenkins] Is everyone that handles evidence
17 documented?

18 A. Yes.

19 Q. And how do they document it?

20 A. Written or through the computer.

21 Q. Are these records kept for all evidence taken into
22 Goose Creek Police Department?

23 A. Yes, sir.

24 Q. Are these records kept in the course of business as
25 a regular practice?

State v Ricky Manigo Dawson
Sandra Favero-Direct Examination by Mr. Jenkins
December 10, 2019

1 A. Yes, sir.

2 Q. And where is the evidence stored prior to testing
3 and after testing?

4 A. For the drugs it's in a drug storage locker that
5 also has a secondary lock on it.

6 Q. Did you receive evidence related to this case at
7 Goose Creek Police Department?

8 A. I did.

9 Q. I'm going to hand you what has been premarked as
10 State's exhibit 6.

11 MR. JENKINS: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes.

14 [Whereupon, the witness is shown exhibit]

15 Q. [Mr. Jenkins] What is this?

16 A. It is going to be a plastic bag containing white
17 powdery substance, a plastic bag containing another white
18 powdery brick substance, and a plastic bag containing a
19 yellowish brick substance.

20 Q. And who did you receive this from?

21 A. I would have gotten it from the drug storage locker
22 as CSI Myers took it in originally and stored it.

23 Q. And what date did you receive it on?

24 A. 11/2/2015.

25 Q. How did you receive the evidence?

State v Ricky Manigo Dawson
Sandra Favero-Direct Examination by Mr. Jenkins
December 10, 2019

- 1 A. I took it from the storage locker.
- 2 Q. Was the evidence sealed?
- 3 A. Yes sir, it was.
- 4 Q. Did you open it?
- 5 A. I did not.
- 6 Q. What did you do with the evidence after you received
- 7 it?
- 8 A. I took it down to the City drug lab.
- 9 Q. And you said the City drug lab. What City drug lab?
- 10 A. I'm sorry; Charleston City drug lab.
- 11 Q. Was the evidence in your custody and control from
- 12 the point you received it up until you passed it on to
- 13 another individual at CPD or placed under lock and key?
- 14 A. Yes, sir.
- 15 Q. And did you ever receive the evidence back?
- 16 A. I did.
- 17 Q. And where did you receive that back from?
- 18 A. I received it from the Charleston City drug lab on
- 19 12/14/2015.
- 20 Q. And how did you receive the evidence back?
- 21 A. It was handed to me.
- 22 Q. From whom did you receive that evidence back?
- 23 A. Susan Payne.
- 24 Q. How was the evidence packaged when you received it
- 25 back?

1 A. It would have been just like this [indicates]. They
2 heat-seal it and initial the heat-seals.

3 Q. So it was sealed?

4 A. It was.

5 Q. And what did you do with it after you received it
6 back?

7 A. I returned it to our drug evidence storage locker.

8 Q. Was the evidence in your custody and control from
9 the point you received it back again up until you passed
10 it on to another individual or placed under lock and key?

11 A. Yes, sir.

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

13 Q. What was the purpose of you taking the package to
14 Charleston City?

15 A. It would be for them to analyze and determine what
16 substance it would be.

17 Q. Please answer any questions Mr. Smiley may have for
18 you.

19 MR. SMILEY: No questions, Your Honor.

20 THE COURT: Okay. You may come down. May this
21 witness be excused without objection?

22 MR. JENKINS: No objection, Your Honor.

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

25

State v Ricky Manigo Dawson
Renee Hilton-Direct Examination by Mr. Jenkins
December 10, 2019

1 MR. JENKINS: The State calls Renee Hilton.

2 [Whereupon, Ms. Hilton comes forward]

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

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

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

9 - - - - -

10 RENEE HILTON,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. TYLER:

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

17 A. The city of Charleston Police Department.

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

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

22 Q. What are the duties of your position?

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

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

3 Q. Please describe your education, training, and
4 experience.

5 A. I have a Bachelor's of Science in chemistry from the
6 University of South Carolina. I have completed CPD's in-
7 house training.

8 I've gone to SLED several times with regards to
9 training there, GCMS analysis, mass spectral analysis; I
10 mean the list continues for training with regards to drug
11 analysis and all the disciplines I'm competent in.

12 Q. Were you employed with the Charleston Police
13 Department in November of 2015?

14 A. I was.

15 Q. What was your position at that time and how long had
16 you worked in that capacity?

17 A. I was laboratory manager at that time and I had been
18 in that capacity for about two years.

19 Q. How does evidence come to the Charleston Police
20 Department?

21 A. An outer agency will come to the laboratory and they
22 will bring their evidence. Prior to that they have to
23 log into our online portal, put the information in our
24 system with regards to case number, the suspect's name if
25 they would like it to be listed, the evidence

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1 descriptions and then how they would like the evidence to
2 processed. So if they would like drug analysis performed
3 on it, fire debris analysis, or serology analysis they'll
4 check that.

5 And then they come to the laboratory and bring me --
6 or the evidence technician who was actually out that day
7 and that's why I stepped in and took the evidence. But
8 they will bring the evidence.

9 That individual will make sure that the information
10 that is displayed on the actual evidence itself matches
11 what they've put in the system, and they make sure it is
12 packaged properly, sealed properly, initialed properly.

13 And then once that happens it's then brought into
14 our LIM system, Laboratory Incident Management System and
15 from that point it can then be taken into that person's
16 custody.

17 Q. What are the practices and procedures for checking
18 evidence into the Charleston Police Department?

19 A. So as stated earlier we make sure that the evidence
20 that is put in our online portal matches that which they
21 are asking to be tested so we'll check all that
22 information.

23 We'll make sure the packaging is proper, that it is
24 sealed properly; there is no tears in it, that it is
25 sealed properly. And once all of that matches our

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1 requirements then we will accept the evidence.

2 Q. Once at Charleston Police Department what are the
3 procedures for handling the evidence?

4 A. The evidence technician, or me at the time, would
5 accept the evidence into our custody and then we would
6 actually place it into a central storage that is in the
7 laboratory where it is left until the assigned analyst is
8 available to take it and perform the analysis.

9 Q. And who has access to the evidence once it is at
10 CPD?

11 A. Once it's in the central safe everyone has access to
12 it but only the person that is assigned to it should
13 remove it from the safe and take it into their personal
14 custody.

15 Q. Does everyone that handles the evidence document it?

16 A. Yes.

17 Q. And how do they document it?

18 A. Within our LIMS systems we have -- you have to --
19 each of us have our own user name and password that is
20 unique to us. And they would have to input their
21 password to be able to transfer the evidence from
22 location to location.

23 Q. Are these records kept for all evidence taken in at
24 the Charleston Police Department?

25 A. Yes.

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1 Q. Are these records kept in the course of business as
2 a regular practice?

3 A. Yes.

4 Q. And where is the evidence stored prior to testing
5 and after testing?

6 A. Prior to testing it's in our central safe until the
7 analyst takes it into their personal custody. Once it's
8 in their personal custody and they're analyzing it it
9 goes into their personal locker, which they only have
10 access to with a key.

11 And then after they are done with it it then returns
12 to the central safe awaiting the outer agency to come
13 pick it up.

14 Q. Did you receive evidence related to this case at the
15 Charleston Police Department?

16 A. Yes.

17 Q. I'm going to hand you what has been premarked as
18 State's exhibit 6.

19 MR. JENKINS: Your Honor, may I approach the
20 witness?

21 THE COURT: Uh Huh.

22 [Whereupon, the witness is shown exhibit]

23 Q. [Mr. Jenkins] And what is this?

24 A. It is evidence in OCA 20155134 --

25 THE COURT REPORTER: Read that again a little

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1 slower.

2 THE WITNESS: OCA 2015-5134.

3 Q. [Mr. Jenkins] Who did you receive this from?

4 A. Sandy Favero.

5 Q. What date did you receive it on?

6 A. November 2nd of 2015.

7 Q. And how did you receive the evidence?

8 A. It was a hand-to-hand transfer.

9 Q. And was the evidence sealed?

10 A. Yes.

11 Q. Did you open it?

12 A. No.

13 Q. What did you do with the evidence after you received

14 it?

15 A. I placed it into our central storage.

16 Q. Was the evidence in your custody and control from

17 the point you received it up until you passed it on to

18 another individual at Charleston Police Department or

19 placed it under lock and key?

20 A. Yes.

21 Q. And did you ever receive the evidence back?

22 A. No.

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

24 MR. JENKINS: Your Honor, we intend to enter the

25 State's exhibit 6 into evidence through Ms. Hilton. Mr.

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1 Smiley has stipulated to the drug analysis.

2 MR. SMILEY: Your Honor, we certainly stipulated so
3 that the analyst would not have to fly from Colorado.
4 And we stipulate that it is in fact cocaine and cocaine
5 base and the weights. It is done as a stipulation to be
6 read into the record, Your Honor -- thank you.

7 MR. JENKINS: At this time we would move to enter
8 State's exhibit 6 into evidence.

9 THE COURT: Without objection?

10 MR. SMILEY: Without objection, Your Honor.

11 [Whereupon, State's exhibit number 6 is entered into
12 evidence by the Court]

13 MR. JENKINS: Permission to publish?

14 THE COURT: Where is the stipulation?

15 MR. STEGALL: Your Honor, I intend to read it as
16 the next witness.

17 THE COURT: That's fine. But the stipulation is to
18 be made part of the record?

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

20 Q. [Mr. Jenkins] Please answer any questions Mr. Smiley
21 may have for you.

22 MR. SMILEY: No questions, Your Honor.

23 THE COURT: No questions? May this witness be
24 excused without objection?

25 MR. SMILEY: Without objection, Your Honor.

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1 THE COURT: You're free to go ma'am. Thank you.

2 [Whereupon, the witness is excused and exits the

3 witness stand]

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State v Ricky Manigo Dawson
Stipulation as to Drug Evidence Read Into Record
December 10, 2019

1 MR. STEGALL: Your Honor, in light of, well instead
2 of calling the next witness, the drug analyst Kaitlin
3 Schroeder, to the stand as Mr. Smiley stated earlier we
4 have a stipulation as to her expected testimony that I
5 would like to publish for the record.

6 THE COURT: Go ahead.

7 MR. STEGALL: As well as make this I'm assuming
8 Court's exhibit 1, Your Honor.

9 THE COURT: All right. Yes, sir.

10 MR. STEGALL: A certified copy of the stipulation.
11 The State of South Carolina County of Berkeley the
12 Court of General Sessions indictment numbers 2016-GS-08-
13 114, 115, 116, the State of South Carolina verses Ricky
14 Dawson this is the stipulation as to the drug evidence.

15 The State and the Defendant through his attorney
16 James W. Smiley, IV stipulate to the following: Item 1
17 is 27.19 grams of cocaine, item 2 ---

18 THE COURT: --- slow -- let me write it. I'll have
19 it but just slow down. 27 what?

20 MR. STEGALL: 27.19 grams of cocaine.

21 THE COURT: Okay.

22 MR. STEGALL: Item 2 is 4.68 grams of cocaine, and
23 item 3 is 1.1 -- or excuse me, 1.31 grams of cocaine
24 base. The Charleston Police Department Forensic Services
25 Division lab report L15-02429 is attached as an exhibit

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1 in support of this stipulation. The analysis was
2 performed by Kaitlin Schroeder formerly of the Charleston
3 Police Department. As such both parties agree that she
4 will not be required to testify at trial. This
5 stipulation serves as her expected testimony.

6 MR. SMILEY: That is our agreement, Your Honor.

7 THE COURT: All right.

8 MR. STEGALL: And I would like to make this a
9 Court's exhibit, Your Honor. It's certified.

10 [Whereupon, Court's exhibit number 1 is marked by
11 the court reporter]

12 THE COURT: All right.

13 MR. STEGALL: The State rests, Your Honor.

14 THE COURT: Any motions?

15 MR. SMILEY: Your Honor, I would like to at this
16 time renew my motion to suppress the evidence. And I
17 would like to reargue it but I'm going to -- whatever
18 Your Honor will allow me to do.

19 THE COURT: I'll allow you to do it.

20 MR. SMILEY: Yes, sir.

21 THE COURT: Go ahead. This is your record.
22
23
24
25

State v Ricky Manigo Dawson
Renewed Motion to Suppress Evidence
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1 MR. SMILEY: Yes, sir. I believe as Judge Jefferson
2 heard this in pretrial on March 18th -- March 14th, 2018
3 published her decision on July the 10th, 2019 and at no
4 time since then have I been able to respond to her motion
5 until today, Your Honor.

6 The motion -- her -- first is her analysis I believe
7 is erroneous in a couple of different ways, Your Honor.
8 This is a consent search. I had Officer Erickson in the
9 pretrial hearing and on the stand yesterday admit he did
10 not believe he had probable cause, that this was purely a
11 consent search which would meet an exception to the
12 Fourth Amendment of the United States as to searches and
13 seizures, Your Honor.

14 In this case the driver of the car gives limited
15 consent to begin with as then cajoled to expand his
16 consent to the compartment of the car. He just says the
17 car. But the whole time that he is expanding it he is
18 saying but I can't speak for the passenger.

19 The passenger, Mr. Dawson, is sitting with a
20 backpack closed between his legs. I don't believe there
21 is any suggestion that it is anybody but Mr. Dawson's
22 backpack. You can see from the video that was put into
23 evidence of Officer Davis who was present on the scene
24 before a search was conducted by his testimony and by
25 what his video shows is Officer Erickson goes into the

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1 passenger compartment, immediately removes the backpack
2 and opens it. My client at the time that that happened
3 has been taken out of the car is put over by Officer
4 Erickson's car as Officer Davis is standing with the
5 driver, Mr. Carr.

6 As the Officer Erickson takes that backpack
7 belonging to Mr. Dawson out Mr. Carr says you lied to me.
8 I said the car. I wasn't -- I won't quote it but
9 something to that effect, he raises his objection. This
10 would have been real easy. Before they did the search
11 all they had to ask is whose backpack was it.

12 As my client, I'm arguing under the United States
13 Constitution and under that they applied the Rodriguez
14 analysis that has been cited in Judge Jefferson's order
15 and applied in state court through the Supreme Court of
16 Utah and Illinois and Indiana -- Illinois and the Court
17 of Appeals in Indiana that said when a closed container
18 is in a car that does not appear to be one that would be
19 used by more than one; a purse in Indiana, a backpack in
20 Utah that it was reasonable for an officer to ask who
21 owns it.

22 And my client was never asked if they could search
23 his backpack. As a matter of fact he was taken away from
24 the car at the time of the search and could not see on
25 the passenger side. He was standing, and the reason I

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1 asked where the cars were he was standing over by Officer
2 Erickson's car on the other side of the car. They go
3 into that without any apparent -- well, without -- I
4 don't want to use that word -- without asking for the
5 consent.

6 Your Honor, Mr. Dawson has an expectation of privacy
7 in his closed container; the container being a backpack,
8 which is not commonly used by others. And the driver Mr.
9 Carr starts from the very beginning trying to limit the
10 amount of consent and expressing that he could not speak
11 for the driver.

12 Your Honor, in Judge Jefferson's analysis, and one
13 of the reasons I kept bringing up the video and the
14 impropriety or the appearance of impropriety about which
15 video Judge Jefferson watched is because she says that
16 there is a conversation between Mr. Carr and Mr. Dawson
17 that I never could hear or see nor was it testified to
18 about hey, I gave them consent for the car and they're
19 going to search it.

20 There is not any of that contained in the testimony
21 or the record of what is put there. There is nothing to
22 indicate Mr. Dawson knew that they were going to go into
23 his backpack until it was taken out and opened.

24 And Your Honor under the Fourth Amendment of the
25 United States it is a due process Fourteenth Amendment

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1 extended to South Carolina says that is an illegal
2 search. While South Carolina Supreme Court has not ruled
3 on it directly is the Supreme Court's of other states
4 applying the dictates of the Constitution have said
5 clearly that that is not permissible.

6 And I would ask you at this point in time to
7 suppress the evidence in this case as being the product
8 of an illegal search and seizure. That's what I have,
9 Your Honor.

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

11 MR. STEGALL: Your Honor, the State asks that you
12 deny the defense's motion. The Chief Administrative
13 Judge at the time, Judge Jefferson, ruled on that motion
14 and denied that motion based on several things. Mainly
15 this is -- she concluded that this was a consent search.
16 She stated that the owner or operator of a vehicle has
17 authority to consent as well as limit consent of search
18 of a vehicle, Your Honor.

19 Also she cited the case of Florida v Jimeno
20 [phonetic] that states that the general consent to search
21 a car included consent to search containers within that
22 car which might bear drugs.

23 In this case Mr. Sam Carr was the driver, operator
24 and owner of the vehicle. Initially he did sort of
25 attempt to limit the scope of the search but after

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1 discussions with Officer Erickson he absolutely gave
2 permission to search the entirety of the car. Mr. Carr
3 made no mention to Officer Erickson that the book bag in
4 the passenger floorboard was not his. Officer Erickson
5 searched the car as he was allowed to do under the U.S.
6 Constitution and all of its containers which could have
7 narcotics in them and located drugs.

8 At the time Mr. Dawson was also out of the car. He
9 made no mention of the fact that that was his book bag
10 during the search. At no time did either individual
11 attempt to stop the search. It wasn't until the drugs
12 were actually located and the book bag was placed on the
13 hood of the car that Mr. Carr made his comments.

14 Once the drugs were located the only thing out of
15 the Defendant's mouth was yes, that's my book bag, yes
16 that's cocaine and by the way there is a gun in the
17 backpack.

18 We believe based on the facts of the case Your Honor
19 that Mr. Carr did provide consent to search the vehicle,
20 the entire vehicle and that search under the U.S.
21 Constitution and Supreme Court case law includes any
22 containers that may hold narcotics. So we respectfully
23 ask that you deny the Defendant's motion.

24 MR. SMILEY: If I could respond to his reliance on
25 Jimenez [phonetic] Your Honor. I can distinguish Jimenez

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1 [phonetic] and I'm looking at State v James, the Illinois
2 Supreme Court case that did this exact analysis. It
3 says: The State argues its ruling in Jimenez [phonetic]
4 shows the officer in the incident of the case were
5 justified in searching the purse in that case found in
6 Bowman's [phonetic] car. We disagree. We find Jimenez
7 [phonetic] is significantly different than the present
8 case. And that's what is here.

9 In Jimenez [phonetic] the Defendant was the driver
10 of the vehicle and in his capacity as driver the
11 Defendant had the ability to consent to the car because
12 he had immediate possession and control of the entire
13 vehicle. It goes on to say: There was no question in
14 Jimenez [phonetic] that the driver also had possession
15 and control over the brown bag and therefore had the
16 authority to permit the police to search that bag.

17 Although there was a passenger in Jimenez [phonetic]
18 there was no argument the brown bag belonged to the
19 passenger rather than the driver. The question is
20 whether the Defendant having the authority to consent to
21 a search of both the vehicle and paper bag intended for
22 his search to also encompass the search of the bag.

23 It's obvious in this case I believe that nobody
24 thought that backpack was anybody else's but Mr. Dawson's
25 sitting closed between his legs. So it's not clear that

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1 Mr. Carr had the authority or the control of the bag,
2 number one Your Honor. Number two, is there is evidence
3 that the driver was trying to limit the search. It was
4 then expanded and as soon as the bag was brought out he
5 expressed no, no, no, or something to that effect, you
6 lied to me. I didn't say you could go in the bag.

7 Your Honor, all he had to do is ask Mr. Dawson for
8 consent to search his bag. They failed to do that. Mr.
9 Dawson was away from the car when the search was being
10 conducted and did not know to the extent that the search
11 was going to be of his bag. He was never asked.

12 However, when the officer found the backpack he
13 never approached Mr. Carr about it. He approached Mr.
14 Dawson because he knew it was Mr. Dawson's bag, Your
15 Honor. That's all I have.

16 THE COURT: All right. Mr. Smiley, let me ask you
17 to react to what I am going to read which is from Judge
18 Jefferson's ---

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

20 THE COURT: --- concluding pages wherein she says:
21 In this case the State presented sufficient testimony and
22 evidence demonstrating Officer Erickson had probable
23 cause to search the vehicle and its contents. A
24 reasonable and articulable suspicion of an officer will
25 support a finding of probable cause. This Court finds

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1 that Officer Erickson had sufficient probable cause to
2 believe that evidence of a crime or contraband would be
3 found in the vehicle. While Erickson testified at that
4 point in the conversation with Carr he lacked probable
5 cause the totality of the stop supports the State's
6 contention that probable cause existed to extend the stop
7 and likewise search the vehicle for contraband.

8 What do I do about that regardless of the issue of
9 consent?

10 MR. SMILEY: Yes, sir. I asked the officer
11 directly at any point did you believe you had probable
12 cause because I was trying to establish whether we're
13 dealing with consent or otherwise and he said I never
14 believed I did.

15 THE COURT: That's what this says.

16 MR. SMILEY: Yes, sir. And so it's erroneous to
17 say that he did. He said he had a reasonable suspicion
18 but that doesn't get you into a container without
19 consent.

20 THE COURT: The confusion is she finds the totality
21 of the circumstances supports probable cause. He says it
22 didn't. What do I do?

23 MR. SMILEY: Well, objectively looking at the
24 situation I disagree with Judge Jefferson respectfully.

25 THE COURT: That I understand.

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1 MR. SMILEY: Yes, sir. And the officer who was
2 there on the scene never believed he had it; never even
3 contemplated it because he was trying to get the search.
4 That's all this is about is a search. It's not about
5 probable cause. It's stopped for a defective headlight
6 is he believes he sees -- well, he says he saw a plastic
7 bag in the ---

8 THE COURT: --- which alerted him to the
9 possibility of...

10 MR. SMILEY: And he never found the bag, Your
11 Honor.

12 THE COURT: I understand.

13 MR. SMILEY: I don't believe they had probable
14 cause looking at the totality of the circumstances. My
15 client sat still with a closed backpack between his legs.
16 He never said anything affirmative or otherwise besides
17 to cooperate with the officers to give them his I.D.
18 period. That's all I have, Your Honor.

19 THE COURT: All right. Well, what you would be
20 asking me to do would be overrule slash write a
21 contradictory order to a motion -- I mean an order which
22 appears to be well-documented. Judge Jefferson heard the
23 same evidence that I did. And although I might have made
24 a different decision -- wait a minute -- although I may
25 have made a different decision based on your argument I

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1 don't think that I can ignore her finding that the
2 evidence is admissible. What were you about to say
3 before I rule?

4 MR. SMILEY: Yes, sir. What I was going to say is
5 you've heard more evidence. At the pretrial hearing only
6 Officer Erickson was presented by the State and only one
7 video was put into evidence.

8 We heard additional testimony from Davis and that's
9 important in this case because it established where Mr.
10 Dawson was and established where Mr. Carr was in relation
11 to the car. And it also provided the audio of Mr. Carr
12 who complained as soon as they removed the backpack, Your
13 Honor.

14 So you have additional evidence. I wouldn't say
15 that you are overruling or changing the judgment of Judge
16 Jefferson based on the same evidence. I believe you have
17 had the opportunity to hear all of the evidence and
18 therefore it would not be inappropriate for Your Honor to
19 make a ruling based on that. That's all I have, Your
20 Honor.

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

22 MR. STEGALL: Your Honor, the State would just ask
23 that you -- Officer Davis' testimony you know he was
24 unavailable during the suppression hearing so we were
25 unable to put him on the stand. We tried. But his

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1 testimony alone shouldn't persuade Your Honor to overrule
2 Judge Jefferson's ruling. We do not believe that
3 Sergeant Davis' testimony or his in-car video should be
4 enough for you as you say to contradict an order that was
5 already ruled upon. So we would simply ask that you deny
6 the motion, Your Honor.

7 THE COURT: All right Mr. Smiley, your motion is
8 respectfully denied.

9 MR. SMILEY: Thank you, Your Honor.

10 THE COURT: Are there any other motions?

11 MR. SMILEY: No sir, besides the suppression no
12 sir. Before I say that in respect to the Suppression
13 Motion I've objected about the evidence that Judge
14 Jefferson looked at because I'm still not sure what disk
15 she saw. And that concerns me that the way the procedure
16 was done on that and be another reason to set it aside.

17 And lastly Your Honor, the delay of 16 months is it
18 certainly couldn't have been fresh in her mind when she
19 comes back 16 months later to issue a ruling. And for
20 all those reasons I understand the situation Your Honor.
21 I'm trying to make sure my client's rights have been
22 protected and to give him a zealous representation. And
23 that's all I have, Your Honor.

24 THE COURT: You have to make the record. I
25 understand. Do I interpret your motion as a directed

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1 verdict motion?

2 MR. SMILEY: Yes sir, a directed verdict motion
3 that given everything in the light most favorable to the
4 State I believe it's a product of an illegal search and
5 will continue to argue that vigorously, Your Honor. And
6 that's all I have.

7 THE COURT: As to that Motion for Directed Verdict
8 I feel the evidence goes beyond that of mere conjecture
9 or suspicion. There is evidence either direct or
10 circumstantial or some combination of both which
11 reasonably tends to prove the guilt of the Defendant or
12 from which that guilt might be logically and reasonably
13 deduced if that evidence is taken in the light most
14 favorable to the State. So therefore I must
15 respectfully deny your Motion for Directed Verdict.

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State v Ricky Manigo Dawson
Fifth Amendment Rights
December 10, 2019

1 FIFTH AMENDMENT RIGHTS

2 THE COURT: Now I would like to advise your client
3 of his Fifth Amendment Rights.

4 [Whereupon, Mr. Dawson stands]

5 THE COURT: Mr. Dawson, at this time I am going to
6 explain certain of your rights. If you do not understand
7 anything that I say, please let me know. If you want me
8 to explain anything in more detail, please let me know.
9 Do you understand?

10 MR. DAWSON: I --

11 THE COURT REPORTER: Speak up, please.

12 MR. DAWSON: Yes sir, I do.

13 THE COURT: We've now reached the stage of the
14 trial where you may present your defense. You have the
15 right to claim the protections given to you by the Fifth
16 Amendment to the Constitution of the United States. This
17 Amendment states in part no person shall be compelled in
18 any criminal case to be a witness against himself. This
19 means you cannot be required to testify in this case.

20 You have the right to testify on your own behalf
21 however no one can make you testify. This is a personal
22 right and no one can waive this right except you. If you
23 decide to testify you will be subject to the same rules
24 that govern other witnesses and you may be examined and
25 cross-examined on any relevant issue in this case.

1 In addition, if you have any convictions involving
2 dishonesty or false statement or for crimes punishable by
3 imprisonment for more than one year and this Court
4 determines the probative value of admitting this evidence
5 outweighs it's prejudicial effect to you the Solicitor
6 will have the ability to introduce your record to attack
7 your creditability.

8 If you decide to testify this decision on your part
9 must be freely, voluntarily and intelligently made with
10 knowledge of the protections given to you by the Fifth
11 Amendment to the Constitution and the consequences of
12 your decision to testify.

13 If you do not testify I will not and cannot give
14 that fact that you did not testify any consideration
15 whatsoever and there is to be absolutely no prejudice to
16 you because you do not testify. It's left entirely up to
17 you whether or not you testify. You may talk to your
18 attorney, your family and friends or anyone else but the
19 final decision will be left entirely up to you. Do you
20 understand what I have explained to you?

21 MR. DAWSON: Yes, Your Honor.

22 THE COURT: Do you have any questions about what
23 I've explained to you?

24 MR. DAWSON: No, I don't.

25 THE COURT: Have you discussed with your lawyer

State v Ricky Manigo Dawson
Fifth Amendment Rights
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1 whether or not you should testify?

2 MR. DAWSON: I haven't.

3 THE COURT: You have?

4 MR. SMILEY: We spoke earlier but maybe we need to
5 speak again, Your Honor.

6 THE COURT: All right. You wish to talk to your
7 lawyer more about this?

8 MR. DAWSON: Yes, sir.

9 THE COURT: All right.

10 MR. SMILEY: Could we go back in the jury room for
11 privacy, Your Honor?

12 THE COURT: Absolutely. Thirty minutes?

13 MR. SMILEY: Not that long.

14 THE COURT: Fifteen minutes? I'll expect your
15 answer in 15 minutes.

16 MR. SMILEY: Yes, sir. Thank you.

17 THE COURT: Oh hold on, Mr. Smiley.

18 MR. SMILEY: Yes, sir.

19 THE COURT: Just stand right there just a minute.

20 Solicitor, are you aware of any impeachable offenses that
21 could be used to impeach this Defendant were he to take
22 the stand?

23 MR. STEGALL: Court's indulgence.

24 [Whereupon, Mr. Stegall reviews documents]

25 MR. STEGALL: No, Your Honor.

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1 THE COURT: Okay. Thank you.

2 MR. SMILEY: Yes, sir.

3 THE COURT: We'll stand at ease for 15 minutes.

4 [Whereupon, Court is in recess from 10:27 a.m. until
5 10:40 a.m.]

6 THE COURT: All right Mr. Dawson, I indicated that
7 I would ask you if you wished to testify. Have you had a
8 chance to talk with your lawyer about this?

9 MR. DAWSON: Yes sir, I did.

10 THE COURT: Do you wish to testify?

11 MR. DAWSON: No, sir.

12 THE COURT: All right. Thank you. Does the
13 Defendant intend to offer any other evidence?

14 MR. SMILEY: No, sir. I believe we'll stand on
15 this record.

16 THE COURT: All right. Any final arguments?

17 MR. STEGALL: Your Honor, I can briefly ---

18 THE COURT: --- sure ---

19 MR. STEGALL: --- give a final closing argument.
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State v Ricky Manigo Dawson
Closing Argument-Remarks by Mr. Stegall
December 10, 2019

1 CLOSING ARGUMENT

2 BY MR. STEGALL:

3 The Defendant is charged with trafficking 28 grams
4 to 100 grams, possession with intent to distribute crack
5 cocaine, and possession of a weapon during a violent
6 crime.

7 You've heard from several officers this week Judge,
8 one being Officer Erickson who testified that he observed
9 a Chevrolet sedan on October 23, 2015 coming from his
10 opposite direction with a burned out headlight. He
11 turned around and initiated a lawful traffic stop on Red
12 Bank Road in the Goose Creek area of Berkeley County.

13 He identified the driver as Sam Carr and the
14 passenger as this Defendant Ricky Dawson. While speaking
15 to Carr he observed what he believed to be a small baggie
16 used to package narcotics in or near Carr's pocket, which
17 Carr then quickly tried to conceal.

18 Having a reasonable suspicion of drug activity
19 Erickson briefly extended the stop and asked Carr to step
20 out for further investigation. He explained what he saw
21 and asked for a consent to search. Carr initially asked
22 for the driver's side to be searched but Erickson
23 explained that the consent to search the car included the
24 entire car. Sam Carr agreed to consent to search the
25 entire car. Erickson also testified that had he not

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Closing Argument-Remarks by Mr. Stegall
December 10, 2019

1 given consent that he would have employed his K-9 which
2 was standing by in Erickson's cruiser. Sergeant Davis
3 then arrives to provide backup and standby with both Carr
4 and Dawson while Erickson conducts the search.

5 Erickson locates an unlocked backpack in the
6 passenger floorboard. Inside he locates a Crown Royal
7 bag which is also unlocked. Inside the Crown Royal bag
8 he locates several baggies of presumed narcotics. He
9 also locates a scale and a box of Ziploc bags used for
10 packaging narcotics.

11 He then places the book bag and its contents on the
12 truck of his car. Due to Dawson being on the passenger
13 side he goes to him first. Dawson admits that the white
14 powder substance is, in fact, cocaine. He also informs
15 Erickson that there is a handgun located in the bag.
16 Erickson then asked Dawson who the bag belongs to to
17 which he admits that the bag and its contents are his.

18 Erickson takes the evidence to Goose Creek P.D. and
19 turns it over to Wendy Myers who secures it. Sandy
20 Favero then takes the evidence from that locker to CPD,
21 Charleston Police Department for testing where they are
22 turned over to Renee Hilton.

23 Kaitlin Schroeder then takes the contents, the
24 drugs, from that storage locker and tests each bag and
25 reports her findings via the drug analysis report, which

State v Ricky Manigo Dawson
Closing Argument-Remarks by Mr. Stegall
December 10, 2019

1 was submitted as Court's exhibit 1. The item 1 is
2 confirmed to be 21 or 27.19 grams of cocaine. Item 2 is
3 confirmed to be 4.68 grams of cocaine. Item 3 is a rock-
4 like substance confirmed to be 1.31 grams of crack
5 cocaine. The total weight on the cocaine is 31.87 grams,
6 which is over the required 28 gram threshold for
7 trafficking; 28 to 100.

8 The crack cocaine exceeds 1 gram which is prima
9 facie evidence of a possession with intent to distribute.
10 Also there is further evidence of an intention to
11 distribute with the Ziploc bags, the scale.

12 The Defendant being in possession of the gun while
13 also being in possession of over 28 grams of trafficking
14 is he should be found guilty of possession of a weapon
15 during a violent crime. Under South Carolina 16-160
16 trafficking is considered a violent offense.

17 We ask that you find this Defendant guilty on all
18 three counts, Your Honor.

19 THE COURT: From the defense?
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State v Ricky Manigo Dawson
Closing Argument-Remarks by Mr. Smiley
December 10, 2019

1 CLOSING ARGUMENT

2 BY MR. SMILEY:

3 No, Your Honor. I don't believe I need to make any
4 argument. I've made my argument. We stand by our
5 argument. I've explained to my client the procedure in
6 this case is he of course will appeal.

7 He wanted an appeals bond and I explained to him
8 under Rule 246 he had a crime that carries more than ten
9 years that he has to ask from the Appeals Court if that's
10 possible. You want me to hold my mitigation -- I know
11 there is only one sentence but I still want to put
12 mitigation at one point. But I guess you need to make a
13 ruling ---

14 THE COURT: --- no, we'll do a sentencing hearing
15 in just a moment.

16 MR. SMILEY: Yes, sir.

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State v Ricky Manigo Dawson
Ruling by the Court
December 10, 2019

1 RULING BY THE COURT

2 THE COURT: At this point it becomes my
3 responsibility to render a verdict in this case. And as
4 to indictment 2016-GS-08-00114 trafficking cocaine 10 to
5 28 grams -- 28 grams or more --

6 [Whereupon, the Court reviews documents]

7 THE COURT: All right I see. Solicitor, you've
8 added all the cocaine to get the 28 grams, is that
9 correct?

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

11 THE COURT: I find that it is trafficking cocaine
12 28 grams but less than 100 grams I find the Defendant
13 guilty beyond a reasonable doubt.

14 As to indictment number 2016-GS-08-00115 possession
15 with intent to distribute crack cocaine, crack cocaine or
16 cocaine base I find the Defendant guilty beyond a
17 reasonable doubt.

18 And as to indictment 2016-GS-08-1116 [sic]
19 possession of a weapon during the commission of a violent
20 crime I find the Defendant guilty beyond a reasonable
21 doubt; guilty on all charges beyond a reasonable doubt.

State v Ricky Manigo Dawson
Sentencing
December 10, 2019

1 SENTENCING

2 THE COURT: At this point I'm prepared to conduct a

3 sentencing hearing. Any objection?

4 MR. STEGALL: No objection, Your Honor. May I have

5 two minutes to go down and get the sentencing sheets?

6 THE COURT: Sure. Anything from the Defendant?

7 MR. SMILEY: Not -- I'd like to make mitigation but

8 there ---

9 THE COURT: --- we'll do that. We'll do that.

10 MR. SMILEY: Okay.

11 THE COURT: We'll stand at ease.

12 MR. SMILEY: Yes, sir.

13 [Whereupon, Mr. Stegall exits the courtroom to get

14 the sentencing sheets]

15 [Off the record momentarily]

16 [Whereupon, Mr. Stegall reenters the courtroom]

17 [Whereupon, Mr. Stegall proffers documents to the

18 Court]

19 [Whereupon, the Court reviews documents]

20 [Off the record momentarily]

21 [Whereupon, the Court confers with the court

22 reporter regarding his remarks when giving his ruling]

23 [Whereupon, the Court reviews documents]

24 THE COURT: Approach the bench.

25 [Whereupon, an off the record bench conference is

State v Ricky Manigo Dawson
Sentencing
December 10, 2019

1 held]

2 THE COURT: All right. We'll now proceed with the
3 sentencing hearing. Does the State have -- wish to
4 proceed?

5 MR. STEGALL: Your Honor, I have certified
6 convictions for the Defendant.

7 THE COURT: Put them on the record please.

8 MR. STEGALL: Yes, sir. This Defendant was
9 convicted in 2007. He pled guilty on January 31, 2007 of
10 the offense of possession with intent to distribute
11 cocaine base reduced to possession of cocaine base.

12 In April 10th, 2014 the Defendant pled guilty to two
13 separate offenses which occurred on two separate dates;
14 the first date being April 18, 2012. The charge of
15 possession with intent to distribute meth and cocaine
16 base was reduced to possession of meth or cocaine base.
17 He pled guilty.

18 The second offense occurred on 10-16-13 also charged
19 with possession with intent to distribute meth or cocaine
20 base. He pled to possession of meth or cocaine base.
21 I'd like to make these a Court's exhibit if I could, Your
22 Honor.

23 THE COURT: Go ahead.

24 [Whereupon, Court's exhibit number 2 is marked by
25 the court reporter]

State v Ricky Manigo Dawson
Sentencing
December 10, 2019

1 MR. STEGALL: Your Honor, under South Carolina Code
2 44-53-470 this Defendant based on his prior convictions
3 these convictions today, the drug convictions are third
4 offenses.

5 The trafficking carried a mandatory minimum of 25
6 years up to 30. The possession with intent to distribute
7 crack cocaine third carries a mandatory minimum of 10 up
8 to 30. We would ask Your Honor to sentence him to 25
9 years.

10 THE COURT: Mr. Smiley?

11 MR. SMILEY: Yes sir, Your Honor. With us is
12 Ricky's mother and significant other are here in the
13 courtroom and have been here throughout, Your Honor.
14 Ricky is 38 years old. He's a licensed barber. He's
15 been plying that trade for quite some time and does quite
16 well at it, Your Honor.

17 He does have prior convictions. I don't know what
18 they were originally charged with; I can only tell you
19 what he pled to. He pled to possessions and received a
20 probationary sentence from Judge Pieper that he
21 completed. And then in 2014 he pled to two convictions
22 two possessions and received probation again.

23 I believe that that probation Your Honor has been
24 held for the most part during the pendency of this case,
25 which has taken quite a long time. And he understands

State v Ricky Manigo Dawson
Sentencing
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1 that this is a violation of that probation he was placed
2 on in 2014. Your Honor, I know you don't have the
3 discretion to suspend anything and I've explained that to
4 my client.

5 My client went into this understanding the possible
6 punishments and his rights and what it took to challenge
7 the search. He's intelligently done that. I think you
8 can see from his demeanor during the videos and in court
9 he's always been an extremely respectful young man.

10 It is -- I am crushed that he is going to prison.
11 He certainly made a mistake. He owned up to his drugs
12 that day and his situation. He has been -- I've known
13 him for over a decade, Your Honor. And during the time
14 that I've known him he has had a substance abuse problem.
15 I have never known him to do anything other than that; as
16 not to be a dealer. I've always known him to have
17 possession weights or close to it.

18 He certainly made a mistake, Your Honor. He
19 certainly wanted to make sure I told everybody he wants
20 to continue to appeal and ask for an appeals bond and I
21 told him that was understood but I'd certainly mention
22 that Your Honor.

23 He did 20 days on this case when he was first
24 arrested and has been out since then. He has been out
25 continuously since 2000 -- late or middle of 2015, Your

State v Ricky Manigo Dawson
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1 Honor. I'd ask you to take that into account. I would
2 ask you to give him a 25 year sentence, to put everything
3 concurrently and terminate his probation. Ricky's still
4 got a productive life. I hope that he finds success in
5 his appeals process. But regardless I know he will be an
6 asset wherever he is. That's all I have, Your Honor.

7 [Whereupon, Mr. Smiley confers with his client]

8 MR. SMILEY: My client doesn't wish to address you,
9 Your Honor.

10 THE COURT: Is that correct, Mr. Dawson?

11 MR. DAWSON: Yes, sir.

12 THE COURT: All right. Well, I am certainly one to
13 recognize the severity of the law in this case. But the
14 law gives me no choice; and you understand that Mr.
15 Smiley.

16 MR. SMILEY: Yes, sir.

17 [Whereupon, the Court reviews documents]

18 THE COURT: All right Mr. Dawson, with regard to
19 your trafficking case the sentence of the Court is you be
20 committed to the State Department of Corrections for a
21 period of 25 years. You've given credit for 20 days
22 pretrial incarceration.

23 With regard to your possession with intent to
24 distribute crack the sentence of the Court is you be
25 committed to the State Department of Corrections for a

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1 period of 10 years. And with regard to the possession of
2 a weapon during the commission of a violent crime the
3 sentence of the Court is you be committed to the State
4 Department of Corrections for a period of five years.
5 All sentences to run concurrent. Good luck to you, sir.

6 MR. SMILEY: As to the probation, Your Honor?

7 THE COURT: As to probation terminate probation.

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

9 MR. STEGALL: Thank you, Your Honor.

10 MR. SMILEY: Thank you, Your Honor. It was very
11 nice to appear in front of you.

12 [Whereupon, the bench trial concludes at 11:20 a.m.]
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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 it 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 is 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 the 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.



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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

FILED

2019 JUL 1

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

Case No(s): 2016-GS-08-114-116

LEAH GULLEY, Clerk
Warrant No(s): 2015A0820200872-874

CLERK OF COURT

BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA

vs.

RICKY MANIGO DAWSON

Defendant

**ORDER DENYING
DEFENDANT'S MOTION TO SUPPRESS**

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.

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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 Carr¹ 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.

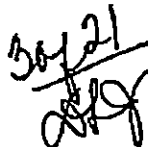
Officer Erickson attempted to identify the "suspicious" item by asking Mr. Carr, "What's that little bag right there that's hanging out [of] your pocket?" Mr. Carr replied "Hmm..." and eventually produced some of the contents from his pocket. Officer Erickson continued to inquire about the contents of 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.

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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

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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."

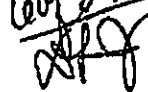
² Defendant has previous convictions for the following: Possession of Cocaine Base in 2007 and two (2) counts of Possession of Cocaine Base in 2014.

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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."

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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

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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.Ed2d 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.

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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

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.

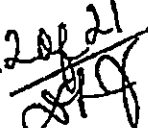
abundantly clear that "[p]assengers, no less than drivers, possess a reduced expectation of privacy with regard to the property they transport in cars." Wyoming v. Houghton, 526 U.S. 295, 296, 119 S. Ct. 1297, 1298, 143 L. Ed. 2d 408 (1999) (holding that a search of passenger belongings was proper by 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 Rodriguez. 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, 110 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 Rodriguez 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).

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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

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

15421
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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.

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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."

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.

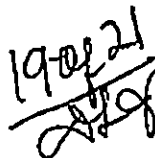
Additionally, there is evidence in the record indicating that the Defendant was aware that Carr had given Officer Erickson consent to search the vehicle. The Defendant although present in close proximity made no attempts to apprise the officers they could not search his backpack. Moreover, when Officer 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

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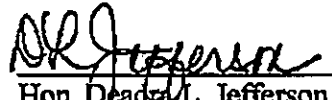
driver had drugs in his possession because the driver appeared to have an item (i.e. the plastic baggie) commonly associated with drug activity. A reasonable and articulable suspicion of an officer will support a finding of probable cause, and the Court thus finds that Officer Erickson had sufficient 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

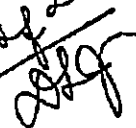
search and seizure of his backpack must be denied. The Court hereby denies the Defendant's Motion to Suppress.

IT IS SO ORDERED.



Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina
June 10, 2019

2/10/21


STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)

IN THE COURT OF GENERAL SESSIONS

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.)

LEWIS & CLARK
 CLERK OF COURT
 BERKELEY COUNTY, SC

2019 OCT -7 PM 1:50

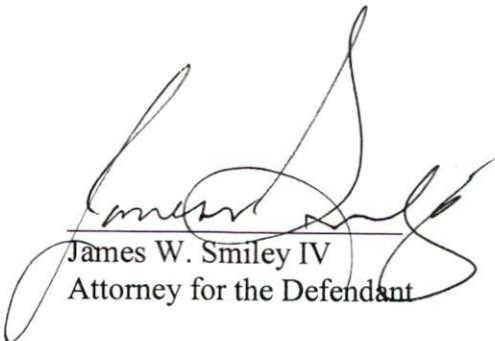
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The State and the Defendant, through his attorney James W. Smiley IV, stipulate to the following:

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



CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY


 DATE 10-7-19 JRG
 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 A Schroeder

DOCKET NO. 2016-GS-08-000114

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

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

Jana M. Marshall 1-12-16
Foreperson of Grand Jury Date:

VERDICT

Foreperson of Petit Jury Date:

R5# 6

16 JAN 12 PM 3:20

CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

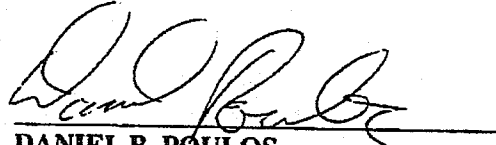
INDICTMENT

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

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

DBP/0310328

WITNESSES

Goose Creek Police Department

AGENCY CASE NUMBER

2015-5134

ARREST WARRANT NUMBER

2015A0820200873

DATE OF ARREST

10/23/2015

ACTION OF GRAND JURY

True

Tina M. Marshall 1-12-16
Foreperson of Grand Jury Date:

VERDICT

Foreperson of Petit Jury Date:

R5# 4

FILED

16 JAN 12 PM 3:20

CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

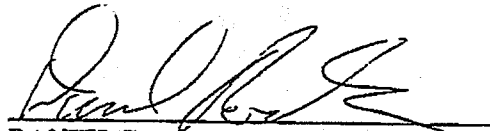
INDICTMENT

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

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
CRIMESC Code: § 16-23-0490
CDR Code: 0549DBP/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

J. M. Marshall 1-12-16
Foreperson of Grand Jury Date:

VERDICT

Foreperson of Petit Jury

Date:

R5# 2

FILED

16 JAN 12 PM 3:20

CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

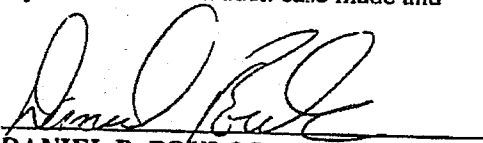
INDICTMENT

At a Court of General Sessions, convened January 2016, the Grand Jurors of Berkeley County present upon their oath:

POSSESSION 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

COUNTY OF BERKELEY
STATE VS.

RICKY MANIGO DAWSON

AKA: Ricky M Dawson

Race: Black/African American

Sex: M

DOB: 1981

SS#: [REDACTED]

Address: Commons Way

City, State, Zip: Goose Creek, SC 29445-5428

DL# [REDACTED]

SID# SC01322045

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)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:

Bar 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 on ☐ 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☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

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: _____

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

Clerk of Court/Deputy Clerk: _____

Court Reporter: Joyce Bugar

Presiding Judge: _____

Judge Code: 2126Sentence Date: 12-10-19

FILED

DEC 10 2019

NO
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

JN

COUNTY OF BERKELEY
STATE VS.RICKY MANIGO DAWSONAKA: Ricky M DawsonRace: Black/African AmericanSex: MDOB: 1/1981SS#: [REDACTED]Address: Commons WayCity, State, Zip: Goose Creek, SC 29445-5428DL# [REDACTED] SID# SC01322045*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Dist/PWID/Manuf Cocaine Base or MethIn 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☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)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
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 90 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☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS 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 FundOther: ☐ Appointed PD or appointed other Counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

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 \$ 25Proviso (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) \$ 8.25TOTAL \$ 283.25Clerk of Court/Deputy Clerk: A. MulliganCourt Reporter: Joyce RyePresiding Judge: C. J. [Signature]Judge Code: 2126Sentence Date: 12-10-19

FILED
DEC 10 2019
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

Jm

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

RICKY MANIGO DAWSONAKA: Ricky M DawsonRace: Black/African AmericanSex: MDOB: 1981SS#: [REDACTED]Address: Commons WayCity, State, Zip: Goose Creek, SC 29445-5428DL# [REDACTED]SID# SC01322045*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Possession Of A Weapon During The Commission Of A Violent CrimeIn violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)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:

Bar 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☐ Ordered

PTLP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

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: _____

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

\$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

§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)

\$

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk: A. MulliganCourt Reporter: Joyce Ruxer

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016-CS-08-00116A/W: 2015A0820200874Date of Offense: 10/22/2015S.C. Code §: 16-23-0490CDR Code #: 0549

SENTENCE SHEET

Presiding Judge: G. T. [Signature]Judge Code: 2126Sentence Date: 12-10-19☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Am

ARREST WARRANT

2015A0820200872

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of Goose Creek, SC

THE STATE

against

DAWSON, RICKY MANIGO

Address: 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 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 12-11-2015 @ 1430

Bond Amount Type PR/Surety

OCA Number 2015-5134

Evidence: Yes ☒ No ☒

*** ORIGINAL *** ORIGINAL *** ORIGINAL *** ORIGINAL *** ORIGINAL

Form approved by
S.C. Attorney General
April 21, 2008
SCCA 618STATE OF SOUTH CAROLINA
County/ ☒ Municipality
Goose Creek

Personally appeared before me the affiant

being duly sworn deposes and says that defendant

did within this county and state on

State of South Carolina (or ordinance of

in the following particulars:

DESCRIPTION OF OFFENSE:

Trafficking Cocaine, 28g to 100g - 1st Offense

I further state that there is probable cause to believe that the defendant

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

willfully, and unlawfully, violate Section 44-53-0370(e)(2)(b)(1) Trafficking cocaine 28g-100g 1st offense

Amended, 1976 and that probable cause is based upon the following facts: 1. That the affiant conducted a legal traffic

Dawson was passenger in 2. The affiant conducted a consent search of the vehicle which was granted by the driver

black backpack on the passenger floor board where Dawson was seated 3. The affiant located a green Crown

two plastic baggies containing a white powdery substance presumed to be cocaine 4. The affiant advised Dawson

questioned Dawson about the suspected narcotics 5. Dawson admitted to the suspected narcotics being

located inside the backpack a cardboard box with numerous plastic bags, a digital scale and a vacuum seal

affiant the weighed each bag of white powdery substance, one of which was 28.3g and the other being 5.5g

\$181.50 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 South

Signature of Affiant

STATE OF SOUTH CAROLINA

Affiant's address

519 North Goose Creek Blvd.

Goose Creek, SC 29445

Affiant's Telephone (843) 863-5200

County/ ☒ Municipality of

Goose Creek

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

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 10-22-2015

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

Mark Anthony Bishop
 DATE 3-19-2020
 CLERK OF COURT
 C.P. & G.S.
 BERKELEY COUNTY, SC

WITNESSES

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS

Judge Paula Mashburne
 On 10-23-15
 Type and Amount: \$5000.00 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

ARREST WARRANT

2015A0820200873

STATE OF SOUTH CAROLINA
County/ ☒ Municipality of Goose Creek, SC

THE STATE

against

DAWSON, RICKY MANIGO

Address: 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: 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 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 11-11-15 @ 1430

Bond Amount Type PR/Surety

OCA Number 2015-5134

Evidence, Yes ☒ No ☐

*** ORIGINAL *** ORIGINAL *** ORIGINAL *** ORIGINAL *** ORIGINAL *** ORIGINAL

STATE OF SOUTH CAROLINA
County/ ☒ Municipality of Goose Creek

Personally appeared before me the affiant A. Erickson

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

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that the 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 was a 2003 Dodge 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 passenger floor board where Dawson was seated 3. The affiant located a green bag inside the backpack which contained a 2003 Dodge containing a yellowish brick like substance presumed to be crack cocaine 4. The affiant advised Dawson of his Miranda rights and questioned Dawson about the suspected narcotics 5. Dawson admitted to the suspected narcotics being cocaine and being inside the backpack a cardboard box with numerous plastic bags, a digital scale and a vacuum seal bag 7. The affiant located a bag of yellowish brick like substance which was 2.1g 8. During a search incident to arrest of Dawson \$1181.50 was located on the person in various denominations consistent with selling narcotics all which was seized. All against the form of the statute in such case made applicable provided for and against the peace, law, and dignity of the City of Goose Creek and State of South Carolina.

STATE OF SOUTH CAROLINA

Signature of Affiant

Affiant's address

519 North Goose Creek Blvd.

Goose Creek, SC 29445

Affiant's Telephone (843) 863-5200

County/ ☒ Municipality of Goose Creek

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

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

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 ☐ CircuitForm approved by
S.C. Attorney General
April 21, 2003
SCCA 618

whb

SEARCHED

CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY

CLERK OF COURT
C.P. & C.S.
BERKELEY COUNTY, SC

DATE 3-19-2020

CLERK OF COURT
C.P. & G.S.
BERKELEY COUNTY, SC

DATE 3-19-2020
Mark Quincy Dupree
CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

Judge Paula M. Edwards
On 10-23-15
Type and Amount: \$5000.00 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

2015A0820200874

STATE OF SOUTH CAROLINA
County/ ☒ Municipality of Goose Creek, SC

THE STATE

again!

DAWSON, RICKY MANIGO		SSN: [REDACTED]	
Address: [REDACTED] COMMONS WAY		B Height 5 ft. 11 in. Weight 195	
GOOSE CREEK, SC 29445		DL# [REDACTED]	
Phone: (843) 000-0000	Sex: M	DOB: [REDACTED] 1981	Agency ORI#: SC0080300
DL State: SC	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
N County/ **N** 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

RETURN

A copy of this arrest warrant was delivered to defendant DAWSON, RICKY MANIGO
On October 13th 2015

John

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 _____
 OCA Number 2015-5134
 Type PLC/Surety
 Evidence: Yes ☒ No ☐

[illegible]

Points approved by
 S. C. Johnson Global
 April 21, 2023
 SCCA 618

AFFIDAVIT

Personally appeared before me the affiant A. Erickson
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

DESCRIPTION OF OFFENSE:

Pass. 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 unlawfully, 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. 3. The affiant located a green Crown Royal bag inside which contained 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 this informant is a gun in the backpack as well. 6. The affiant located a Makarov 9mm pistol loaded with 8 rounds of ammo, which was 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 under the justice 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

ARREST WARRANT

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

DESCRIPTION OF OFFENSE:

Poss. Weapon During Violent Crime

I 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

Judge's Address 519 N. Goose Creek Blvd.

Christina A. Kline

Signature of Issuing Judge _____ Judge's telephone (843) 569-4230

Judge Code: 6158)
Issuing Court:

Circuit

DATE 3-19-2020
Clerk of Court
C.P. & G.S.
BERKELEY COUNTY, SC

BAIL SET BY
Paula M. Elmore
 Judge
 On 10-23-15
 Type and Amount: \$2000 surety
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 On _____
 D ☒ Attorney: _____
 Decision: _____

DISPOSITION before

Judge _____
 On _____
 By _____
 (indicate jury trial, bench trial, plea, nol. Pros. etc.)
 Disposition: _____
 Sentence: _____

JURORS

CODEFENDANTS

WITNESSES

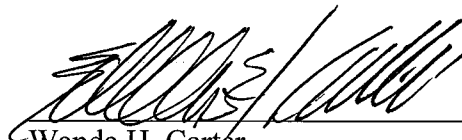
Name: _____
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 Telephone: _____
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 Telephone: _____
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 Name: _____
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 Name: _____
 Address: _____
 Telephone: _____

CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY
Debra Murray Bishop
 CLERK OF COURT
 C.P. & G.S.
 BERKELEY COUNTY, SC
 DATE 3-19-2020
SPC

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Amended 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,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

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 14th day of May, 2021.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

May 14 2021

SC Court of Appeals

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

THE STATE,

RESPONDENT,

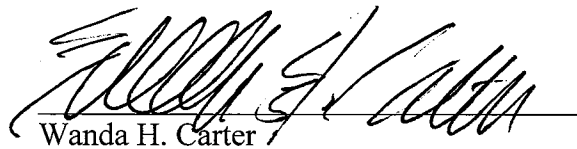
V.

RICKY MANIGO DAWSON,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Amended Record on Appeal in the above referenced case has been served upon Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS) this 14th day of May, 2021.



Wanda H. Carter
Deputy Chief Appellate Defender