

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Jul 29 2021
SC Court of Appeals

Appeal from York County

Honorable J. Mark Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TAVIS ANDRE COLSTON,

APPELLANT

APPELLATE CASE NO. 2020-000257

RECORD ON APPEAL

VICTOR R SEEGER
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DAVID SPENCER
Senior Assistant Attorney General

PO Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR APPELLANT

KEVIN SCOTT BRACKET
Solicitor, Sixteenth Judicial Circuit

Moss Justice Center
1675-1A York Highway
York, SC 29745
(803) 628-3025

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

PRETRIAL HEARING TRANSCRIPT DATED JANUARY 31, 20201

TRIAL TRANSCRIPT DATED FEBRUARY 12-13, 202010

TESTIMONY

 GARY PENCE (IN CAMERA)

 Direct Examination by Ms. Smith19

 Cross Examination by Mr. Zuschke.....23

OPENING STATEMENT BY MS. SMITH27

OPENING STATEMENT BY MR. ZUSCHKE29

TESTIMONY

 JEFFREY LONG

 Direct Examination by Ms. Smith33

 Cross Examination by Mr. Zuschke.....34

 Redirect Examination by Ms. Smith.....38

 GARY PENCE

 Direct Examination by Ms. Smith40

 Cross Examination by Mr. Zuschke.....46

 Redirect Examination by Ms. Smith.....48

 KENNETH MULDER

 Direct Examination by Ms. Smith50

 Cross Examination by Mr. Zuschke.....55

 GARY PENCE

 Direct Examination Continued by Ms. Hamilton59

 Cross Examination Continued by Mr. Zuschke.....61

 HOLLY TOBIAS

 Direct Examination by Ms. Smith61

 Cross Examination by Mr. Zuschke.....68

THE STATE RESTS69

CLOSING ARGUMENT BY MS. SMITH.....70

CLOSING ARGUMENT BY MR. ZUSCHKE73

CHARGE ON THE LAW83

VERDICT84

SENTENCING92

INDICTMENTS AND SENTENCE SHEETS.....93

CERTIFICATE OF COUNSEL102

**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
COURT’S EXHIBIT #1 (DISK – DEPUTY PENCE’S BODY CAM FOOTAGE)**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA GENERAL COURT OF JUSTICE
COUNTY OF YORK SIXTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

vs. CASE NUMBER: 2019-GS-46-08049

TAVIS ANDRE COLSTON,

 Defendant.

HEARING BEFORE: THE HONORABLE DANIEL D. HALL

DATE: JANUARY 31, 2020

REPORTED BY: KYMBERLEE M. WILLIAMS, CSR/RPR
State of South Carolina
Official Circuit Court Reporter
P.O. Box 8091
Beaufort, South Carolina 29903

APPEARANCES:

FOR THE 16TH CIRCUIT SOLICITOR'S OFFICE
AUSTIN NEWMAN, ESQ., ASSISTANT SOLICITOR
1675 YORK HIGHWAY #1A
YORK, SOUTH CAROLINA 29745

ATTORNEY FOR THE BEAUFORT COUNTY PUBLIC DEFENDER
JEFFREY B. ZUSCHKE, ESQ.
1675 YORK HIGHWAY
YORK, SOUTH CAROLINA 29745

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

3

PROCEEDINGS CONCLUDED

8

CERTIFICATE OF REPORTER

9

EXHIBITS

(NONE OFFERED)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

* * *

FRIDAY, JANUARY 31, 2020

YORK, SOUTH CAROLINA

* * *

THE COURT: Solicitor.

MS. NEWMAN: Your Honor, before you is Tavis Colston. He is represented by Jeff Zuschke of the Public Defender's office. I arraigned him on his possession of methamphetamine, second charge, just now in front of Judge McKinnon. I informed him that he has been put on the trial docket for that charge for the February 10th term. Should they convict him of that charge during that term, I will bump up his trafficking to a third offense. He is taking exception with the way that I am calling these cases, and he would like you to instruct me to call them in a different order.

I informed Judge McKinnon and the defendant of your remarks from yesterday's docket meeting. This Defendant would like to hear it from you.

THE COURT: All right.

Mr. Zuschke, I will hear from you.

MR. ZUSCHKE: Yes, Your Honor. We are asking you to adjust the scheduling. It is currently -- and

1 I guess this will be partially a continuance motion.

2 The solicitor has mentioned how you are
3 scheduling the cases. He has multiple pending
4 cases. This one that they are calling on February
5 10th is the the most recent case of the ones that
6 were currently -- drug cases at least. It's a
7 possession of methamphetamine, second offense.

8 He has one about a year older than that.
9 I believe it's 11 months older, a trafficking,
10 second offense, case that he has hired Jeff Dunn
11 on. We are requesting that that one go first for
12 a variety of reasons. The first one is
13 scheduling. It's a year older. We think it
14 appropriate to address an older charge first and
15 not a brand new charge.

16 Secondly, Jeff Dunn has requested a speedy
17 trial on that trafficking charge. So we think it
18 makes sense that his older and the one that he's
19 requested trial be scheduled earlier.

20 Also, as far as the economy. He has
21 retained Jeff Dunn. He has paid the money. I
22 don't think it makes a lot of sense to have the
23 government funding the first trial one when he has
24 already paid money of his own in the private
25 market to arrange for his trial and his needs in

1 court.

2 Finally, in the interest of justice. The
3 same reason the solicitor wants to try this one first.
4 It's to enhance an earlier case from a trafficking
5 second to a trafficking third where there be a
6 mandatory minimum of 25 years. We think in the
7 interest of justice, scheduling, and the economy, it
8 makes sense to try the trafficking first. Jeff Dunn
9 is in agreement with this and also believes it should
10 be that way. The client feels that way as well. He
11 also feels he has a better rapport with Jeff Dunn at
12 this time than he does with me.

13 THE COURT: Thank you. The trial is
14 scheduled February 10th. What was the charge?

15 MS. NEWMAN: Your Honor, that's for
16 possession of methamphetamine, second offense.

17 THE COURT: How many witnesses will the State
18 have?

19 MS. NEWMAN: That is going to be a one-day
20 trial. At this moment we would have four witnesses.

21 THE COURT: All right. Well, I am not
22 going to ask Mr. Colston any questions unless he
23 wants me to and you agree. I don't intend to ask
24 him any questions.

25 MR. ZUSCHKE: Do you want to address the

1 Court?

2 THE COURT: Do want him to speak?

3 MR. ZUSCHKE: Only if he wants to, Your
4 Honor.

5 THE COURT: Mr. Colston, I will be glad
6 to hear from you. I need to be sure, and I am
7 sure your lawyers have all warned you, that you
8 are not required to speak to the Court at all;
9 however, anything you say -- if you say anything
10 about your cases, that could possibility by used
11 against you. That is for your protection.

12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: What do you want to tell the
15 Court?

16 THE DEFENDANT: The day of the possession
17 of meth charge, my baby momma was keeping my son
18 from me. I went over there, and I tried to get to
19 see my son.

20 MR. ZUSCHKE: Tell him about the scheduling.

21 THE DEFENDANT: I should have just did the
22 correct thing.

23 THE COURT: You don't have to say
24 anything else. You have already said too much.
25 That is for your protection.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: I am not cutting you off to deny
3 you a protection. I am cutting you off because I am
4 trying to protect you.

5 THE DEFENDANT: I appreciate it.

6 THE COURT: I am going to deny the
7 continuance. Here is the thing, Mr. Colston. The
8 Court can't assess cases, the strengths and weaknesses
9 of cases, the evidence in the cases. In our system,
10 that is the State's responsibility. It's their
11 privilege and their right. Listen to me.

12 When they make that -- when they assess
13 those cases, in determining which cases to try,
14 they have various reasons for those. Again, that
15 is their right. That is their responsibility.

16 The Court doesn't have any authority to
17 order them to try a particular case at a
18 particular time, unless they have already told me
19 that they are ready for trial and the defense is
20 ready for trial and everybody has agreed on it.

21 Where we are today is that they have
22 agreed that possession is the trial. They are
23 ready for trial. It has been scheduled for trial.

24 So I will deny your continuance. I am
25 not going to order the State, because I don't

1 believe I have any judicial authority to order
2 them which case to call at what time.

3 So that is where we stand. Your case will be
4 called for trial the week of February 10th.

5 THE DEFENDANT: I would like to file for a
6 motion to relieve counsel. This is my first time even
7 seeing him. He hasn't told me anything prior to this.
8 I would like a new attorney. That's just me
9 personally.

10 THE COURT: Well, I am not going to
11 entertain that motion today until you talk to
12 Mr. Zuschke. If that is something we need to deal
13 with, on February the 10th we will do that. At
14 this point, you need to be ready for trial the
15 week of February the 10th.

16 THE DEFENDANT: Thank you, sir.

17 THE COURT: Thank you.

18 MS. NEWMAN: Thank you, Your Honor.

19 (At 12:18 p.m. the proceedings were
20 concluded.)

21 * * *

22 END OF TRANSCRIPT

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, KYMBERLEE M. WILLIAMS, Registered Professional Reporter, do hereby certify that the foregoing transcript is a true, accurate, and complete record for the hearing held on January 31, 2021.

I further certify that I am neither related to, nor counsel for, any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 7th day of June, 2021 at Beaufort County, South Carolina.



Kymerlee M. Williams, CSR/RPR
Official Circuit Court Reporter
State of South Carolina
Fourteenth Judicial Circuit
kwilliams@sccourts.org

1 State of South Carolina)
) Court of General Sessions
 2 County of York) 2019-GS-460-08049

3

4 The State of South Carolina)
)
 5 vs.) Transcript of Record
)
 6 Tavis Andre Colston)

7

8

9 February 12-13, 2020
 10 York, South Carolina

10

11

12 B E F O R E:

13 The Honorable J. Mark Hayes, Judge

14

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

16 Austin Newman Smith, Assistant Solicitor
 17 Marina Bender Hamilton, Assistant Solicitor
 Attorneys for the State

18 Jeffrey Baldwin Zuschke, Assistant Public Defender
 19 Attorney for the Defense

19

20

21 Nadine M. Capps, CVR
 22 Court Reporter

22

23

24

25

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

2 (The matter was heard in open court.)

3 THE COURT: Yes, ma'am. I'll be more than happy to
4 hear from you.

5 MS. SMITH: The case that we're calling today is for
6 indictment 2019-GS-460-8049 as The State versus
7 Tavis Andre Colston. The indictment is for possession of
8 methamphetamine, second offense. It was true billed by the
9 grand jury on December 12th, 2019.

10 THE COURT: And do you have an indictment for me?

11 (Counsel handed the document to the Court.)

12 Thank you, ma'am.

13 THE COURT: Yes, sir?

14 MR. ZUSCHKE: Your Honor, we, at this time, are
15 requesting a continuance in this case, and I'll present our
16 arguments at the appropriate time.

17 THE COURT: Yes, sir. I'll be more than happy to hear
18 from you.

19 MR. ZUSCHKE: If it will please the Court, we have
20 essentially a four-part argument to this. The first one is
21 for scheduling purposes.

22 Given that we have a judicial-run docket system
23 here, we would ask that it be rescheduled first -- for the
24 purposes of scheduling -- because we have a much older case.
25 In fact, this case is being tried before one that is more

1 serious and occurred almost a year before this event was
2 alleged to have occurred. We think it's appropriate for the
3 Court to set a trial date for that one prior to this one
4 being tried.

5 Our second reason is on that case
6 Attorney Jeff Dunn did request a speedy trial, and we think
7 the "speedy trial" part of that would imply that it's tried
8 before a case that's a whole year newer. The other part of
9 that is just the economy of the system. On this trial, he's
10 having the public defender's office, through me, defend him
11 and adjourn on that resource, when he actually has already
12 paid an attorney, Jeff Dunn, to represent him on his
13 trafficking charge. Given that there's a more serious
14 charge that occurred first in time and he's paid money on
15 it, I think, it makes sense to let him fund his own defense
16 there, and certainly, they might resolve all of these cases
17 together.

18 And, lastly, in the interest of justice, the same
19 reason that we don't want it to be scheduled prior to the
20 other one, and we want it to be continued until after that
21 one's trial date is the same reason they want to do it,
22 which is they plan to enhance that prior in time charge to a
23 third offense, which would carry a mandatory minimum of
24 25 years. And we think it's a manifest injustice for him
25 and would, in effect, be cruel and unusual punishment for

1 him to be getting a mandatory minimum on a charge for
2 something that happened a whole year earlier in time based
3 on a conviction of something that happened a year later.

4 THE COURT: I'm not the administrative judge for the
5 general sessions docket.

6 Was a request made to the administrative judge?

7 MR. ZUSCHKE: Yes, Your Honor. And in court, the
8 Friday before last, we spoke in front of Judge Hall and
9 requested the same thing. He said that he was not going to
10 continue it at that time; that it could be -- that a
11 continuous motion could be reheard by the trial judge he
12 even mentioned by name, so I don't know if that limits your
13 consideration to some of these issues and not others. But
14 certainly, he did expect that it would be heard again by
15 you.

16 THE COURT: And, too, Judge Hall was the subparts of
17 the motion ---

18 MR. ZUSCHKE: Every part was said to Judge Hall.

19 THE COURT: Okay. Did he say why he wanted me to hear
20 it as opposed -- me decide as opposed to ---

21 MS. SMITH: Your Honor, sorry to interrupt.

22 THE COURT: Let him answer.

23 MS. SMITH: Okay.

24 MR. ZUSCHKE: I believe that he had said that he
25 didn't -- was not going to tell the solicitors in whatever

1 order they can call cases. If we needed a continuance, that
2 you could request it from the trial court judge.

3 THE COURT: Okay.

4 MR. ZUSCHKE: And he said it was -- believe it was
5 scheduled in front of you.

6 THE COURT: Is there a particular reason why he doesn't
7 want to tell the solicitors in what order to call cases?

8 MR. ZUSCHKE: I'm not entirely sure of the reason
9 there.

10 THE COURT: All right. Yes, ma'am.

11 MS. SMITH: Your Honor, sorry to interject, but he did
12 make a ruling that day. He made a ruling that we could try
13 this case in whatever order that we saw fit. He did rule
14 that he does not have the authority to make us try that case
15 before this one but that he certainly would allow Mr. -- to
16 make a continuance motion in front of you.

17 We agree with Judge Hall that we can try this case
18 before the other one, even though it is newer. And the
19 conviction from this case could also enhance an earlier
20 arrest. The statute says that any conviction would enhance,
21 so it does not limit you as to an arrest that happened after
22 the prior trafficking offense. So we would ask that you go
23 along with Judge Hall's ruling that the State could try the
24 cases in whichever order they deemed fit.

25 THE COURT: All right. Any reply?

1 MR. ZUSCHKE: Not to that, Your Honor.

2 THE COURT: If another judge, especially administrative
3 judge, has made a substantive ruling, I would not -- I feel
4 it would be inappropriate for me to make a subsequent ruling
5 that addresses those particular issues. So while I might
6 agree or disagree with his position that a judge cannot tell
7 the solicitor when or when not to call a case, I would
8 respect that judge's prior decision on that. So if the
9 matters that are being presented to me, as a basis for the
10 continuance, were the same as what's already been addressed,
11 I would not be inclined to grant the request for the
12 continuance based on anything that Judge Hall had already
13 addressed.

14 If he felt like that my decision or that you can
15 present to me a request for a continuance based upon
16 anything that's happened since then or that he didn't
17 address, I would be more than happy to hear those and would
18 rule on those separately.

19 So if the solicitor is correct, then I would have
20 to deny the motions based upon what you've told me, that
21 Judge Hall has already heard.

22 MR. ZUSCHKE: Thank you, Your Honor.

23 (Counsel conferred briefly with the defendant.)

24 THE COURT: And you are, Mr. Colston?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay.

2 MR. ZUSCHKE: Our next -- if the Court's ready.

3 THE COURT: Yes.

4 MR. ZUSCHKE: Our next motion is a motion to suppress
5 the search that ended up finding the contraband here. In
6 this case it was a bag containing about three pills that --
7 or their chemist is going to testify -- contained
8 methamphetamine.

9 Our argument is based on there's was a warrant to
10 search without probable cause. I believe that the State
11 will intend to argue that it was a -- using the plain sight
12 doctrine. My response to that would be the plain sight
13 doctrine -- we picked up the federal standards. It was in
14 *Horton v. California*, which has three prongs.

15 One prong has subsequently been eliminated. It's
16 the second prong, where -- the three prongs are the initial
17 intrusion, which afforded authorities the plain view was
18 lawful; that one is still in effect. The second one, that
19 the evidence being advertent, has since been overturned.
20 But the final prong of the test, that the incriminating
21 nature of the evidence is immediately apparent is still good
22 South Carolina and federal law, and -- given that we picked
23 up the standard.

24 And my argument here is that while he saw a
25 plastic bag, he didn't accurately see the contents of that

1 bag, so didn't know that there was criminally -- criminal
2 behavior within that. While he believed it contained
3 criminal -- there's lots of reasons to have a plastic bag.
4 I think most people's kitchens are full of them.
5 Oftentimes, we keep all kinds of things that are legal. In
6 fact, it's legal to sell and have. It's not inherently drug
7 paraphernalia to have a plastic bag.

8 Our evidence -- I believe and it's actually a
9 burden on the State to show that they meet this exception,
10 not the burden on the defense to show that they didn't. But
11 our evidence, I think, it would show, based on the video of
12 the arrest, that the officer believed the bag contained what
13 he called "dope" and described it as a bag with blue
14 powder -- I'm sorry -- white powder. The bag ended up
15 containing three blue pills and no white powder. And so I
16 believe he didn't see the contents of the bag and only saw
17 that there was a plastic bag before he went to seize the
18 bag.

19 THE COURT: Yes, ma'am.

20 MS. SMITH: We do have the officer here and the video,
21 if you would like to see either of those. But we would
22 argue Plain View. He is asking the defendant to see his
23 driver's license. The defendant gives him permission to go
24 into the vehicle to get it. Once he does that, the
25 defendant grabs a T-shirt and goes to throw it over the

1 center console of the car. When he does that, it causes the
2 officer to look in that direction. He sees a bag, which he
3 says he believes contains drugs. He does say that there are
4 white pills in there. On the video that you will see, the
5 bag is on the hood of the car. It does in fact look like
6 they are white pills. They do come back to be two blue
7 pills and two red pills. It would be our argument that the
8 light blue pills appear to be white, so if you did, in fact,
9 see the drugs in the bag -- this is also not just a sandwich
10 bag that you would get in your kitchen; it is tied up in a
11 knot. It is a small piece of a bag that the defendant has
12 used. The officer describes it just as he saw it in the
13 car. He believed it to be drugs, and so we would argue that
14 that gives him probable cause to go into the vehicle and to
15 retrieve those drugs; he does that and he retrieves exactly
16 what he believed to be in the vehicle.

17 THE COURT: All right. I can't make any decisions
18 unless I have evidence, so I need to either hear from the
19 officer or view the video or both. I leave that up to the
20 State. It is their burden of proof.

21 MS. SMITH: The State would call Officer Gary Pence to
22 proffer his testimony.

23 THE COURT: Sir, let the clerk of court, wherever she
24 is, swear you in.

25 (The following took place without the presence and

1 hearing of the jury.)

2 OFFICER GARY PENCE, upon first being duly sworn,
3 testified as follows:

4 THE COURT: Sir, just have a seat in the witness stand,
5 and please speak up loud enough so both the court reporter
6 and I can hear you.

7 DIRECT EXAMINATION

8 BY MS. SMITH:

9 Q Can you state your name for the record, please.

10 A Gary Pence.

11 Q And what is your occupation?

12 A I'm a deputy with the York County Sheriff's Office.

13 Q How long have you been in law enforcement?

14 A A little over three years.

15 Q Where are you assigned and what do you do as a part of
16 your assignment?

17 A I'm assigned to the Rock Hill District in York County.
18 I'm a patrol deputy.

19 Q And what training did you go through to be a patrol
20 deputy?

21 A I've gone to the South Carolina Criminal Justice
22 Academy, which was a 12-week academy. I've done in-service
23 training. We have monthly trainings. I attend outside
24 trainings that other departments or companies offer.

25 Q Do you ever handle drug cases?

1 A I do.

2 Q About how many drug cases do you believe you've
3 handled?

4 A Over 100.

5 Q Were you working on August 31st, 2019?

6 A I was.

7 Q Did you respond to an incident at [REDACTED] Road?

8 A I did.

9 Q And what city and what county is that in?

10 A In Rock Hill, South Carolina, in the county of York.

11 Q What happened that day?

12 A We -- I responded to the -- to that address. It was a
13 disturbance of some sort that we were called to. I pulled
14 up on scene. I -- there was -- Mr. Colston was in the
15 driveway -- in front of my patrol car when I pulled into the
16 driveway. I got out and immediately talked with
17 Mr. Colston, just trying to figure out what was going on.
18 I -- with my conversation with Mr. Colston, I asked him for
19 his ID and he told me that it was in his vehicle. He
20 started to walk towards his vehicle. I asked him if he'd
21 mind -- or if there were any weapons or anything inside of
22 the vehicle, which he said there were not. I then asked him
23 if he was okay with me retrieving his ID from his vehicle,
24 in which he did say that it was okay. I reached inside, and
25 in the front passenger seat, grabbed a wallet that had his

1 ID card in it. While looking at his ID card, Mr. Colston
2 was standing beside me, which we were right beside his
3 vehicle. He was continually looking into the vehicle, and
4 then grabbed a white T-shirt that was on the front of the
5 vehicle and threw it inside of the vehicle through the open
6 front passenger window. When he did that, I looked into the
7 vehicle. The shirt landed in the -- on the center console.
8 And I noticed before the shirt landed, there was a small bag
9 that appeared to have a white substance that -- you know, it
10 was a plastic bag. It was tied into a knot. It appeared to
11 be narcotics to me.

12 Q Were you wearing a body cam ---

13 A I was.

14 Q --- during this incident?

15 A I was.

16 Q Are you familiar with how those body cams are
17 activated?

18 A I am.

19 Q Have you done training in that?

20 A I have.

21 Q Was your body cam activated on this day?

22 A It was.

23 (A disk was marked as Court Exhibit 1.)

24 Q I am going to hand you what we need to mark as, for
25 now, Court's Exhibit 1.

1 Do you recognize what I'm handing to you?

2 A I do.

3 Q And how do you recognize that?

4 A It is a disk of a video -- or my body cam video from
5 this incident.

6 Q Have you viewed what's on the disk?

7 A I have.

8 Q Is it a fair and accurate representation of what
9 happened that day?

10 A It is.

11 MS. SMITH: Your Honor, at this time I would ask to
12 publish the portion of his body cam.

13 MR. ZUSCHKE: Without objection.

14 THE COURT: Without objection. Will I see this
15 someplace up here?

16 MS. SMITH: You should.

17 (Court's Exhibit 1 was played for the Court.)

18 MS. SMITH: Your Honor, that would be the video that we
19 would present. We would argue that he says he sees it. He
20 describes it to both the defendant and the other officers.
21 He says it's a white substance that he believes to be a
22 narcotic. As you can see when it's on the hood of the
23 vehicle, it does appear to be a white substance. We would
24 argue that the light blue pills that are in there looked
25 white to him, but nevertheless, he saw what he believed to

1 be narcotics.

2 THE COURT: All right. Let me ask you this. Last I
3 thought that he has a right to cross-examine.

4 MS. SMITH: Yes, sir.

5 THE COURT: Do you waive cross-examination?

6 MR. ZUSCHKE: No, Your Honor.

7 THE COURT: Then you're making arguments now in front
8 of the witness.

9 MS. SMITH: Sorry about that.

10 THE COURT: So let him cross-examine first. Okay?

11 MS. SMITH: Yes, sir.

12 THE COURT: Thank you.

13 CROSS-EXAMINATION

14 BY MR. ZUSCHKE:

15 Q So first time you looked in the car, it was to grab the
16 ID out?

17 A Yes, sir.

18 Q And you did not see it at that time?

19 A No, sir.

20 Q It was just after that when he goes to put his shirt in
21 the car?

22 A Yes, sir.

23 Q When you saw the bag?

24 A Yes, sir. The bag that I retrieved, yes sir.

25 Q That you described as -- you first believed to contain

1 some kind of dope?

2 A Yes, sir.

3 Q And described as a white substance?

4 A Yes, sir.

5 MR. ZUSCHKE: I have no further questions.

6 THE COURT: Any reply?

7 MS. SMITH: No, sir, Your Honor.

8 THE COURT: All right. Now we can receive the
9 arguments. Anything else?

10 MS. SMITH: Nothing from the State, Your Honor.

11 THE COURT: Yes, sir? Thank you sir, you may step
12 down. Watch your step as you step down.

13 (The witness left the stand.)

14 MR. ZUSCHKE: Your Honor, as you've seen the bag that
15 was found. He saw a bag and believed it contained a white
16 substance, and it turned out to have blue and red pills in
17 the bag. I believe, you know, the opaque nature of the bag
18 goes towards my argument of he just saw a bag; he didn't see
19 the contents of the bag. Bags are certainly not illegal,
20 inherently. I don't think that the illegal nature of the
21 bag was apparent -- was immediately apparent to him, so I
22 don't think the Plain View Doctrine applies, and we would
23 ask for this evidence to be suppressed as an unlawful
24 search.

25 THE COURT: All right. Yes, ma'am.

1 MS. SMITH: Your Honor, we would argue that these drugs
2 are in plain view. The officer describes them exactly how
3 they were found. He noticed them when the defendant goes to
4 throw his shirt. He was right there. He is in good
5 eyesight of it. He explains it to be a bag with dope in it.
6 He says that they are white pills. It is our argument that
7 the light blue pills appeared to be white to him. In the
8 video you can see in the baggy that it looks to be a white
9 substance. Nevertheless, he does say that he saw drugs in
10 the vehicle in plain view, so we would argue that he does
11 have probable cause to search that vehicle.

12 THE COURT: Reply?

13 MR. ZUSCHKE: No, Your Honor.

14 THE COURT: Thank you very much for the arguments.

15 Does the case law require that the police officer
16 know the exact identity of the substance that he's
17 searching, such as, you know, did he have to know it was
18 meth, or could it have been cocaine and then he thought it
19 was meth? Does the law allow an officer to make that kind
20 of mistake, if it's a reasonable mistake?

21 MS. SMITH: Yes, sir, Your Honor. They just have to
22 believe it to be a controlled substance or a narcotic.
23 Excuse me.

24 THE COURT: Okay. Do you agree?

25 MR. ZUSCHKE: My understanding is that just the illegal

1 nature of what they see has to be immediately apparent to
2 them. And so if it's something that could be legal and it's
3 not immediately apparent, I would argue that it would not
4 apply.

5 THE COURT: So it's your position that it was not
6 apparent ---

7 MR. ZUSCHKE: Yes.

8 THE COURT: --- to the police officer?

9 MR. ZUSCHKE: He just saw a bag. It was not apparent.
10 I mean short of him having preconceived notions about my
11 client, would not immediately assume that a bag would
12 contain drugs. Maybe he would if he spent all day looking
13 at them as an officer, but I don't think it's immediately
14 apparent that every bag you see contains drugs.

15 THE COURT: Okay. All right. I mean, I watched the
16 video. I paid attention to the video. I've listened to the
17 officer's testimony. I think that the State has carried its
18 burden of establishing that there was probable cause for the
19 search, so I would allow the case to move forward with that.

20 MR. ZUSCHKE: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 MS. SMITH: Thank you, Your Honor.

23 MR. ZUSCHKE: So if it pleases the Court, our next
24 motion is to suppress. They find scales as well in the bag,
25 later on, when they're doing a more thorough search of the

1 as the foreperson in the jury room and to preside over the
2 jury during their deliberations, and it will also be your
3 duty to write the verdict in this case. But I will give you
4 further instructions on that at the inclusion of the case.

5 Now, in order to preserve everyone's rights, I
6 will give either of the parties an opportunity to object to
7 anything that I've said during my opening instructions to
8 you.

9 Any objections from the State?

10 MS. SMITH: None from the State, Your Honor?

11 THE COURT: Any from the defense?

12 MR. ZUSCHKE: No, Your Honor.

13 THE COURT: Ladies and gentlemen, at this time we will
14 receive the opening statements from the attorneys.

15 MS. SMITH: On August 31st of last year, officers
16 responded to a residence on Saluda Road in York County.
17 They were there for a disturbance caused by the defendant.
18 The residence was not his. It was the residence of the
19 mother of his child's parents. That day was a Saturday.
20 That's important because he has a disagreement with the
21 mother of his child about seeing his child. His days are
22 Thursdays, not Saturdays. He wanted to see his child on a
23 Saturday. His child was not there. The mother of his child
24 was not there, just her parents. He caused a scene to the
25 point that her parents called the police. The police

1 responded. They made contact with the defendant. They
2 asked him for his identification. He said, yes, that he
3 would give it to them. He went to his vehicle that he
4 arrived in at that residence. The only one in the vehicle
5 was the defendant. Officers asked if they could get the ID
6 from the vehicle, just for officer safety, just in case he
7 had anything else in the vehicle. He agreed. He allowed
8 them to go get his license. They do that, and they
9 notice -- one of the officers that's talking to him notices
10 that his demeanor starts to change. He starts moving about.
11 He then goes and grabs a shirt that was on the hood of the
12 vehicle and goes to throw it inside of the open window.
13 When he does that, it causes the officers -- the officer to
14 look in the vehicle as he's throwing the shirt. The officer
15 sees a bag. He notices that it contains pills in that bag.
16 He immediately turns and arrests the defendant. He tells
17 him exactly why; that he see's dope in the vehicle. He
18 arrests him.

19 The defendant in this case is charged with
20 possession of methamphetamine. In order to be convicted of
21 that in this state, you have to knowingly possess
22 methamphetamine. There are two ways that a person can
23 possess methamphetamine: Either actual, which would mean in
24 his hand, on his person, anything like that, or constructive
25 possession, which is what we have in this case.

1 Constructive possession means he has dominion or control
2 over those drugs. This is the vehicle that he arrived in.
3 He's the only person in the vehicle. The officer sees the
4 drugs right there, in the center console, in plain sight,
5 and the defendant tries to hide them.

6 We would argue that he knowingly possessed that
7 methamphetamine, because he tries to hide it from the cops.
8 It's in a tied up baggy, right -- sitting right there. We
9 also argue that he knew they were illegal for the same facts
10 that he's trying to hide it from the officer.

11 We would ask you that you listen to all the
12 witnesses in this case. You will hear from the mother -- or
13 the father of the mother of his child about how he arrived
14 there first, on scene. Nobody else was in his vehicle. You
15 will hear from the two officers that investigated this case.
16 The officer that saw the pills and the officer that
17 collected the pills. You will then hear from the chemist in
18 this case. She took those pills that was submitted by the
19 officers and tested them, and they did, in fact, come back
20 as methamphetamine.

21 At the end of all the testimony, we would ask that
22 you convict him of possession of methamphetamine, based on
23 these facts that you hear today. Thank you.

24 MR. ZUSCHKE: May it please the Court.

25 Hello, ladies and gentleman of the jury. We've

1 been waiting for you. We're very glad you are here because
2 you are our chance to hear this case. You're the most
3 important constitutional right that any of us in America
4 have, more important than the right to a defense and the
5 right to an attorney, which is why I'm here. I work at the
6 public defender's office. My name is Jeff Zuschke. It's
7 nice to meet you all.

8 More important than any of the presumptuous things
9 around is you guys. We don't have somebody that works for
10 the state that is prosecuting decide whether somebody is
11 guilty or innocent. We don't have an officer on the street
12 deciding that, not even a judge is going to determine here.
13 It's up to you. Because we as Americans decided that we
14 want a community of our peers, the people like us -- people
15 that have families, mothers, children, just like us, that
16 live in the community -- to decide whether the State's met
17 their burden.

18 Tavis Colston is someone here. He's a real
19 person, not a face, not a charge, not a potential
20 conviction. He's a human being. He has a mother. She's
21 here today in support of him. And I'd ask you -- and I know
22 you will -- take this burden very seriously. Please pay
23 attention to all of the evidence. What you're looking to do
24 is to see if it makes sense, essentially.

25 The burden is on the State to prove that he's

1 guilty. The burden is that way for a reason. It's
2 impossible to go around every day proving that you didn't do
3 any number of crimes. You can't constantly have -- be
4 thinking in terms of let me have an alibi to this, let me
5 write down where I am and what I'm doing. Some people are
6 better at that kind of thing than others, but nobody can do
7 that perfectly. So when you get accused of something, we
8 move the burden on the State, who has a team of
9 investigators, officers, equipment, experts -- you're going
10 to see some of those here today -- to make that -- to do the
11 research and then present it to you in a way that convinces
12 you.

13 Now, not only do they have to present you with
14 evidence, they have to present you with evidence that
15 convinces you beyond a reasonable doubt. It's the highest
16 burden that we have in any of the court systems in the
17 country. There's lots of -- there's no beyond-all-doubt
18 system, because nobody has divine guidance, nobody is
19 talking to God in today's day and age and figuring out
20 exactly what happened to a degree of certainty, so what they
21 have is reasonable doubt. The Court's tried several times
22 to define it, but they are always hesitant to do so, because
23 you are the reasonable people that are deciding what a
24 reasonable doubt is.

25 But doubt is easy. It's a fact pattern or a

1 circumstance that could have happened that meant that the
2 person would be guilty of the offense, one or more elements
3 of it, whether that's the intent, whether that is, you know,
4 the actual -- whether in this case it's actually drugs.
5 We're not going to be arguing that, but that's what an
6 element would be a reasonable doubt that -- they've put it
7 down as something that leaves you firmly convinced,
8 something that would make a reasonable person hesitate to
9 act.

10 Once again, you're the reasonable people here. I
11 think you can decide among yourselves what's reasonable and
12 what's not. And I want you to look at it. I want you to
13 listen to every detail of what every single witness says,
14 because I think you're going to hear it and say, "Well, that
15 story doesn't really add up. That doesn't really make
16 sense." And I think when you have that doubt and you
17 realize that it's reasonable, you're going to find my client
18 not guilty, and that's just what I'm going to ask you to do.

19 THE COURT: Is the State ready to call their first
20 witness?

21 MS. SMITH: We are, Your Honor. The State would call
22 Jeffrey Long.

23 THE COURT: Just come around up here and let the clerk
24 of court swear you in.

25 JEFFREY LONG, upon first being duly sworn,

1 testified as follows:

2 THE COURT: Sir, just come right over and have a seat
3 in the witness chair.

4 DIRECT EXAMINATION

5 BY MS. SMITH:

6 Q Can you say your name for the record, please.

7 A Jeffrey Long.

8 Q And how do you know this defendant?

9 A He has a son by my daughter.

10 Q Were you present for an incident that occurred at
11 [REDACTED] Road, in York County, on August 31st of 2019?

12 A Yes, I was.

13 Q Can you tell us what happened?

14 A Well, he showed up banging on the door, requesting to
15 see his son, and causing a whole lot of problems.

16 Q Were you able to see the vehicle that he arrived in
17 that day?

18 A Yes.

19 Q Was anyone else in that vehicle?

20 A No. He was by himself.

21 Q So the entire time, the only person you saw was the
22 defendant?

23 A Yeah, it was him.

24 Q Okay. As a result of the disturbance that he caused,
25 did y'all request that he be put on trespass notice?

1 A Yes.

2 MS. SMITH: Thank you. That's all the questions I have
3 for you today. Please answer any questions the defense has.

4 CROSS-EXAMINATION

5 BY MR. ZUSCHKE:

6 Q Hey. Mr. Long?

7 A How are you doing?

8 Q Doing all right. You don't like Tavis very much, do
9 you?

10 A Do I like him?

11 Q Yeah.

12 A I don't like his ways.

13 Q Right. You just don't really care for him?

14 A I don't like his ways.

15 Q And he's the father of your daughter's child, right?

16 A Right.

17 Q So you're kind of forced to deal with him to at least a
18 limited extent?

19 A Yeah.

20 Q So he came that day and was causing problems, you said?

21 A Yes, sir.

22 Q And so you called the police on him?

23 A Yes, sir.

24 Q To get him arrested?

25 A I called them to get him -- get him removed. I gave

1 him the benefit of the doubt to get him moved hisself.

2 Q So you wanted him to leave?

3 A Yeah. He refused.

4 Q Well, didn't you tell the 9-1-1 operator and the police
5 that you went and took his keys out of his car?

6 A I didn't tell the 9-1-1 operator; I told the officer I
7 took his keys out his car. Because he ---

8 Q And you were holding the keys in your hand while you
9 were talking to them, right?

10 A When he threatened to pull a gun on me, yeah. I wanted
11 him to be there.

12 Q So that he could be arrested by the police?

13 A That's right.

14 Q So you did want him arrested by the police?

15 A I wanted him removed.

16 Q So you went in the car and took the keys so that he
17 couldn't leave?

18 A That's right.

19 Q And you say that because he threatened to use a weapon
20 against you?

21 A Yeah.

22 Q Did you think it was a firearm?

23 A Yes. It's what he said he had.

24 Q And police asked you if he had one. You believed that
25 he had at the time?

1 A I assumed that he had it because he went -- he went to
2 his bag to reach for it.

3 Q And you told him that the bag in the passenger's seat
4 is where you thought the gun would be?

5 A Whatever he -- whatever he reached in the car to get.

6 Q But that's where you told him?

7 A That's why I -- no. I didn't tell him ---

8 Q That's where you believed it was, not that you saw it.

9 A That's what I believed it was. I didn't tell him
10 anything.

11 Q Right. So, essentially, you didn't want him to leave
12 before the police could arrive, so that ---

13 A He wasn't trying to leave before the police arrived.

14 Q But you took his keys so that he couldn't?

15 A I took his keys when he threatened me. He
16 threatened ---

17 Q So that he couldn't leave before the police arrived?

18 A That's right.

19 Q Okay. And so you didn't try to take the weapon out of
20 the car when you went to take the keys out?

21 A I didn't try to reach for no weapon, no.

22 Q So you didn't try to secure it or -- where you thought
23 it might be?

24 A (Witness shook head from side to side.)

25 THE COURT: Mr. Long, if you would, you need to give

1 verbal responses. That lady that's sitting over here to the
2 right of you --

3 THE WITNESS: Okay.

4 THE COURT: --- she's the court reporter. She's taking
5 down everything that's said. She needs to be able to hear,
6 as well as that gentleman that's over in the back over
7 there.

8 THE WITNESS: Okay.

9 THE COURT: The last juror. Thank you, sir. So please
10 speak up. Thank you.

11 Q And when -- you and your wife both called 9-1-1, right?

12 A She called 9-1-1.

13 Q You didn't speak to them ever?

14 A I didn't talk to 9-1-1.

15 Q Was there another male there that might have been
16 talking to them?

17 A My son and my -- his mother -- they talked to 9-1-1. I
18 didn't talk to ---

19 Q So your son also spoke. I see. And when they called
20 9-1-1, it was right in front of Tavis Colston, wasn't it?

21 A I assume so. They was on the phone with 9-1-1. I was
22 trying to get him to leave.

23 Q And he was still arguing with you guys at that point,
24 right?

25 A Yeah. Yeah.

1 Q So he knew the police were coming, it's safe to say?

2 A Yeah. And he -- he still wasn't trying to leave.

3 Q Do you know if your wife took a video of the incident?

4 A I don't know.

5 Q And to your knowledge, the police never found a weapon,
6 did they?

7 A Not to my knowledge. I don't know.

8 Q And your record -- you have a forgery charge on your
9 record from 2013?

10 A A forgery record?

11 Q Yeah.

12 A No. I didn't forge. I had a bad check that was wrote
13 to me, that it came back.

14 Q You pled guilty to forgery, though?

15 A Well, yeah. I pled guilty to it, yeah.

16 Q Okay. For probation?

17 A Yeah.

18 MR. ZUSCHKE: All right. No further questions.

19 THE WITNESS: All right. Thank you.

20 MR. ZUSCHKE: Thank you.

21 THE COURT: Any redirect limited to what he went into?

22 MS. SMITH: Just briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. SMITH:

25 Q I believe you said that Tavis Colston showed up to your

1 residence.

2 A Yes.

3 Q Do you see that person in the courtroom today?

4 A Yes, I do.

5 Q Can you describe what he is wearing and point him out
6 to the jury?

7 A What he's wearing now?

8 Q Yes, sir.

9 A He's -- he's wearing the white outfit.

10 Q Can you point him out.

11 A (The witness complied.)

12 MS. SMITH: Thank you. That's all the questions I
13 would have for this witness.

14 THE COURT: Thank you, sir. You may step down. Watch
15 your step as you're stepping down.

16 (The witness left the stand.)

17 THE COURT: Any reason why the witness cannot be
18 excused?

19 MS. SMITH: No, sir, Your Honor.

20 THE COURT: Any reason why the witness cannot be
21 excused?

22 MR. ZUSCHKE: Oh, no, Your Honor. Sorry.

23 THE COURT: Thank you. Sir, you may be excused as
24 well.

25 Would the State please call the next witness.

1 MS. SMITH: Your Honor, the next witness we would call
2 would be Officer Gary Pence.

3 I know you wanted to look at the time before ---

4 THE COURT: Yes. I'd say let's go ahead.

5 MS. SMITH: Okay. The State would call
6 Officer Gary Pence to the stand.

7 THE COURT: Sir, just come right up here and let the
8 clerk of court swear you in.

9 OFFICER GARY PENCE, upon first being duly sworn,
10 testified as follows:

11 THE COURT: Please have a seat in the witness chair and
12 chair up to the microphone.

13 DIRECT EXAMINATION

14 BY MS. SMITH:

15 Q Can you give your name for the record, please.

16 A Gary Pence.

17 Q And what is your occupation?

18 A I'm a deputy with the York County Sheriff's Office?

19 Q How long have you been in enforcement?

20 A A little over three years.

21 Q Where are you assigned and what do you do as part of
22 that assignment?

23 A I'm assigned to our Rock Hill district as a uniformed
24 patrol deputy.

25 Q And what do you do as a uniformed patrol deputy?

1 A I respond to calls for service, traffic stops, the
2 normal -- you know, people see us in uniform, our patrol
3 vehicle. Just basically handling shift -- shift work.

4 Q Do you ever respond to drug cases?

5 A I do.

6 Q About how many drug cases have you responded to?

7 A At least 100.

8 Q Were you working on the day of August 31st, 2019?

9 A I was.

10 Q Did you respond to a scene at [REDACTED] Road?

11 A I did.

12 Q What city is that in?

13 A Rock Hill.

14 Q And what county is that in?

15 A York.

16 Q What happened when you arrived on scene?

17 A When I arrived, there was people out in the yard.

18 Mr. Colston was the closest to my patrol vehicle that I was
19 driving. He was directly in front of my parole vehicle, in
20 the driveway, when I arrived. There was a blue car that was
21 partially in the driveway, perpendicular with my vehicle. I
22 got out of my vehicle, began talking with Mr. Colston, just
23 trying to figure out what was going on, what the disturbance
24 was at the residence.

25 I asked Mr. Colston for his identification while I

1 was speaking with him, and he told me that it was in his
2 vehicle. And he immediately -- he went -- or I asked him if
3 I could get it from -- he went to go get it from his
4 vehicle. I asked him if -- if I could get it from his
5 vehicle for him and also if there was any weapons in the
6 vehicle. He did tell me there were no weapons and that it
7 was okay for me to get his license -- or his ID, which I did
8 receive from the -- the front passenger window in the
9 vehicle was -- was down. I reached through the window,
10 grabbed his wallet out of the front passenger seat. I
11 retrieved his ID, and then Mr. -- I -- while I was getting
12 his ID out of his wallet, Mr. Colston was continually trying
13 to get around me. I noticed a little -- his -- began to
14 change -- he seemed a little nervous to me. He reached
15 beside me and grabbed a white T-shirt that was sitting on
16 the front of the vehicle -- of his vehicle. And he
17 started -- I think he said "excuse me" and threw the white
18 T-shirt through the window, which caused me to glance where
19 he was throwing it. And on the center console of the
20 vehicle, on the inside the vehicle, I noticed a small
21 plastic bag that appeared to be tied in a knot, that
22 appeared to have narcotics in it, so I placed Mr. Colston in
23 custody and took him back to the front of my vehicle.

24 Q Were you equipped with a body camera that day?

25 A I was.

1 Q Are you familiar with how that body camera works, and
2 have you had any training ---

3 A I am and I have.

4 Q --- how to use it? What normally causes the body
5 camera to activate?

6 A Manual activation. I have to press the button twice to
7 activate it.

8 Q Did you activate it that day?

9 A I did.

10 Q So you have a recording of this incident?

11 A I do.

12 Q I'm going to show you what's being marked as
13 State's Exhibit 1.

14 (State's Exhibit 1, Disk, was marked for
15 identification.)

16 Do you recognize what I'm showing you?

17 A I do.

18 Q How do you recognize it?

19 A It's a disk that contains my body camera footage from
20 that incident.

21 Q Have you viewed this disk?

22 A I have.

23 Q How do you know that this is the disk you've viewed?

24 A I signed and dated it.

25 Q Is what you viewed on this disk a fair and accurate

1 representation of what happened that day and what was
2 recorded on your body camera?

3 A It is.

4 MS. SMITH: Your Honor, at this time, the State would
5 ask to admit exhibit -- States Exhibit 1 into evidence and
6 publish it to the jury.

7 MR. ZUSCHKE: Without objection, with the exception of
8 reiterating our pretrial objections that have already been
9 ruled on.

10 THE COURT: All right. I will allow it, subject to the
11 pretrial objections. You may publish as well.

12 MS. SMITH: Thank you, Your Honor.

13 (State's Exhibit 1 was played for the Court and jury.)

14 MS. HAMILTON: Beg the Court's indulgence. I just want
15 to restart, so it -- the buffering stops, Your Honor.

16 (State's Exhibit 1 was stopped and restarted for the
17 Court and jury.)

18 Q Where were the drugs located?

19 A In the center console of the vehicle.

20 Q So was that in plain view to you?

21 A Yes. I could see it from outside the vehicle.

22 Q Okay. Did his demeanor change when you asked him to
23 see his ID?

24 A When I asked him to see his ID, it -- while we were
25 walking towards the vehicle, he -- it was like he wanted to

1 get there before I did. And then after I got his ID, that's
2 when I noticed that his behavior really changed, when he was
3 trying to move around me.

4 Q You said that the drugs were located in the center
5 console. Was that in the open or was that a closed console?

6 A It was on top of the center console, where like a
7 normal gearshift would be, on the center.

8 Q What did you believe those -- what was in the bag to
9 be?

10 A Narcotics.

11 Q How were they packaged?

12 A It was packaged in a plastic bag. It was ripped off
13 and tied up into a knot. It was a very small bag.

14 Q Who did you give the drugs to once you found them?

15 A To Deputy Mulder.

16 Q So were they continuously in the custody and control of
17 officers ---

18 A Yeah.

19 Q --- on scene?

20 A Yes, they were.

21 Q The defendant in the video that we saw continues to
22 discuss an illegal search. Was the search of his vehicle
23 illegal in this case?

24 A No, it was NOT.

25 Q And why not?

1 A I saw it in plain view, believed it to be narcotics,
2 which was probable cause for me to search his vehicle.

3 Q Do you see the individual in the courtroom today, whose
4 car that was, and who you arrested that day?

5 A Yes, I do. Mr. Colston.

6 MS. SMITH: Thank you. Please answer any questions the
7 defense may have.

8 CROSS-EXAMINATION

9 BY MR. ZUSCHKE:

10 Q So you came out to a kind of domestic disturbance-type
11 situation?

12 A Yes, sir.

13 Q And when you got there, Mulder was talking to the
14 family that lived there and you turned over to talk to
15 Tavis?

16 A Yes, sir.

17 Q And at one point during your conversation, where he's
18 explaining why he's there to see his child and that she'd
19 been having some problems letting him see his child, as we
20 saw in the video, you asked him for the ID?

21 A Correct.

22 Q And he walked towards car, and then you asked if you
23 could go in and get it?

24 A Yes, sir.

25 Q At that point he said yes and pointed into the car?

1 A Yes, sir.

2 Q Then you went and retrieved the ID?

3 A Yes, sir. I retrieved his wallet where his ID was.

4 Q And it was shortly after that that he grabbed the shirt
5 and threw it into the car?

6 A Yes, sir.

7 Q And it wasn't until that point that you noticed the bag
8 sitting on top of the center console?

9 A That's correct.

10 Q And it was right on top and in plain sight, right?

11 A Yes, sir.

12 Q So it wasn't like hidden or outside of anything?

13 A No, sir.

14 Q Okay. And you went to search his person. We saw that
15 in the video, right?

16 A Yes, sir.

17 Q Originally, with -- kind of tarried first, but
18 eventually got to actually searching him?

19 A Yeah. Deputy Mulder was the one that searched him.

20 Q And during that point, he was telling you guys not to
21 search him and that he didn't want a search?

22 A Yes, sir.

23 Q Essentially, trying to assert rights that you didn't
24 feel he had in that case, but due to the probable cause that
25 you had from what you saw?

1 A I wanted to retrieve the drugs before I did any full
2 search.

3 Q But you didn't find any drugs or anything illegal on
4 his person?

5 A No, sir.

6 Q But he still didn't want to be searched, right?

7 A Correct.

8 Q And no weapon was ever found, was it?

9 A No, sir. Not -- not -- I wasn't the one that searched
10 the car, but I know that ---

11 Q No weapon was found to your knowledge, just the ---

12 A Not that I know of.

13 Q --- reports of a weapon?

14 A Correct. I didn't.

15 Q And no DNA was ever collected from the bag?

16 A No, sir.

17 Q And no prints were ever collected from the bag?

18 A No, sir.

19 MR. ZUSCHKE: And no further questions. Thank you for
20 your time.

21 THE WITNESS: Yes, sir.

22 THE COURT: Any redirect limited to what he went into?

23 MS. SMITH: Yes, sir, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. SMITH:

1 Q So he asked you of the search of the dope -- about the
2 search of the defendant's person.

3 Was that an illegal search at that time?

4 A No, it was not.

5 Q And why not?

6 A He was under arrest, placed in custody.

7 Q So you have the right to search somebody once they're
8 under arrest?

9 A Correct.

10 Q And why didn't you take DNA or fingerprints from that
11 baggy?

12 A Because it was his car that he arrived in by himself.
13 You know, he clear -- he identified it as his vehicle to me
14 when I first arrived.

15 MS. SMITH: Thank you. Nothing further.

16 THE COURT: Thank you, sir. You may step down. Watch
17 your step as you're stepping down.

18 (The witness left the stand.)

19 Lawyers, approach a moment.

20 (A conference was held at the bench between counsel and
21 the Court.)

22 THE COURT: State ready to call their next witness?

23 MS. SMITH: The State calls Officer Kenneth Mulder.

24 THE COURT: Sir, just come right up here and let the
25 clerk of court swear you in.

1 A In the county of York.

2 Q Thank you. What happened when you arrived?

3 A When I arrived, I saw a male subject standing outside
4 of a vehicle, also a couple of other subjects standing on
5 the other side. Seems like they were engaged in some kind
6 of verbal altercation. Myself and another deputy separated
7 the parties and started talking to each of them.

8 Q Was an individual arrested that day?

9 A Yes, ma'am.

10 Q Did you perform a search of the vehicle that that
11 individual arrived in?

12 A We conducted an inventory of the vehicle.

13 Q Why were you inventorying the vehicle?

14 A It's going to -- it was going to be towed, so we
15 conducted an inventory to make sure that any valuable items
16 that were in the vehicle were accounted for.

17 Q So do you look through the entire vehicle as part of
18 that?

19 A Yes, ma'am.

20 Q And you document -- do you document what's located in
21 the vehicle?

22 A Yes, ma'am.

23 Q Did you discuss any of the contents of the vehicle with
24 the defendant in this case?

25 A Yes, ma'am.

1 Q Can you tell us about that discussion.

2 A The defendant in this case was concerned about some
3 musical equipment that was in the trunk of his vehicle. He
4 just wanted to make sure that that wasn't damaged or taken
5 away or anything like that.

6 Q And did you see that musical equipment as part of your
7 search?

8 A Yes, ma'am. In the trunk.

9 Q Did you collect any other evidence in this case?

10 A Yes, ma'am. We collected --

11 MR. ZUSCHKE: Your Honor? May I approach?

12 THE COURT: Okay.

13 (A conference was held at the bench between counsel and
14 the Court.)

15 Q Did you collect any evidence in this case?

16 A Yes, ma'am, I did.

17 Q What was that evidence?

18 A It was three different colored pills that deputies
19 located in the passenger compartment of the vehicle.

20 Q And when you collected those pills, what did you do
21 with them?

22 A First, we sealed the package that it was collected in.
23 We filled out the evidence inventory sheet, documentation of
24 what we collected, and I submitted that to the York County
25 evidence.

1 Q I'm going to show you what's marked as
2 State's Exhibit 2, and then what's going to be marked as
3 State's Exhibit 3 and Exhibit 4.

4 (State's 2, evidence bag with red pill; State's 3,
5 evidence bag with multisided red pill; and State's 4,
6 multisided blue pill, were marked for identification.)

7 Do you recognize these items?

8 A Yes, ma'am.

9 Q Can you tell us what they are.

10 A These are the items that we collected that day and that
11 I submitted to evidence: a couple of different multicolored
12 pills, blue and red.

13 Q How do you know that those were the items that were
14 collected that day?

15 A It's my handwriting, and it has my signature on them.

16 Q When you bag-up evidence, do you seal the bag after
17 you've done it?

18 A Yes, ma'am.

19 Q When you did that, did you sign your name to that bag?

20 A Yes, ma'am. My name's signed on the bag on the front.
21 And on the back, it's initialed and dated at the time that I
22 signed it.

23 Q And then where do you take that evidence?

24 A We take it to an evidence drop with the Rock Hill
25 district that I was working that day. I would have taken it

1 to Moss, which is here, dropped it here in this locked
2 evidence compartment.

3 Q When you submit it, can anyone else reach in and get
4 the evidence?

5 A No, ma'am, other than evidence technicians.

6 Q Okay. So it goes into a container at that point?

7 A Yes, ma'am.

8 Q And you are no longer able to access it?

9 A That is correct.

10 Q Would you have submitted those bags if they were
11 tampered with in any way?

12 A No, ma'am.

13 Q And are those bags a fair and accurate representation
14 of the bags that you submitted on that day?

15 A Yes, ma'am.

16 MS. SMITH: I have no further questions, but can you
17 answer anything ---

18 THE COURT: The witness has identified them all three
19 together. Could you ask him what 2, 3, and 4 are.

20 MS. SMITH: Yes, sir.

21 Q Can you identify what is in State's Exhibit 2.

22 A Yes, ma'am. In State's Exhibit 2 -- in this exhibit is
23 going to be a red, circular pill, very small. But that's in
24 State's Exhibit 2. In State's Exhibit 3, this is going to
25 be also a red multisided pill. It's a little bit bigger,

1 but still very small. And within State's Exhibit 4, it's
2 going to be a blue multisided pill, and this is also very,
3 very small pill. And I do recognize all three of them.

4 Q And where did those pills come from?

5 A The passenger compartment of the suspect's vehicle.

6 MS. SMITH: Thank you. Please answer any questions the
7 defense may have.

8 CROSS-EXAMINATION

9 BY MR. ZUSCHKE:

10 Q Officer Mulder, right?

11 A Yes, sir.

12 Q What rank is that over there?

13 A Deputy Mulder.

14 Q Deputy Mulder?

15 A Yes, sir.

16 Q So when you arrived on scene, you kind of took a
17 different approach from the other deputy.

18 You went and spoke -- over to the family that
19 lived at the residence, right?

20 A Yes, sir.

21 Q And Jeffrey and Crystal Long?

22 A Yes, sir. I believe that was their names.

23 Q And they wanted him arrested?

24 A I believe so. Yes, sir.

25 Q During your conversation with them, Jeffrey Long was

1 holding Tavis's keys, wasn't he?

2 A I don't recall.

3 Q Would reviewing the video refresh your memory?

4 A Yeah.

5 MR. ZUSCHKE: Your Honor, I'm trying to think of a --

6 THE COURT: I'm not technology inclined, so however
7 y'all can work it out.

8 MR. ZUSCHKE: What I'm wondering is how we can do this
9 silently because the intent is not to publish it to the jury
10 so much as him letting him view it himself.

11 THE COURT: Do y'all have the ability -- I mean, do
12 y'all have the technology/ability just for the witness to
13 see it?

14 MS. HAMILTON: I do not --

15 MS. SMITH: I don't know how to do that.

16 MS. HAMILTON: We don't, but I think they do.

17 THE CLERK: We can set it on preview, and then that
18 would go to your screen, their screens, and the witness.

19 THE COURT: Okay. Then ---

20 MS. SMITH: Your Honor, may we approach for second.

21 THE COURT: Sure. You may approach. Just don't ask me
22 to do it.

23 (Laughter)

24 (A conference was held at the bench between counsel and
25 the Court.)

1 step down.

2 (At 12:48 p.m., a recess was taken.)

3 (At 12:55 p.m., the court was reconvened.)

4 THE COURT: Do you feel the need to want to refresh his
5 memory in front of the jury, or can you do it outside of
6 their presence?

7 MR. ZUSCHKE: I think he's probably refreshed,
8 Your Honor.

9 THE WITNESS: I have, Your Honor.

10 THE COURT: All right. Let's bring the jury in.

11 (The jury entered the courtroom at 12:56 p.m., after
12 which the following proceedings were continued:)

13 THE COURT: Yes, sir.

14 MR. ZUSCHKE: Thank you, Your Honor.

15 Q So you at least recall that Jeffrey Long had a pair of
16 keys in his hand while you were talking to him?

17 A Yes, sir.

18 Q Car keys?

19 A Yes, sir.

20 Q And it was indicated that he might have had a weapon?

21 A Who?

22 Q Sorry. Tavis Colston may have had a weapon?

23 A Yes, sir.

24 Q No weapon was ever found, though, was it?

25 A No, sir.

1 Q And as far as on the drugs itself, there was no testing
2 for DNA?

3 A On the drugs?

4 Q Like, on the plastic bag with the pills in it?

5 A No, sir.

6 Q And no testing for prints either?

7 A No, sir.

8 MR. ZUSCHKE: No further questions at this time. Thank
9 you.

10 THE WITNESS: Yes, sir.

11 THE COURT: Any redirect limited to what he went into?

12 MS. SMITH: Nothing from the State, Your Honor.

13 THE COURT: Thank you, sir. You may step down. Watch
14 your step as you are stepping down.

15 Any reason why the witness cannot be excused?

16 MS. SMITH: No, sir, Your Honor.

17 THE COURT: Thank you, sir. You may be excused as
18 well. Thank you for coming.

19 THE WITNESS: Thank you, Your Honor.

20 (The witness left the stand.)

21 THE COURT: All right. Ladies and gentlemen, we are
22 going to let you take a lunch break. All right?

23 Need to remind you, do not have any discussions
24 with anyone about anything involved in this case, as well as
25 do not do any type of independent research or investigation.

1 Go ahead and get the officer.

2 MS. HAMILTON: I'm sorry, Your Honor.

3 THE COURT: Tell the officer to come on in.

4 MS. HAMILTON: Okay. He's here, Your Honor. It is the
5 case agent.

6 THE COURT: Oh, this is the case agent?

7 MS. HAMILTON: Yes, Your Honor.

8 THE COURT: Officer Pence, I just need to remind you
9 that you remain under oath. Do you understand that?

10 THE WITNESS: Yes, sir.

11 THE COURT: Yes, ma'am.

12 DIRECT EXAMINATION

13 BY MS. HAMILTON:

14 Q Officer Pence, I just want to ask you a few brief
15 questions.

16 Were you present when the defendant was given his
17 Miranda Rights?

18 A I was.

19 Q And where was he located when he was given these
20 rights?

21 A In front of my patrol vehicle.

22 Q Was anybody making any threats to him?

23 A No.

24 Q Was he handcuffed?

25 A He was.

1 Q Did he seem under the influence of anything?

2 A No.

3 Q So he was clear-headed at that point?

4 A From what I could tell.

5 THE COURT: All right, Counsel. Remember what you
6 asked.

7 Q Did he make any statements to you acknowledging the
8 presence of drugs? With the presence -- I'm sorry. Let me
9 clarify that.

10 Did he acknowledge what was found in his vehicle?

11 A He did.

12 Q And what did he say about those items?

13 A He said that they were not drugs or narcotics; that
14 they were some sort of supplement of some kind that he sold
15 through his employer.

16 Q Did he ever talk to you about anybody planting those
17 drugs?

18 A No.

19 Q About the father of his baby's mama planting those
20 drugs?

21 A No.

22 Q And you see the person in the courtroom that stated
23 that he knew those were present in his vehicle?

24 A That's correct. It was Mr. Colston.

25 MS. HAMILTON: Thank you. Please answer any questions

1 of the defense.

2 CROSS-EXAMINATION

3 BY MR. ZUSCHKE:

4 Q So the defendant repeatedly denied having drugs in his
5 vehicle?

6 A Yeah. He never admitted he had drugs to me.

7 Q Did you speak to the State's counsel this -- in the
8 interim, during lunch?

9 A About this incident?

10 Q About this part of this incident.

11 A Yeah. They asked me if I remembered talking with him
12 after.

13 MR. ZUSCHKE: No further questions.

14 THE COURT: Any redirect limited to what he went into?

15 MS. HAMILTON: Nothing, Your Honor.

16 THE COURT: Thank you, sir. You may step down. Watch
17 your step as you're stepping down.

18 (The witness left the stand.)

19 State ready to call their next witness?

20 MS. SMITH: We are, Your Honor. The State would call
21 Holly Tobias.

22 THE COURT: Ma'am, just come right up here and let the
23 clerk of court swear you in.

24 HOLLY TOBIAS, upon first being duly sworn,
25 testified as follows:

1 THE COURT: And just around over here and have a seat
2 in the witness chair, chair up to the microphone.

3 DIRECT EXAMINATION

4 BY MS. SMITH:

5 Q Can you say your name for the record, please.

6 A Holly Tobias.

7 Q And where are you employed?

8 A I'm currently employed at York County Sheriff's Office.

9 Q How long have you been employed there?

10 A I've been employed here a little over year.

11 Q What are your duties there?

12 A I am a forensic chemist for York County. My jobs are
13 to analyze substances, such as powders, tablets, crystal,
14 plant material, et cetera, and determine if a controlled
15 substance is present.

16 Q And what kind of education have you had?

17 A I went to Wofford College, where I received a bachelor
18 of science and chemistry.

19 Q Have you had any training, and what kind?

20 A Yes. I've had training and continuing education every
21 year, as well as conferences and meetings for forensic
22 chemists to keep up to date with what's going on.

23 Q And how long have you been trained or certified as a
24 chemist?

25 A I have been certified for a little over four years now.

1 Q Have you ever been qualified as an expert in the field
2 of chemical drug analysis and identification?

3 A Yes, I have.

4 Q And how many times?

5 A Six times.

6 Q As part of your duties, do you analyze substances such
7 narcotics or illegal drugs?

8 A Yes.

9 MS. SMITH: Your Honor, at this time the State would
10 offer as an expert witness -- offer Holly Tobias as an
11 expert witness in chemical analysis and identification of a
12 controlled substance?

13 MR. ZUSCHKE: Without objection.

14 THE COURT: Did you say that it was without objection?

15 MR. ZUSCHKE: Yes, Your Honor.

16 THE COURT: All right. Ladies and gentlemen, normally,
17 a person cannot give opinion testimony. Normally, when a
18 person testifies, they must testify as to what they either
19 saw, heard, or sensed by smell or something of that nature.
20 However, there is an exception when someone is qualified
21 because of education or experience. They are permitted to
22 give their opinion in certain areas that qualifies them in
23 that way. This witness will be qualified in the area of
24 chemical analysis and identification of controlled
25 substances ---

1 MS. SMITH: Yes, sir.

2 THE COURT: --- to give opinion testimony in that area.
3 Now, that does not mean you must accept the opinion, but it
4 is evidence for you to use in any way that you see fit.

5 Q I'm going to show you what's been marked as
6 State's Exhibit 2, State's Exhibit 3, and State's Exhibit 4.

7 Do you recognize those items?

8 A Yes.

9 Q When did you receive those items?

10 A I received them on November 18th, 2019.

11 Q And where did you get them from?

12 A I received them from the evidence room.

13 Q What did the bags look like when you received them?

14 A When I received them -- it is the inside bag, which is
15 a tamper-evident bag, and it was sealed at the time that I
16 received it.

17 Q What does a tamper-evident bag mean?

18 A If someone was to get back into it, it would be evident
19 that it was either cut open or torn open. The side has
20 markings that are easy to tell if they've been cut and tried
21 to be retaped or glued.

22 Q Had they been tampered with in this case?

23 A No, they had not.

24 Q And how do you know that?

25 A I check each bag before I will accept it. If it has

1 been tampered with or if it's not sealed, I will not take it
2 into the lab. And also, when I tape them, I put an "okay"
3 at the top of each bag, saying that I have checked it.

4 Q So if it had been tapered with ---

5 A --- I would not have accepted it.

6 Q After you received these bags, what did you do with
7 them?

8 A I entered them into our system. And then from there, I
9 proceeded to perform an analysis on each item and then
10 produced a report from my findings.

11 Q How do you test those items?

12 A For each of these items, I would open each bag one at a
13 time. There's never more than one bag open at a time. From
14 there, I would perform a color test, just as a presumptive,
15 see if, you know, it might tell me something that could be
16 in there. And then from there, I would do a confirmatory
17 test to confirm what I find it.

18 Q And after you test them, what do you do with them?

19 A Once I'm done analyzing it and taking my sample, I will
20 put it into -- it's called a Kapack bag, which is this other
21 bag. So, one, you can still see in it. And from there, I
22 will seal it with my initials and the date that I worked the
23 case -- or worked this item.

24 Q Was the substance continuously under your control
25 during the testing process?

1 A Yes.

2 Q Okay. Is there any evidence today of tampering of
3 those bags?

4 A They appear to be in the condition I left them.

5 Q After testing these substances, did you make any
6 determination of what they were?

7 A Yes.

8 Q Okay. Did you prepare a report?

9 A I did.

10 Q I'm going to show you what's going to be marked as
11 State's Exhibit 5.

12 (State's 5, Holly Tobias's lab report, was marked for
13 identification.)

14 Q Do you recognize that item?

15 A Yes, I do.

16 Q And what is it?

17 A This is my final lab report of my findings.

18 Q And what did you determine each of those items to be?

19 A Do you want me to refer to it as the State's exhibits?

20 Q Yes, please.

21 A So for State's Exhibit 2, I found this item to contain
22 methamphetamine; for State's Exhibit 3, I found this item to
23 contain methamphetamine; and for State's Exhibit 4, I found
24 this item to contain methamphetamine.

25 Q And did you weigh these items? And if so, did you

1 weigh them before or after testing?

2 A I weighed each of these items and weigh it after I'd
3 taken my sample.

4 MS. SMITH: Your Honor, at this time we would offer her
5 report into evidence and offer the drugs into evidence as
6 well.

7 MR. ZUSCHKE: Only objection is the reiteration of the
8 pretrial objection.

9 THE COURT: All right. I'll allow State's 5. We
10 already let the drugs into evidence.

11 MS. SMITH: Your Honor, we had the witness talk about
12 them, but we didn't enter them into evidence. We just had
13 them identified.

14 THE COURT: All right. When we'll allow them in as
15 State's 2, 3, and 4 as well.

16 MS. SMITH: Thank you, Your Honor.

17 Q Looking at those drugs -- each of those drugs, are
18 there any characteristics that you notice?

19 A Can I refer to my notes?

20 Q Yes.

21 A Each of these were tablet-form. Most of them you could
22 not clearly make out the markings on these tablets.

23 Q Are they in a form that would be similar to a
24 prescription pill?

25 A They do not appear to be that way.

1 MS. SMITH: I beg the Court's indulgence.

2 Please answer any questions the defense may have.

3 CROSS-EXAMINATION

4 BY MR. ZUSCHKE:

5 Q So you work for the York County Sheriff's Department?

6 A Yes, sir.

7 Q And you're paid by them?

8 A Yes.

9 Q And you test only on what they give you to test?

10 A I analyze evidence that I'm provided with.

11 Q By the sheriff's department?

12 A That is correct.

13 Q And you weren't testing for any DNA on this or the bag

14 that they were contained in?

15 A I do not analyze for DNA.

16 Q And didn't test for any fingerprints on the bag they

17 came in or any of these?

18 A I do not analyze for fingerprints either. Strictly --

19 sorry -- strictly controlled substances.

20 Q And you weren't there when they were collected?

21 A I was not.

22 MR. ZUSCHKE: No further questions. Thank you.

23 THE COURT: Any redirect limited on what he went into?

24 MS. SMITH: No, Your Honor.

25 THE COURT: Thank you, ma'am. You may step down.

1 Watch your step as you're stepping down. Be sure you leave
2 the evidence there.

3 THE WITNESS: Okay.

4 THE COURT: Had a witness one time took the evidence
5 with them as they left the courtroom.

6 (The witness left the stand.)

7 Any reason why the witness should not be excused?

8 MS. SMITH: Not from the state, Your Honor.

9 MR. ZUSCHKE: No, Your Honor.

10 THE COURT: Thank you. Then you may be excused as
11 well.

12 THE WITNESS: Thank you.

13 (The witness left the stand.)

14 THE COURT: State ready to call their next witness?

15 MS. SMITH: Your Honor, at this time, the State would
16 rest.

17 THE COURT: All right. Ladies and gentlemen, this is
18 one of those times where I have to take up some matters of
19 law outside of your presence. I need to remind you again in
20 my ongoing instruction to you, do not have any discussions
21 among yourselves about anything involved in the case. But
22 we'll get you back just shortly. If you would just retire
23 back to the jury deliberation room.

24 (The jury left the courtroom at 2:35 p.m., after which
25 the following proceedings were had:)

1 evidence. You should disregard any remark, statement, or
2 argument which is not supported by the evidence presented
3 during this trial or the law that I will instruct you after
4 the arguments. But at this time, we will receive the
5 closing arguments from the attorneys.

6 BY MS. SMITH: Ladies and gentlemen, you have now heard
7 from all the witnesses in this case, and you know all of the
8 facts. The judge in a few moments will instruct you on the
9 law, so let's go over those elements real quickly .

10 You have to have knowingly possessed the drugs and
11 there's actual possession, like I said before, or
12 constructive possession. In this case, we have constructive
13 possession, so it's not physically on his person, but he has
14 control over those drugs.

15 The judge will also instruct you on reasonable
16 doubt. We know very few things for absolute certainty in
17 this world. Reasonable doubt is not beyond all doubt. The
18 defense is going to allege in this case that this was some
19 elaborate setup by the father. For that to be true, he
20 would have had to have known that the defendant was coming
21 to his house that day. He had no idea that the defendant
22 was coming. He showed up angry and causing a scene. He
23 would have had to have had bagged pills just ready to throw
24 in the defendant's car when he had the chance. That is not
25 reasonable. He had no way of knowing that the car would

1 even be searched in this case. You heard from the officer
2 that the only legal way he was able to search that vehicle
3 was because the defendant himself threw a shirt over the
4 drugs, causing the officer to see the drugs. If the officer
5 had never seen those drugs that day, he would not have been
6 able to get into the vehicle. So the father had no idea
7 that the officers were even going to search the vehicle.

8 He told the defense attorney that he did not want
9 him arrested that day. "I just wanted him put on trespass
10 notice." He wanted him off the property. The defense went
11 into him taking his keys. It's really hard to put somebody
12 on trespass notice if when the officers show up, that person
13 is not even there.

14 It is not reasonable to conclude from these facts
15 that these drugs were planted by anyone from the evidence
16 that you heard. So let's go through that evidence that
17 shows the defendant's guilt in this case.

18 We have to show knowing possession. He threw the
19 shirt over the drugs to hide them. He knew they were there.
20 He had to hide them from the police. You also heard the
21 officer testify that he spoke to the defendant about the
22 drugs. He told him that he was selling them for some
23 company. You heard the chemist testify that these drugs
24 were from meth -- were meth. No legal company is going to
25 have the defendant going about selling meth.

1 You also heard that chemist describe what these
2 drugs looked like. You couldn't make out the markings on
3 them; they were faint. They did not look like a
4 prescription. They didn't look like anything that a legal
5 company would be asking him to sell. You then heard the
6 officers describe the packaging of these drugs. They were
7 in a tied up piece of a bag, not even a full bag. They were
8 not in a prescription bottle. They were not in a box. They
9 were just in a tied up bag.

10 The defense attorney asked, well, why didn't you
11 fingerprint these drugs. Why didn't you take DNA. They had
12 no reason to believe that they belonged to anybody else.
13 They were in the defendant's car. In fact, he told the
14 officers that he sold them for some company. They had no
15 reason to fingerprint or DNA -- take DNA from these drugs.
16 Also, there's constructive possession in this case. We have
17 to show that he had dominion and control over these drugs.
18 The drugs were in his vehicle. They were right next to the
19 passenger seat, open, easy for him to access, or have
20 control over. He also knowledged possession of the drugs
21 when he told the officer that he was selling them for some
22 company.

23 The judge will instruct you that in order for us
24 to prove possession, we have to show that the defendant had
25 the power and intent to control the disposition or use of

1 those drugs. He told the officer that he was planning on
2 selling them for this company. That is controlling the
3 disposition and use.

4 We also have to prove in this case that what the
5 officers found was in fact methamphetamine. The chemist
6 testified that she tested all those drugs. Every single one
7 of them came back as methamphetamine. So considering all of
8 these facts, all the testimony that you heard, we would ask
9 you to find the defendant, Tavis Colston, guilty of
10 possession of methamphetamine in this case. Thank you.

11 MR. ZUSCHKE: May it please the Court?

12 THE COURT: Yes, sir.

13 MR. ZUSCHKE: The solicitor here wants you to just take
14 the easy answer and leave it at that. It was in Tavis's
15 car. It was Tavis's drugs. No prints. No DNA. Nothing
16 else to link him. They have it in his car. Normally,
17 that's an easy answer. If it's in your car, there was
18 nobody else that drove there with you, that's that.

19 The problem here is the rest of their story
20 doesn't make any sense. And we're going to go -- the first
21 part of that is Jeffrey Long sat up there, their first
22 witness, and he got caught lying over and over and over
23 again in there. And there's no reason for him to lie, in
24 their story. He didn't do anything wrong, with their story.

25 So first of all, you know, why was he lying to us?

1 Is it because he was convicted of a forgery and everyone's a
2 liar once they've been -- no. That doesn't make any sense.
3 That tells you something about a willingness, but what you
4 really come into is you gotta have a reason to lie. People
5 lie because they're trying to get away with something,
6 because they're trying to hide something, because they're
7 trying to get something across.

8 So the first thing he said was he told the
9 prosecutor, once he was up there, that Tavis Colston was the
10 only one that was in that car. He said that knowing that he
11 went in that car and grabbed the keys out of the ignition.
12 He later admitted that. He didn't want to volunteer that
13 information, but we eventually got there because he knows
14 that he had the keys in his hand on video and he talked to
15 the officers about it and it was going to come out. So he
16 got caught. But why? Why lie about going into the car,
17 unless you did something in that car.

18 The next thing, he said he didn't want to have
19 Mr. Colston arrested. He doesn't want him arrested, but he
20 then said, well, yeah, I took his keys and, yeah, we called
21 the police down there and, yeah, we asked the police to
22 arrest him, but we didn't want to arrest -- well, yeah, I
23 did later, when he was threatening with a gun; a gun that we
24 never found, by the way. So why lie about wanting him
25 arrested unless you had some part in getting him arrested.

1 He said he wanted Tavis to leave. Do you take the keys of
2 somebody that want to leave? You don't take the keys of
3 somebody want to leave. You take the keys of somebody you
4 want to stay. And the only reason they would want
5 Tavis Colston to stay is so that he could be there when the
6 police arrived so the police could arrest him.

7 The problem is he was there. He was raising Cain.
8 He was causing problems with his baby's mother and their
9 family. The baby wasn't even there. You heard on there
10 that he was upset about she wasn't letting him get his
11 normal visitation anymore, so he was coming to try and see
12 his baby right then. He knew it wasn't his day, but he
13 doesn't like these people; they don't like him. He went up
14 there and said that. But if you want him to leave, you
15 don't go take his keys. You take his keys because you want
16 him to get in trouble. You want the police to get there.
17 They called the cops right in front of him.

18 He also told the police -- you heard him say that,
19 yes -- they said he was threatening us with a gun and, yeah,
20 I think it was in his car. You hear the police say, yeah,
21 he told us he had a gun and it was in the car. Why lie
22 about that? Maybe he really didn't know. Maybe he really
23 thought Tavis Colston had a gun in the car. He said there's
24 a gun in the car because he wants that car searched. If you
25 put some drugs and something that's going to get him in

1 trouble in the car and you say exactly what it is and where
2 it is to the police, they're going to know that -- how did
3 you know that? Did you put it in there? What did you
4 have -- but you tell them there's a gun in the car, then
5 they find drugs. Well, they're not going to link that back
6 to you as easily.

7 Problem is none of their other story make sense
8 either. And we're going to give it to him. That's just why
9 he's lying. And when he has no motivation to in this
10 case -- he's not accused of anything. It's not a domestic
11 with him as a victim. He's just a reason the police were
12 out there. This is -- their story is correct, and this is
13 just a drug possession case.

14 The next question is: Why were the drugs sitting
15 there in plain sight? And this isn't like plain sight in
16 like a door handle or a cup holder or inside of a console
17 somewhere that the officer could see, but it's a good spot
18 to store your drugs. It's not going to fly away. He said
19 it was on top of a lid of the console. It's sitting there.
20 You saw it. It was like a tiny bag, like this, with four
21 pills in it, that's all wrapped up, balancing on the little
22 console. You think he's driving around town that way? Or
23 do they want you to believe that Tavis Colston arrived at
24 his baby mama's house to argue with her about custody and
25 probably get the police called on him. But even if not,

1 he's going to show up to his baby mama's house to argue
2 about custody, goes ahead, and pulls out his bag of drugs,
3 and balances them on the center console before he walks in
4 because, you know, that's just -- he wants to get arrested
5 this day. He just wants it -- easy access for -- it doesn't
6 make sense.

7 And then Jeffrey Long said they called 9-1-1 right
8 in front of him. He was sitting there arguing while they
9 were on the line with 9-1-1. He knew the police were
10 coming. If he came there and he pulled his drugs out and he
11 balanced them on the center console, then why the heck
12 didn't he go and pick them up, toss them in the woods before
13 the police could get there. It's a bag about that --
14 hard -- it wouldn't be hard to dispose of. If he was pretty
15 confident on the searchability of his car, could at least
16 take it off of there and put it in a compartment. But he
17 heard them saying he had a gun in his car on the 9-1-1 call.
18 If he's there, they're calling 9-1-1. They told police that
19 he had a gun, then he's going to know that his car's going
20 to be searched at some point. You heard him asserting his
21 rights there and not wanting to be searched. I think that
22 is not a sign of guilt, given that he also didn't want him
23 to search his person. And they found nothing on his person.
24 He's a man that knows his rights and doesn't want them
25 violated. I would be too.

1 He sits there and is calmly talking to the officer
2 when they arrive, explaining the situation with his baby
3 mama, explaining why he's there, and what's going on, and
4 how they don't like him. They ask for his ID. He was like,
5 yeah, I'll get the ID. Well, you know, there's been --
6 weapon -- the officer reasonably is like, well, can I get
7 your ID. And he doesn't sit there and argue with them. He
8 doesn't like -- well, let me just grab it real quick. He
9 stops right where he is, points in the car, directly where
10 his ID is, right next to where they would eventually find
11 the pills. He goes in. He grabs the ID.

12 At that point you stop seeing Tavis be calm on the
13 video. I think at that point is when you see Tavis have
14 like an "oh shoot" moment and he's looking around like he
15 saw something at that point. And yeah, you saw him grab a
16 shirt and throw it in the car. He knew he was setup. The
17 answer at that point isn't to say, hey, I think they put
18 something in my car. That's your car. He's going to get
19 arrested the same way he did now. He was hoping to avoid
20 being arrested.

21 Now, they said a lot about vitamins. I think
22 there's a couple important things to point out there. One
23 is at that point Tavis is trying to get out of trouble. Did
24 he try to say something about, oh, maybe that's not even
25 something illegal, maybe it's vitamins. I don't know. But

1 it's noteworthy that the officer had to come back after
2 lunch, after talking to the prosecutor before he's saying
3 any of those things. And it's noteworthy that that's the
4 one thing out of all of this that you didn't get to see on
5 video. And I think you should remember that when you're
6 thinking about in chambers what a reasonable doubt is.

7 The third thing that doesn't make any sense about
8 their story that I think we need to look at and I think
9 gives us some reasonable doubt about whether they were
10 Travis Colston's drugs or whether they were put there for
11 him to be arrested by an angry, essentially, not-quite
12 inlaw, but father inlaw-type figure who doesn't like him --
13 I think we all have some relatives that either you think are
14 bad news or think you're bad news -- it tends to be a thing
15 that happens, particularly where you have relationships that
16 aren't of choice.

17 The last thing we look at is he took the keys and
18 he didn't say he took the keys right away. He wouldn't
19 admit that he had took the keys because he wanted him
20 arrested on the spot. His story to me was, oh, the -- you
21 know, trying to cover up for why he originally said that no,
22 I didn't want him arrested; I wanted him to leave when he
23 took his keys was, well, at first, I wanted him to leave,
24 but then he threatened us with a gun, and so at that point I
25 wanted to take his keys so that the person that might shoot

1 you will be stuck next to you? You want this person around
2 your family? At that point you want them to leave more than
3 ever. Tell the police he had a gun. Let them go find him.
4 You don't take the keys, hold them right next to, call the
5 police, antagonize him. Frankly, also, goes in the car,
6 takes the keys. He didn't think -- he thinks he knows where
7 the gun is. He said he thinks it was in his bag in the car.
8 He didn't go and look in the bag and try to take the gun.
9 That's what I'd do if I'm going to take anything out of the
10 car. It's look for the gun, not the keys, to keep the
11 person that, you know, you think is threatening to shoot
12 you, near by. And I think the reasonable assertion there is
13 that we just have more lies going on. Because the whole gun
14 story is just to get the police to search the car.

15 Now, none of those stories makes sense, and that's
16 the State's story. It sounds simple on the surface.
17 There's drugs in the car. That's all they have. And they
18 have all these other things that would have to add up before
19 the drugs would be there in that car for that on that day
20 and for any other case that makes sense.

21 What does make sense is Jeffrey Long didn't like
22 Tavis, got his daughter pregnant -- had a kid with him.
23 Relationship was obviously rocky since there. Obviously,
24 they had problems. I'm not here to defend whether Tavis is
25 a good father or whether he is in a good relationship with

1 that family and ought to treat his baby mother better.
2 Maybe he should; maybe he doesn't. I don't know them that
3 well.

4 What I do you know is he admitted he didn't like
5 him. It caused problems with the daughter. He eventually
6 admitted that he wanted Tavis arrested. We know that he
7 went into the car, pulled keys out of the ignition right
8 next to that console where the drugs were found, balanced on
9 top of it, like no reasonable person would put their own
10 drugs, but like you would absolutely put them if you wanted
11 them to be found, got back out. He calls the police. They
12 called the police right in front of Tavis, who, if he pulled
13 the drugs out and put them there or even just had drugs
14 bouncing around on his console, somehow not falling off
15 during driving around on York County roads all day, would
16 still go and dispose of those drugs, not leave them there
17 for the police to find in plain sight.

18 He also tells them there is a gun in the car so
19 that they'll go and search the car. It's everything you
20 need for a setup. Nothing makes sense for you to put your
21 own drugs there.

22 The burden is on the State to prove here. I don't
23 think I could possibly go back. I can't have video showing
24 what happened that day, but I think there's at least a doubt
25 here. And I don't think the State has proven these were

1 Tavis's drugs, given all the extraneous things, all the
2 coincidences that have to happen, all the reasons for a
3 witness to get up there and lie for no reason, for all of
4 these irrational behaviors of four different people to come
5 into -- three different people to come into play.

6 What makes more sense is, went in the car, wanted
7 Tavis in trouble. Didn't have to plan this weeks ahead of
8 time as the solicitor said. You don't have to plan to have
9 drugs. You just have to possess the drugs yourself in a
10 nice, hidden spot in your house. Oh, he's going to raise
11 hell with us; we're going to go out and get him arrested,
12 grab you drugs, and put them there. He already had them for
13 his own use or somebody else in the house did. There are
14 several people there you can see on camera. They also said
15 that he wouldn't have been able to -- the solicitor also
16 said that they wouldn't have been able to search much in
17 plain sight. And while they wouldn't have searched at that
18 point -- and that is the justification they used -- I would
19 say to you, use your common sense. If somebody's out there
20 saying that there's a man at their house with a gun
21 threatening them with it, the police would search to find
22 that gun in very legal means. You can get a warrant. You
23 can do a probable cause search. There's lots of other ways
24 to get to it. So I would ask you to hold them to the
25 burden, tell them they haven't met their burden, and not

JURY CHARGE

128

1 proven beyond a reasonable doubt. I've given you the doubt.
2 And if you talk between yourselves -- and you'll know that
3 it's reasonable, that it could have happened -- and find him
4 not guilty. Thank you.

5 THE COURT: All right. Ladies and gentlemen, I'll
6 remind you that during this trial you and I have had certain
7 duties to perform. As the trial judge, it is my
8 responsibility to rule over the trial of this case, and I
9 also have the duty to rule on the admissibility of the
10 evidence offered during this trial.

11 You are to consider only the competent evidence
12 that is before you. You are to consider only the testimony
13 which has been presented from the witness stand and any
14 exhibits which have been made part of the record of this
15 case.

16 Now, I have the additional duty to charge you with
17 the law applicable to this case. And as the presiding
18 judge, I am the sole judge of the law of this case, and it
19 is your duty as jurors to accept the law as I now state it
20 to you. If you already have an idea as to what the law is
21 or what the law ought to be and it does not agree with what
22 I now tell you the law is, you must abandon this idea
23 because you are sworn to accept the law and apply the law
24 exactly as I state it to you.

25 In every case that is tried in this court before a

1 (The jury entered the courtroom at 12:47 p.m.)

2 THE COURT: Mr. Foreman, I'm told the jury has reached
3 a verdict; is that correct?

4 THE FOREPERSON: Yes, we have, Your Honor.

5 THE COURT: If you will please give the verdict form to
6 the bailiff. Madame clerk?

7 THE CLERK: Indictment 2019-GS-46-8049,
8 The State versus Tavis Andre Colston, as to the charge of
9 possession of methamphetamine against Tavis Andre Colston,
10 we, the jury, unanimously find Tavis Andre Colston guilty.
11 Signed by the foreperson, dated today's date.

12 Ladies and gentlemen of the jury, if that be your
13 verdict, so say you all by raising your right hand.

14 Let the record show all jurors affirm this
15 verdict.

16 THE COURT: Anything before the Court dismisses the
17 jury? From the State?

18 MS. SMITH: Nothing from us, sir.

19 THE COURT: Any from the defense?

20 MR. ZUSCHKE: None from the defense, Your Honor.

21 (The jury was dismissed from duty.)

22 I'm going to step down for a couple of minutes, see if
23 we can get all the parties together. Any reason why we
24 should not proceed with the sentence?

25 MR. ZUSCHKE: No reason for delay.

1 THE COURT: I'll come back in about a minute. Okay.
2 We'll step down.

3 (At 12:52 p.m., a recess was taken.)

4 (At 1:01 p.m., the court was reconvened.)

5 MS. SMITH: Your Honor, may I approach?

6 THE COURT: Yes, ma'am.

7 (Counsel handed a document to the Court.)

8 All right. Mr. Colston, I've just got a few questions
9 to ask you. I need to remind you, you are under oath. Do
10 you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. Sir, how old are you?

13 THE DEFENDANT: Twenty-two.

14 THE COURT: And how far did you go in school?

15 THE DEFENDANT: I completed high school.

16 THE COURT: Have you got a diploma?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Presently, are you married, single,
19 divorced, or widowed?

20 THE DEFENDANT: Single.

21 THE COURT: Do you have children?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How many?

24 THE DEFENDANT: One.

25 THE COURT: How old?

1 THE DEFENDANT: Four.

2 THE COURT: Prior to being arrested, did you have a job
3 outside of the home?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: What were you doing?

6 THE DEFENDANT: I was working at Ross warehouse.

7 THE COURT: Ross?

8 THE DEFENDANT: Warehouse. I was a forklift driver.

9 THE COURT: Ever served in the military?

10 THE DEFENDANT: No.

11 THE COURT: And on this charge, how long a time have
12 you been in jail?

13 THE DEFENDANT: Eighty-six days.

14 THE COURT: Any prior record?

15 THE DEFENDANT: Yes, sir. Oh.

16 THE COURT: Thank you, sir. Yes, ma'am.

17 MS. SMITH: He does, Your Honor. In 2014, he has
18 10 counts of B&E auto and two counts of petty larceny. He
19 received a suspended WYO on that, which he later violated.
20 In 2015, he has four counts of obtaining controlled
21 substance by fraud and two counts of attempted or conspiring
22 to violate drug laws. In 2016, he has a giving false
23 information to police, an unlawful carry, a possession of
24 marijuana, first, and a probation violation.

25 THE COURT: Anything else from the State?

1 MS. SMITH: Yes, Your Honor. For starters, we would
2 just like to make his prior drug conviction part of the
3 record. We are submitted the four obtaining controlled
4 substances by fraud.

5 (State's Exhibit 6, Prior record, was marked for
6 identification.)

7 THE COURT: Yes, sir.

8 MR. ZUSCHKE: Yes, Your Honor. For starters, we would
9 object to the prior obtaining controlled substances by fraud
10 being used to enhance this to a second offense.

11 We believe that the statute intended for
12 possessions and distributions to be used, not for something
13 that was about defrauding a drugstore. However, there are
14 no cases that indicate this. It was a first impression that
15 it hasn't been through our appellate process, so we
16 understand that there is not a binding a case law to put
17 Your Honor there.

18 Within your discretion on sentencing, where you
19 end up on that, we would ask for as much leniency as the
20 court can provide. He's a young man. He's 21 years old.
21 He has a family that cares about him. He has a child that
22 he wants to get back to and take care of. He was working
23 when he was out. He realizes he was having trouble when --
24 he to be punished for that, but he would just ask the Court
25 to be lenient. He also does have some other problems with

1 the -- he has another charge that he's likely going to
2 continue to deal with here, so this is not the end of his
3 legal problems. And we'd ask for any leniency the Court
4 would provide.

5 THE COURT: Mr. Colston, do you agree with the
6 statements just made by your lawyer?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is there anything else that you would like
9 to say or want me to know or consider?

10 THE DEFENDANT: I'd consider that I was working. I had
11 a good job. When this came about, my bond got revoked, so I
12 just ask you give me a reasonable sentencing.

13 MR. ZUSCHKE: He does have family here, Your Honor, who
14 may want to speak. I believe they'll speak on behalf --

15 THE COURT: And just come right up here. You can stand
16 beside the attorney. Just need you to stand right there
17 beside him. Just need to let you know, we are making a
18 recording, so please speak up loud so that both that lady
19 that's sitting way we over there, the court reporter, and I
20 both, can hear you. But start by giving us your full name.

21 MS. COLSTON: My first and last name is Tracy Colston.

22 THE COURT: Yes, ma'am.

23 MS. COLSTON: And I am the biological parent/mother of
24 Tavis Colston. And thank you very much for giving me the
25 opportunity to speak.

1 I do -- would like to say to you to make sure that
2 you are aware that Tavis about four years ago had a severe
3 knee injury and his tibia was broken. He was slammed down,
4 and he was -- had to have surgery and he became addicted to
5 drugs. Think he was -- had hydrocortisone, I believe, and
6 some other "codone" meds that he had. He became addicted to
7 the med, and that's where he -- when he became addicted to
8 drugs, all types of drugs. And he was -- did go to Keystone
9 for about, I guess, possibly about a year or so. And he did
10 finish that program. So I believe in your sentencing, I
11 request, Your Honor, if you would please give him -- let him
12 have some type of treatment for his addiction. Appreciate
13 if you would consider that in your sentencing, Your Honor.

14 THE COURT: Did you say he went to Keystone in 2014?

15 MS. COLSTON: I'm not for sure exactly what year it
16 was. Can I ask -- can we ask him do he recall?

17 THE DEFENDANT: I believe it was in 2015.

18 THE COURT: All right. Do you have the indictment?

19 Help me understand why would I want -- I mean, all
20 in favor of your son turning his life around. I would hope
21 that he does do that. But if Keystone didn't help, what
22 else could we do?

23 MS. COLSTON: Well, seems like he needs more help, you
24 know, than what he had. It was outpatient. So, you know,
25 outpatient is not as effective, in my opinion, as inside --

1 in-treatment for it. So I believe that, you know, if he
2 could just go through a program while he's there, you know,
3 if he could get some type of treatment for addictions. I
4 believe he's an addict. That's my opinion.

5 And he has also, Your Honor, had medical --
6 mental -- he has a mental diagnosis of ADHD that I know --
7 want you to be aware of that too.

8 THE COURT: Thank you, ma'am.

9 MS. COLSTON: Thank you, Your Honor.

10 THE COURT: All right. This issue of the prior drug
11 offenses -- to me, it's the State that has the discretion on
12 what a person is charged with or what's brought to court on,
13 not the Court. And I'm being presented a sentencing sheet
14 that indicates his possession of methamphetamine, second
15 offense. It seems like y'all want me to go ahead and
16 address this issue of can these prior drug offenses be used
17 for enhancement purposes, when I do not feel that it's
18 necessary for me to address that.

19 I understand, based on conversations we've had
20 back in chambers, that he is looking at other offenses,
21 trafficking offenses, to which if I understand the
22 conversations correctly that the State intends to use what I
23 do here today to enhance that subsequent trafficking
24 offense. I think the State has the ability to do that,
25 regardless of how I rule today, if I were in fact going to

1 rule that this could, in fact, be used as an enhancement or
2 not. I actually think it's more cleaner from a procedural
3 standpoint, from a due process standpoint, that I don't make
4 that rule, allow the State, then, to make that decision on
5 whether to enhance the trafficking offense based on the
6 record that he has. Let all of that be decided at one time,
7 as opposed to deciding it piecemeal. I say from a due
8 process standpoint because it could mean that in order to
9 preserve his rights to challenge my decision on the
10 enhancement issue, he would have to appeal this decision.
11 Otherwise, the argument could be made that he is actually in
12 fact waived that right to challenge this decision on can
13 these prior drug offenses that deal with obtaining
14 prescription drugs by fraud -- can those be used as
15 enhancers to possession of meth case. I think he'd very
16 well waive that if he didn't appeal his decision. So I
17 don't think that it's -- from a due process standpoint, it's
18 the best approach to do, to have me to make that decision at
19 this time.

20 I also feel like that looking at him as an
21 individual, that I would not impose a five-year sentence on
22 him for this offense, even if I were to enhance it. Because
23 the facts being presented to me is that he has -- this is
24 his -- other than the marijuana charge, this is the first
25 real drug offense that he's had, is this possession of meth

1 case. If it is true that I could use those prior ones, it
2 doesn't seem that that's the same type of drug offense as
3 what the legislature, I think, was looking at when they said
4 enhance this type -- enhance the meth case, so...

5 But it's being presented to me as possession of
6 meth, second offense, on the sentencing sheet, so that's
7 what the State has given me. I've got to process it like
8 that, but I want the record to indicate that I've made no
9 decision on whether or not those prior drug offenses could
10 be used as enhancers or not. Okay.

11 MR. ZUSCHKE: Thank you, Your Honor.

12 THE COURT: On this case, it's going to be a three-year
13 sentence at the state department of corrections. Now, I'm
14 going to suspend that upon the service of 24 months,
15 followed by 36 months of supervision.

16 Your mom, Mr. Colston -- you are a very fortunate
17 person to continue to have your mother to stand by you at a
18 time like this. There are many young men that come to
19 court, who their loved ones, their parents have already
20 abandoned them at this point in life. And you're a young
21 fellow. So I want to -- I only pause to mention that
22 because I want you to thank your mother at the appropriate
23 time for still wanting to be part of your life, her coming
24 to court to speak on your behalf, and to understand how
25 important that is to you. It speaks well of you, sir. It

WITNESSES

YCSO

Witnessing Officer: *Hager*

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

Sarah Niven
Foreperson of Grand Jury
Date: *12-12-19*

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: *13 February 2020*

Direct Indictment
DOCKET NO. 2019-GS-46-08049

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

DECEMBER 12, TERM 2019

THE STATE

VS.

TAVIS ANDRE COLSTON

INDICTMENT FOR

POSSESSION OF METHAMPHETAMINE

SC Code: § 44-53-375(A)
CDR Code: 3017

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
2020 FEB 17 PM 2:39
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on December 12, 2019, the Grand Jurors of York County present upon their oath:

POSSESSION OF METHAMPHETAMINE

The defendant, Tavis Andre Colston, did on or about August 31, 2019, in York County, South Carolina, knowingly or intentionally possess methamphetamine as defined in Section 44-53-110, all in violation of Section 44-53-375(A), Code of Laws of South Carolina (1976, as amended).

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



AUSTIN D. NEWMAN
ASSISTANT SOLICITOR

COUNTY OF YORK
STATE VS.

TAVIS ANDRE COLSTON

INDICTMENT/CASE#: 2019-GS-46-08049
A/W: 2019-GS-46-08049
Date of Offense: 08/31/2019
S.C. Code §: 44-53-375(A)
CDR Code #: 3017

AKA:
Race: Black Sex: M Age: 22
DOB:
SS#:
Address: Road
City, State, Zip: Rock Hill, SC 29730
DL# SID# SC02152075

CERTIFIED TRUE COPY

2020 FEB 17 PM 2:39

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Possession of Methamphetamine 2nd Offense (NMT 5 YEARS &/OR \$7,500)
In violation of § 44-53-375(A) of the S.C. Code of Laws, bearing CDR Code # 3017

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:

Austin N. Smith, Assistant Solicitor 102332 SC Bar #

Defendant

Attorney for Defendant 102416 SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 2 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 24 days/months/years and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 30
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 SCDQC.

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.

Recipient:

May serve W/E beginning

*Fine: \$

Substance Abuse Counseling

§14-1-206 (Assessments 107.5%) \$

Random Drug/Alcohol Testing

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100

Equal/Headstart

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$

Fine may be pd. in equal consecutive weekly/monthly

§56-5-2995 (DUI Assessment) \$12 \$

pmts. of \$ Beginning

§56-1-286 (DUI Breath Test) \$25 \$

\$ Paid to Public Defender Fund

Proviso (Public Def/Probation) \$500 \$

Other:

§14-1-212 (Law Enforce. Funding) \$25 \$ 25

#10 if available

§14-1-213 (Drug Court Surcharge) \$150 \$ 150

Mental Health Care/Counselor

§50-21-114 (BUI Breath Test Fee) \$50 \$

Appointed PD or appointed other counsel,

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso requires \$500 be paid to Clerk

3% to County (if paid in installments) \$ \$

during probation and shall be collected before

TOTAL \$ 275

any other fees

Clerk of Court/Deputy Clerk: DAVID HAMILTON
Court Reporter: Nadine Capps

Presiding Judge:
Judge Code:
Sentence Date: 02/13/2020

WITNESSES

RHPD

Witnessing Officer: *R. Smith*

ARREST WARRANT NUMBER

2018A4620302228

ACTION OF GRAND JURY

TRUE BILL

Sarah Niu
Foreperson of Grand Jury
Date: *6/20/19*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018-GS-46-07479

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 20, TERM 2019

THE STATE

VS.

TAVIS ANDRE COLSTON

INDICTMENT FOR

TRAFFICKING METHAMPHETAMINE

SC Code: § 44-53-375(C)
CDR Code: 0451

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA
COUNTY OF YORK


INDICTMENT

At a Court of General Sessions, convened on June 20, 2019, the Grand Jurors of York County present upon their oath:

TRAFFICKING METHAMPHETAMINE

The defendant, Tavis Andre Colston, did on or about September 18, 2018, in York County, South Carolina, knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, 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 ten grams or more of methamphetamine as defined and otherwise limited in Sections 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), all in violation of Section 44-53-375(C), 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.



AUSTIN D. NEWMAN
ASSISTANT SOLICITOR

98 COUNTY OF YORK STATE VS.

TAVIS ANDRE COLSTON

AKA: Race: Black Sex: M Age: 24 DOB: SS#: Address: Road City, State, Zip: Rock Hill, SC 29730 DL# SID# SC02152075

INDICTMENT/CASE#: 2018-GS-46-07479 A/W: 2018A4620302228 Date of Offense: 09/18/2018 S.C. Code §: 44-53-375(C) CDR Code #: 0451

JAIL

SENTENCE SHEET

*CDI. Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was PLEADS TO: Trafficking Methamphetamine 10g or more 2nd Offense (1-5 YEARS TO 30 YEARS & \$50,000)

In violation of § 44-53-375(C) of the S.C. Code of Laws, bearing CDR Code # 0451

ORIGINAL

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. The plea is: Without Negotiations or Recommendation Negotiated Sentence Recommendation by the State.

ATTEST:

Austin N. Smith, Assistant Solicitor SC Bar # 102332 s/Tavis Colston Defendant s/Geoffrey Dunn Attorney for Defendant 72541 SC Bar #

WHEREFORE, the Defendant is committed to State Department of Corrections for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: all 4-21-21 pleas The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 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 days/hours Public Service Employment Obtain GED

Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like §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 \$215.

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:

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: Judge Code: Sentence Date:

Clerk of Court/Deputy Clerk: DAVID HAMILTON Court Reporter: Nadine Capps

WITNESSES

RHPD

Witnessing Officer: *R. Smith*

ARREST WARRANT NUMBER

2018A4620302226

ACTION OF GRAND JURY

TRUE BILL

Sarah Niemi
Foreperson of Grand Jury
Date: *6/20/19*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018-GS-46-07478

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 20, TERM 2019

THE STATE

VS.

TAVIS ANDRE COLSTON

INDICTMENT FOR

TRAFFICKING COCAINE

SC Code: § 44-53-370(e)
CDR Code: 0387

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA
COUNTY OF YORK


INDICTMENT

At a Court of General Sessions, convened on June 20, 2019, the Grand Jurors of York County present upon their oath:

TRAFFICKING COCAINE

The defendant, Tavis Andre Colston, did on or about September 18, 2018, in York 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 ten (10) grams or more of cocaine or any mixtures containing cocaine, as provided in 44-53-210(b)(4), all in violation of 44-53-370(e), 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.



AUSTIN D. NEWMAN
ASSISTANT SOLICITOR

JAIL 101

COUNTY OF YORK

STATE VS.

TAVIS ANDRE COLSTON

AKA:
Race: Black Sex: M Age: 24
DOB: SS#:
Address: Road
City, State, Zip: Rock Hill, SC 29730
DL# SID# SC02152075

INDICTMENT/CASE#: 2018-GS-46-07478
A/W: 2018A4620302226
Date of Offense: 09/18/2018
S.C. Code §: 44-53-370(e)
CDR Code #: 0387

SENTENCE SHEET

ORIGINAL

*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: Trafficking Cocaine 10g or more 2nd Offense (NLT 5 YEARS TO 30 YEARS & \$50,000)

In violation of § 44-53-370(e) of the S.C. Code of Laws, bearing CDR Code # 0387

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:

Austin N. Smith, Assistant Solicitor 102332 SC Bar # s/Tavis Colston Defendant s/Geoffrey Dunn 72541 Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: all 4-21-21 pleas
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
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
Obtain GED

Set by SCDPPS Attend Voc. Rehab. Or Job Corp.

Recipient: May serve W/E beginning

Table with 3 columns: Description, Amount, Total. Includes items like §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(I) (Vehicle Assessment) \$40/ca, 3% to County (if paid in installments) \$, TOTAL \$275.

Appointed PD or appointed other counsel. Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: DAVID HAMILTON
Court Reporter: Nadine Cupps

Presiding Judge: Judge Code: Sentence Date:

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,

s/ Victor R. Seeger
Victor R Seeger
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

Jul 29 2021

SC Court of Appeals

This 29th day of July, 2021.