

20165

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Robin B. Stilwell, Circuit Court Judge

ANDERS ORIGINAL

No Respondent's Brief Filed

NO DEFENDANT'S BRIEF
RECORDED
NOV 27 2012

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

MARLIN HUTLEY,

APPELLANT

Appellate Case No. 2011-201809

RECORD ON APPEAL

DAYNE C. PHILLIPS
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

INDEX

INDEXi

TRIAL TRANSCRIPT1

EXHIBIT'S LIST74

STATE'S EXHIBIT # 1 (TRAFFIC TICKET)75

STATE'S EXHIBIT # 4 (WARNING RECORD)76

STATE'S EXHIBIT # 9 (LAB REPORT).....77

DEFENDANT'S EXHIBIT # 2 (DISPATCH REPORT).....78

DEFENDANT'S EXHIBIT # 3 (TEMPORARY LAW ENFORCEMENT COMMITMENT)80

INDICTMENTS81

SENTENCING SHEET85

CERTIFICATE OF COUNSEL.....87

DEFENDANT'S EXHIBIT # 1 (DVD) TRANSPORTED TO THE COURT

STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	
COUNTY OF GREENVILLE)	Case No(s) : 2010GS2302817,
)	2010GS2302819
State of South Carolina,)	
)	
Plaintiff,)	
)	
-VS-)	TRANSCRIPT OF RECORD
)	
Marlin Hutley,)	
)	
Defendant.)	
)	

October 10, 2011
Greenville, South Carolina

B E F O R E:

HONORABLE ROBIN B. STILWELL, Judge.

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

KAYCE McCALL, Esquire
HOWARD STEINBERG, Esquire
Assistant Solicitors

SCOTT ROBINSON, Esquire
Attorney for the Defendant

Reported by: Mary DiGirolamo
Circuit Court Reporter

Transcribed by: Teresa B. Johnson
Circuit Court Reporter

I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Motions	4			
Suppression Hearing	9			
Jeffrey Hines				
by Ms. McCall	9			
by Mr. Robinson		17		
Marlin Hutley				
by Mr. Robinson	31			
by Ms. McCall		38		
Argument	39			
Ruling of the Court	42			
Jeffrey Hines				
by Ms. McCall	44			
by Mr. Robinson		51		
Steven Babinsky				
by Ms. McCall	58			
by Mr. Robinson		61		
Verdict of the Court	65			
Sentencing of the Court	66			
Certificate of Reporter	73			

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
PLAINTIFF EXHIBITS			
S-1	Ticket	4	
S-2	Photo	4	
S-3	Map	4	
S-4	Warning record	4	
S-5	Drugs - Crack	4	49
S-6	Drugs - Crack	4	49
S-7	Drugs - Crack	4	49
S-8	Drugs - Cocaine	4	49
S-9	Lab Report	4	49

DEFENSE EXHIBITS

D-1	DVD	4	
D-2	Dispatch report	24	24
D-3	Temporary law enforcement commitment	55	55

COURT EXHIBITS

(No exhibits offered.)

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

2 **(WHEREUPON, State's Exhibits 1 through 9 are**
3 marked for identification purposes.)

4 **(WHEREUPON, Defendant's Exhibit 1 is marked for**
5 identification purposes.)

6 **THE COURT:** All right. Take your seats,
7 Ladies and Gentlemen. Good morning.

8 Okay. Let's call to bar the case of the
9 State versus Marvin Hutley, uh, Indictment
10 number 2010-2817 and 2010-2819. And I will
11 defer to the State.

12 **MS. McCALL:** Uh, actually, it's a motion
13 for suppression.

14 **THE COURT:** Okay.

15 **MS. McCALL:** I'm going to give you a brief
16 background of the case and why the evidence
17 shouldn't be suppressed in the, uh, suppression
18 hearing and the State should be able to go
19 forward. Officer Hines initiated stop, a
20 traffic stop on the defendant and issued a
21 ticket to the defendant for giving a false name
22 to the police.

23 I'm handing up what has been marked as, uh,
24 State Exhibit 1, a certified conviction of when
25 the defendant gave false name to police. The

1 defendant pled guilty to giving this false name
2 to police on March 4th, 2010 which was related
3 to the traffic stop at issue here. The traffic
4 stop and the defendant giving false name is
5 what led to the arrest of the defendant and the
6 search incident to arrest which led to the drug
7 charges that are before you now.

8 The State would argue that the defendant
9 waived his right to be heard on
10 constitutionality of the stop by pleading
11 guilty to false name. Uh, State v. Snowden,
12 and I've got a copy of that if you want that.

13 **THE COURT:** Okay. Thank you.

14 **MS. McCALL:** Uh, the State would argue
15 that the case facts is analogous to State v.
16 Snowden where the defendant gave a Breach of
17 Peace plea. The magistrate court precluded him
18 from contesting legality of his arrest. The
19 defendant waived constitutionality and
20 collateral estoppel was established. The State
21 would argue that the defendant already had a
22 chance to argue the constitutionality of the
23 stop and failed to do so and does not get a
24 second chance to argue.

25 **THE COURT:** Okay. All right. Mr.

1 Robinson, do you need to be heard, sir?

2 MR. ROBINSON: Yeah. May it please the
3 Court.

4 THE COURT: Sure.

5 MR. ROBINSON: Your Honor, uh, we're
6 talking apples and oranges here. Uh, we're
7 arguing this suppression hearing regarding the
8 stop itself which occurred in, uh, January of
9 2010, about two and a half months before the
10 defendant pled to a, uh, to a, uh, ticket that
11 was given. The ticket wasn't given before or
12 during the stop. It wasn't before the stop.
13 We're attacking in the suppression hearing the
14 actual stop itself. This is long after, uh,
15 the stop was even done.

16 So I think that if this had been done, he
17 had been, uh, -- pled before that time, it
18 would be one thing. But this is a month and a
19 half afterwards. This is -- we're just arguing
20 here just about the illegality of the stop. So
21 it's kind of after the fact arguing this. We
22 think that the motion should be rejected.

23 THE COURT: Okay. In, uh, reviewing the
24 holding in State versus Snowden, it does appear
25 that the facts of those case -- of that case

1 are analogous to the case at bar. Uh, there
2 were two separate and distinct, uh, charges
3 that issued from the arrest. One was handled
4 in a summary court, wherein the defendant pled
5 guilty to the arrest. And then, subsequently,
6 at his trial for a -- in circuit court for the
7 other charge, tried to suppress that evidence
8 as the fruit of a search from an illegal arrest
9 made without probable cause. I think this is
10 an instance which the facts are analogous
11 because it would appear that the false name to
12 police was a charge that was issued and
13 emanated from the same set of facts and that he
14 came before the court in summary court and pled
15 guilty, uh, and waived any right to the, uh, to
16 the arrest and now in circuit court attempts to
17 raise that very same issue and suppress
18 evidence that was found incident to an illegal
19 arrest. And I think that State versus Snowden
20 is clear in that he waived that in the initial,
21 the initial, uh, proceeding before the court.

22 Now, I'll also say that, uh, in, in giving
23 a false name to police, not only did he waive
24 that in the first offense but also having given
25 a false name to the police, uh, upon an

1 inquiry, that would give rise to probable cause
2 for a search in and of itself, notwithstanding
3 the fact that there was a plea in summary
4 court. Therefore, on those two sustaining
5 grounds, I respectfully deny the motion to
6 suppress.

7 **MR. ROBINSON:** Okay.

8 **THE COURT:** All right. Anything else
9 before we get started?

10 **MR. ROBINSON:** Your Honor, so we're not
11 going to have the suppression hearing?

12 **THE COURT:** Oh, well, we can have a
13 suppression hearing. I thought that y'all were
14 just giving me a legal argument with respect to
15 the suppression hearing. But if you want to
16 call witnesses to the stand, I'm comfortable
17 with that too.

18 **MR. ROBINSON:** Well, the reason is, the
19 suppression hearing, the Court's ruling, if I'm
20 understanding correctly is that we can't have a
21 suppression hearing?

22 **THE COURT:** Huh-uh. I'm not. I thought
23 y'all were making an argument based on
24 acknowledged facts, stipulated facts. The way
25 that y'all had begun the hearing, I thought

1 that's what you had done. But it sounds to me
2 like you haven't. So let's put the witnesses
3 on the stand. Okay. What I'm doing is I'm
4 withholding that, I'm withholding that
5 determination until I hear from witnesses.

6 **MR. ROBINSON:** Thank you, Your Honor.

7 **THE COURT:** Okay. Good enough.

8 **MS. McCALL:** Okay. The State would call
9 Officer Hines to the stand.

10 **THE CLERK:** Sir, please place your left
11 hand on the Bible and raise your right hand.

12 **JEFFREY SCOTT HINES**
13 having first been sworn, testifies as follows:

14 **THE CLERK:** Thank you. Please be seated.
15 Please state your full name for the record.

16 **THE WITNESS:** Jeffrey Scott Hines.

17 **DIRECT EXAMINATION**

18 **BY MS. McCALL:**

19 **Q** Officer Hines, where are you employed?

20 **A** Greenville City Police Department.

21 **Q** And how long have you been employed there?

22 **A** Four years.

23 **Q** And uh, what is your current position?

24 **A** Uniform patrol.

25 **Q** Were you working on January 25th, 2010?

1 **A** Yes, ma'am.

2 **Q** And can you tell us what you were doing
3 that evening?

4 **A** Yes, ma'am. I was, uh, stationary at a
5 stop sign at West Washington and, uh, West Washington
6 Street.

7 **Q** And that would be in Greenville County?

8 **A** Yes, ma'am. It is.

9 **Q** Uh, and why were you watching the stop
10 sign?

11 **A** Uh, we have a lot of problems with people
12 running the stop sign there. It comes from a lot of,
13 uh, a lot of traffic moves through from, uh,
14 different angles. So we've been having a lot
15 problems, which we still have problems with people
16 running that stop sign.

17 **Q** And you know, when you are watching the
18 stop sign, where do you have to sit to be able to
19 monitor the stop sign?

20 **A** I actually sit, uh, -- there's the train
21 depot right there on West Washington Street. I back
22 my patrol car up there on the hill on West Washington
23 Street at the train depot there, uh, so I'll be out
24 of traffic's way and I'll have a very clear view of
25 the stop signs and the stop marks.

1 **Q** Uh, now did you come in contact with this
2 defendant on that -- on the evening of January 25th,
3 2010?

4 **A** Yes, ma'am.

5 **Q** Could you please tell us how you gained
6 contact?

7 **A** Yes, ma'am. I, uh, conducted a traffic
8 stop on the defendant due to him not coming to a stop
9 at the stop sign located at the intersection at West
10 Washington and Washington Street Extension.

11 **Q** Okay. Were you able to see who was driving
12 the vehicle when it didn't come to a complete stop?

13 **A** No, ma'am. Where I'm sitting at, it's on
14 top of the hill there. There's no way I can see in
15 the vehicle in the day time, especially not at
16 nighttime.

17 **Q** Did you initiate a traffic stop, a traffic
18 stop once you saw, uh, a vehicle roll by the stop
19 sign?

20 **A** Yes, ma'am. I had to pull out. And then I
21 issued -- I conducted a traffic stop.

22 **Q** And when did you, uh, pull out behind the
23 defendant and when did you pull the defendant over?

24 **A** Uh, I pulled the defendant over. I
25 actually initiated my blue lights a couple of blocks

1 from Hampton Avenue on, uh, Mulberry Street. The
2 defendant then kept going straight and made a right
3 hand turn onto Hampton Avenue and then pulled into a
4 driveway on the left.

5 Q Okay. Uh, uh, describe, uh, tell us what
6 happened during this traffic stop, when you initiated
7 the traffic stop.

8 A Yes, ma'am. I initiated the traffic stop.
9 And, uh, I exited my patrol vehicle. I went up to
10 the driver of the black Forerunner there. And I
11 asked him for his license, insurance, registration,
12 which is a common practice any time that I pull
13 anyone over. He told me that he didn't have a driving
14 license. And, uh, I asked him his name. He then
15 told me his name was Michael Cooper.

16 I was able to see the defendant. I
17 recognized him from a prior incident. I knew that
18 his name was not Michael Cooper. It didn't ring a
19 bell. I did not know his name. I then returned to
20 my vehicle and, uh, started going through my incident
21 reports because I took an incident report on the
22 defendant, uh, prior to that. After I went through
23 there, I noticed that, uh, his name was actually, uh,
24 Marlin Hutley, which, uh, -- so I then called for
25 assistance. Oh, excuse me.

1 **Q** Uh, with the name Michael Cooper, did you
2 run that name?

3 **A** Yes, ma'am. I did.

4 **Q** Okay. And what came back?

5 **A** The name that came back and it actually had
6 a C driving license number that, uh, came back.

7 **Q** And that, uh, what does that mean when you
8 say a C driver's license?

9 **A** Uh, when the DMV, say, they issue a C in
10 front of the license number if someone has used that
11 name before and they do not have a driving license.
12 That way, they will keep a track if they are
13 suspended or for DUI or whatever. So that way, it
14 helps law enforcement and DMV keep track of people
15 who do not have valid driver's licenses.

16 **Q** So after you were able to determine what
17 you thought was the defendant's name, what did you do
18 at that time?

19 **A** Uh, once I determined that he was giving me
20 a false name, I called for assistance.

21 **Q** Okay. Uh, and why did you call for
22 assistance at that time?

23 **A** I called for assistance at that time
24 because I knew I was going to be placing him under
25 arrest.

1 **Q** And what did you do once your assistance
2 arrived?

3 **A** Asked -- reapproached the vehicle, asked
4 him to step out of the car, and then placed him under
5 arrest for false name to police and no state DL.

6 **Q** Okay. And, uh, did you issue any sort of
7 warning ticket?

8 **A** Yes, ma'am. I issued a warning for the
9 stop sign violation.

10 **Q** How do you document the fact that you gave
11 someone a warning?

12 **A** Uh, I write it down on a, uh, blue ticket.
13 I keep, uh, -- there's a blue and a white copy. I,
14 uh, keep the white copy and give the blue copy to the
15 defendant. And then it goes upstairs. We turn it
16 in. It goes upstairs to Crime Analysis. Then they
17 electronically file it and dispose of the hard copy.

18 **Q** Okay. I'm going to show you what's been
19 marked as State's Exhibit 4. Would you take a look
20 at this. What is this document?

21 **A** Uh, this is the document that I received
22 from, uh, Records, Crime Analysis of, uh, the warning
23 ticket that I issued.

24 **Q** What's the date listed on that?

25 **A** It's, uh, -- the date is January 25th,

1 2010.

2 Q And the location?

3 A West Washington Street.

4 Q And what does that viol-- is that --
5 violation coding on there, what does that stand for?

6 A Uh, violation code 42, uh, is disregarding
7 a stop sign.

8 Q And how do you recognize that document?

9 A Uh, I actually retrieved this document from
10 Crime Analysis records.

11 MS. McCALL: Uh, I mean, I would move to
12 have that exhibit admitted. But, uh, that's all
13 we have as far as suppression.

14 THE COURT: All right. Is it marked
15 already? Any objection to this, sir?

16 MR. ROBINSON: I have an objections. If I
17 could see it, Your Honor. (Pause.)

18 Your Honor, the objection that I have is it
19 doesn't say a ticket versus that. It's not like
20 a regular warning ticket that you would get,
21 that someone would receive. What it is is an
22 administrative report of some sort. Uh, and I
23 don't -- my objection is it's not -- it really
24 does not reflect a warning ticket. It doesn't
25 say anything about a warning ticket on there.

1 And looking at on the top of the, uh, it looks
2 like a faxed copy. The top of it, I believe,
3 that's from some other date. And it also has
4 page 2. We don't know whether there's a page 1
5 or 3 or anything of that nature.

6 **THE COURT:** It's just simply a record of a
7 warning ticket that was issued. Is that
8 correct?

9 **THE WITNESS:** Yes, Your Honor.

10 **THE COURT:** Okay. And your testimony was
11 that you issued a warning ticket?

12 **THE WITNESS:** Yes, Your Honor.

13 **THE COURT:** What was that warning ticket
14 for?

15 **THE WITNESS:** For disregarding the stop
16 sign at West Washington Street and --

17 **THE COURT:** Okay. All right. Inasmuch as
18 this document doesn't really have any
19 information that is instructive to the court,
20 that is, it has a violation code of 42 and it
21 seems to be administrative in nature, I think
22 it's probably cumulative and not relevant. I
23 take notice of the fact that he has testified
24 under oath that he issued a warning to the
25 officer. Therefore, I'm not going to allow it

1 police, correct?

2 A The stop was for a stop sign violation.

3 Q The question is yes or no. The stop was
4 not for giving false information to police, correct?

5 A That's correct.

6 Q Uh, now in terms of where you were sitting,
7 you testified that you were sitting on a hill looking
8 down. What time of night was this or what time of
9 day was this?

10 A It was, uh, approximately -- it's on the
11 incident report there. It's 10:00-something, I
12 believe.

13 Q Was it nighttime?

14 A Yes, sir. It was.

15 Q Okay. And, uh, how far away from this stop
16 sign were you that we're talking about? How far away
17 were you?

18 A Uh, approximately, -- I was right above it
19 there. I mean, it's down, so I'm backed up above it.
20 Probably 20 feet. And it's below me. So just backed
21 up probably a car length from me. Maybe two car
22 lengths maybe.

23 Q When did you start duty that night for, uh,
24 for your shift?

25 A 6:30 p.m.

1 Q About 6:30?

2 A Yes, sir.

3 Q So you had been on your shift for a few
4 hours at that time, is that correct?

5 A Correct.

6 Q And during that period of time, how many
7 tickets did you give out for going through the stop
8 sign or not -- excuse me, not stopping at a stop
9 sign. How many tickets did you give out?

10 A I don't recall. It was in 2010.

11 Q Last January, okay. Uh, would it be fair
12 to say that you didn't given any tickets out other
13 than to Mr. Hutley? Would that be fair to say?

14 A I wouldn't say that. I was sitting at the
15 stop sign, watching the stop sign. I worked the area
16 there for approximately two years. It was common
17 practice for me to write tickets and warning
18 citations through that stop sign on a regular basis.

19 Q Okay. Now in looking at the vehicle that
20 Mr. Hutley was driving, the tag was fine, correct?
21 Nothing wrong with the tag?

22 A Uh, after I got behind him and conducted
23 the traffic stop, the tag was fine. I could not see
24 the tag from where I was sitting. I just observed
25 him roll through the stop sign ---

1 Q Okay.

2 A --- without stopping.

3 Q So your testimony is that after you
4 actually conducted the traffic stop, you observed --
5 you found that the tag was fine?

6 A Dispatch did not -- dispatch did not advise
7 me of anything wrong with the tag. We called the tag
8 number in. They usually advise us if something is
9 wrong with the tag.

10 Q So nothing wrong with the tag. Now, the
11 lights -- were there any lights on in the car?

12 A I do not recall. I stopped him for the
13 stop sign violation.

14 Q Would it be fair to say that if you had,
15 uh, -- if there were lights that were either damaged
16 or missing, uh, in this Forerunner, this vehicle,
17 that you would have given a ticket for that?

18 A For the lights that -- if it was damaged?

19 Q If the lights were out or damaged.

20 A Would I have given a ticket?

21 Q Would you normally -- would you normally
22 give a ticket for that?

23 A I would -- it depends if I'd give a ticket.
24 If I give a warning ticket for -- first of all, I
25 don't write tickets for lights being out. I usually

1 write warning tickets for that because that's, uh,
2 common for anybody to have a light out. I don't
3 think it's anything that's going to hurt anyone else.
4 I just normally give them a warning for it. So, uh,
5 when I pulled him over for running the stop sign, he
6 got a warning ticket for the stop sign. I do not
7 recall if any lights were out. But no, I would not
8 have wrote anything for the lights being out due to
9 him already getting a warning for the stop sign
10 violation and for being arrested for false name. I
11 would not have given a citation.

12 Q So your testimony is -- so you're not
13 saying you would have given ticket for a light being
14 out or some sort of damage to the vehicle, correct,
15 is that what you're saying? You wouldn't have
16 normally given a ticket, right?

17 A Normally, I would not issue a ticket for
18 it. Unless that's the violation that I pulled him
19 over for, I would not give a ticket for it.

20 Q And you did not do that in this case,
21 correct?

22 A I gave him a citation for, uh, -- a warning
23 citation for disregarding the stop sign.

24 Q But you didn't give him one for lights out
25 or some sort of common thing, right?

1 **A** No.

2 **Q** Uh, now you talk about this traffic stop
3 violation that you gave him immediately. Now, you
4 didn't give that -- you didn't stop him for a period
5 of a couple, did you?

6 **A** That's correct. I had to catch up to him
7 from where I was sitting at. I have to make sure
8 that the intersection there is clear. And also
9 there's speed bumps that go over on Mulberry Street.
10 So without damaging my car, I had to go over the
11 speed bump there before I could initiate my traffic
12 stop. And at that point, I call out my traffic stop
13 before I issue, before I conduct the traffic stop. I
14 call out to dispatch for my safety to let them know
15 where I'm at, what vehicle and then I initiate my
16 emergency equipment to pull them over.

17 **Q** Do you have your report up there? Do you
18 have your file up there?

19 **A** Uh, no, sir. I do not.

20 **Q** Uh, going back to the traffic stop, did you
21 see -- other than the -- other than this, uh, going
22 through the stop sign that we're talking about and
23 not -- the ticket is for not coming to a complete
24 stop, correct?

25 **A** Disregarding a stop sign.

1 **Q** Right. Okay. Other than that, there was
2 nothing else concerning the stop that gave you any
3 sort of reasonable suspicion to stop him, was there?
4 You didn't see --

5 **A** I --

6 **Q** You didn't see --

7 **A** I stopped him for disregarding a stop sign.
8 That's the reason that I stopped him, for
9 disregarding a stop sign.

10 **Q** And it's your testimony that you gave him a
11 ticket that night, is that right?

12 **A** I gave him a citation, a warning citation
13 that night and then also, uh, the other citations
14 that I wrote that night.

15 **MR. ROBINSON:** Beg the Court's indulgence.

16 **THE COURT:** Sure.

17 **BY MR. ROBINSON:**

18 **Q** Where is your copy of this ticket? Do you
19 have it here? Did you keep it in your file?

20 **A** As I explained earlier, the copy of the
21 ticket goes into a metal box which gets picked up by
22 Crime Analysis. It goes to Crime Analysis. Crime
23 Analysis then enters the copy of the ticket into a
24 database and then destroys the hard copies due to
25 storage. So they store it in the database.

1 **Q** And then you called for backup at some
2 point, correct?

3 **A** After he gave the false name.

4 **Q** False name. After the stop, is that right?

5 **A** Yes, sir.

6 **MR. ROBINSON:** All right. Your Honor, I
7 have an exhibit here. It was provided to me by
8 the State. Uh, it's the incident recall. It's
9 the dispatch report as far as time and so forth.
10 They have stipulated to it as far as
11 authenticity and so forth. I would like to have
12 it put in as Defendant's Exhibit number 1 and
13 then ask him some questions as far as time.

14 **THE COURT:** All right. Any objection?

15 **MR. ROBINSON:** Defendant's Exhibit 2.

16 **THE COURT:** Okay. All right. If you will
17 mark it, without objection, it will be entered
18 into evidence.

19 **(WHEREUPON, Defendant's Exhibit 2 is marked for**
20 **identification and admitted into the record.)**

21 **BY MR. ROBINSON:**

22 **Q** Officer Hines, have you seen, uh, -- are
23 you familiar with dispatch in your office, the
24 dispatchers that keep track of all the time that you
25 call in and so forth?

1 **A** Am I familiar with their job duties or am I
2 familiar with --

3 **Q** No, you understand they do reports and
4 stuff like that, correct? They take down times ---

5 **A** Yes.

6 **Q** --- and such of calls, is that correct?

7 **A** Yes.

8 **Q** Okay. What we just did a second ago, this
9 is an Exhibit that's been agreed to by the State,
10 stipulated to. Uh, this is an Exhibit, Defendant's
11 number 2, which is the dispatch report for that
12 night, which is, uh, January 25th, 2010. You -- I'm
13 going to show this to you and make sure you
14 understand it. I'm going to ask you some questions
15 about this. It is a dispatch report. Have you seen
16 a dispatch report before?

17 **A** I have seen dispatch reports before. That
18 looks like a dispatch report.

19 **Q** Does that look like a dispatch report to
20 you?

21 **A** Yes, sir.

22 **Q** I want to, uh, ask you -- this goes to your
23 testimony a few moments ago as far as when you made
24 calls in terms of when you started calling this in
25 and so forth. Now the time that -- and this is

1 defense Exhibit number 2 -- the time that you
2 actually made the call in to dispatch, you don't make
3 any mention in there of any stop sign violation, do
4 you?

5 **A** I do say stop sign violation in the call.
6 It's, uh, actually recorded. When I call the traffic
7 stop, if I recall, I say copy 56 which means traffic
8 stop. Then I stated for stop sign violation, uh, on
9 the radio, if I recall correctly.

10 **Q** It doesn't reflect that on there, does it?

11 **A** They don't take notes as we're going
12 through unless it is a critical incident. Then
13 they'll put notes in. Like a chase, for example.
14 They don't just take notes. They just, uh, -- they
15 just click when you do the traffic stop and then the
16 time appear. So they don't take notes of it.

17 **Q** As far as when you called this in though,
18 when you called it in, did you call for backup at the
19 same time you called this in?

20 **A** I did not.

21 **Q** Did not?

22 **A** No, sir.

23 **Q** Does it reflect anything on what's marked
24 as Defense Exhibit 2, anything regarding backup,
25 calling for backup?

1 **A** (Reviewing.) I don't see where it says I
2 asked for backup on here.

3 **Q** But you testified a few moments ago that
4 you did call for backup, isn't that correct?

5 **A** Uh, yes, correct.

6 **Q** And it's not in report, correct?

7 **A** It's on the -- again, it's on the radio.
8 When I called, it should be on the radio. It's
9 recorded. The actual transmission is recorded, so
10 it would be on the radio.

11 **Q** And does it say on that report that as far
12 as the vehicle goes, no occupants?

13 **A** Does it state no occupants?

14 **Q** Yeah.

15 **A** Uh, if you would point that out to me, I
16 don't see it. And if it does, I don't know why it
17 would. Unknown occupants maybe.

18 **Q** I'll withdraw that question. And you say
19 that there was an audio that was done, is that
20 correct?

21 **A** Correct.

22 **Q** I'm going to, uh, -- you know your voice
23 and so forth. We have an Exhibit, which is
24 Defendant's Exhibit number 1, that I want to play for
25 you. What you do is you call into dispatch and it's

1 all recorded, isn't that correct?

2 A Correct.

3 Q If there's anything that happened, the date
4 and time are on that, correct?

5 A Uh, I believe so, yes, sir.

6 Q Okay. I'm going to play this. If you
7 recognize your voice for the court.

8 (WHEREUPON, Defendant's Exhibit 1 is played.)

9 BY MR. ROBINSON:

10 Q Is that the entirety, officer, of the call
11 you made?

12 A Would you repeat the question?

13 Q So that's your voice on there and that's
14 the entirety of the call, correct?

15 A That -- that is my voice on the tape. So
16 you're asking is that the whole --

17 Q That reflects the stop?

18 A That does reflect the stop, yes, sir.

19 Q Okay. Thank you. There may be more to
20 this tape.

21 (WHEREUPON, the attorneys confer.)

22 MR. ROBINSON: That's all I have. Thank
23 you, Your Honor.

24 THE COURT: Any followup questions?

25 MS. McCALL: No, sir.

1 **THE COURT:** Okay. Officer, let me ask you
2 one question. Where'd you find the drugs?

3 **THE WITNESS:** Sir?

4 **THE COURT:** Where did you find the drugs?

5 **THE WITNESS:** The drugs were found after
6 the arrest inside his sock inside detention,
7 inside the sally port, right before you go
8 inside.

9 **THE COURT:** Okay. So it was found
10 incident to arrest at the detention center in
11 his sock, which was on his person?

12 **THE WITNESS:** Correct.

13 **THE COURT:** All right. Good enough.
14 Thank you very much.

15 **THE WITNESS:** Yes, sir.

16 (WHEREUPON, the witness exits the witness
17 stand.)

18 **MS. McCALL:** I move that, uh, the stop was
19 constitutional and, therefore, search incident
20 to arrest (inaudible).

21 **THE COURT:** Okay. All right.

22 **MR. ROBINSON:** Your Honor?

23 **THE COURT:** Yes, sir.

24 **MR. ROBINSON:** He would like to --
25 regarding the pre-trial motion, he would like to

1 testify in regard to that.

2 **THE COURT:** Okay. Sure. You can call --
3 you may call him to stand.

4 **MR. ROBINSON:** I would call Mr. Marlin
5 Hutley to the stand.

6 **THE CLERK:** Mr. Hutley, please place your
7 left hand on the Bible and raise your right
8 hand.

9 **MARLIN HUTLEY**

10 having first been sworn, testifies as follows:

11 **THE CLERK:** Thank you. Please be seated.

12 **THE COURT:** Mr. Robinson, before you get
13 started, I'm going to ask him -- just advise him
14 of his rights. Okay.

15 Mr. Hutley, you recognize, sir, that under
16 the Constitution, you have the right to remain
17 silent?

18 **MR. HUTLEY:** Yes, sir.

19 **THE COURT:** And you recognize that
20 incident to that, you have a right against self-
21 incrimination, which means that you don't have
22 to say or do or prove anything. You understand
23 that?

24 **MR. HUTLEY:** Yes, sir.

25 **THE COURT:** And you understand that if you

1 do elect to waive that right and testify, then
2 you are subject to cross-examination. You
3 understand that?

4 **MR. HUTLEY:** Yes, sir.

5 **THE COURT:** Okay. Uh, and you are fully
6 aware and advised of that right to remain silent
7 and recognize you don't have to say anything in
8 this courtroom. Nothing to me and nothing to
9 anybody else. You understand?

10 **MR. HUTLEY:** Yes, sir.

11 **THE COURT:** You want to waive it and
12 present testimony?

13 **MR. HUTLEY:** Yes, sir.

14 **THE COURT:** All right. Good enough.
15 Go ahead, Mr. Robinson.

16 **MR. ROBINSON:** May it please the Court.

17 **DIRECT EXAMINATION**

18 **BY MR. ROBINSON:**

19 **Q** Mr. Hutley, you obviously are -- are you a
20 resident of Greenville?

21 **A** Yes, sir.

22 **Q** Okay. How old are you?

23 **A** 39.

24 **Q** How far did you go in school?

25 **A** 11th grade.

1 **Q** Mr. Hutley, you acknowledge that you do
2 have a criminal record, correct?

3 **A** Yes, sir.

4 **Q** No argument on that?

5 **A** No, sir.

6 **Q** Uh, I believe they did mention at one point
7 that you had pled guilty to, uh, a false name or
8 something like that, isn't that correct?

9 **A** Yes, sir.

10 **Q** You acknowledge all that, correct?

11 **A** Yes, sir.

12 **Q** Let's take -- let me take you back to that
13 night of January 25th of 2010. Uh, tell me about
14 this stop.

15 **A** Yes.

16 **Q** Why don't you just tell the judge how you
17 approached the intersection. This is at Mulberry
18 Street, is that correct?

19 **A** This was at Washington Street.

20 **Q** Okay. Why don't you tell the judge what
21 happened.

22 **A** Uh, I came to a stop at Washington Street
23 and Washington Street Extension. I was crossing
24 Washington Street to go to Mulberry Street. I see
25 the officer popped out behind me with no headlights

1 on. How I know is because the reflection from the
2 light, the street light shined off of his car. I
3 kept pursuing, going up to Mulberry and Hampton
4 Avenue. The whole time, he's behind me tailgating me
5 with no lights on. I get to the stop sign on Mulberry
6 and Hampton Avenue. I make a right. I pull into the
7 driveway of a friend of mine's and that's when he put
8 the blue lights on me.

9 Q Okay. So when you came up to the, went up
10 to stop sign, did you not stop completely?

11 A No, I stopped completely.

12 Q You stopped completely?

13 A Yes, sir.

14 Q When the officer says that you didn't stop
15 completely, that's false?

16 A Yes, sir.

17 Q Okay. Now, did you get a ticket, actually a
18 warning ticket, either yellow or blue, from this
19 officer that you had gone through or did not stop at
20 the stop sign?

21 A No, sir.

22 Q Okay. You never got one?

23 A No.

24 Q Uh, this vehicle that we're talking about,
25 did it belong to you?

1 **A** No, it was a friend of mine.

2 **Q** A friend of yours? Okay. Were the lights
3 working?

4 **A** Yes, sir.

5 **Q** Okay. Was the tag valid?

6 **A** Yes, sir.

7 **Q** Okay. Uh, did the officer stop you
8 immediately after you stopped at the stop sign?

9 **A** No, I continued -- like I said, I continued
10 from that stop sign, went about three or four blocks
11 up to another stop sign. No blue lights. No kind of
12 signal to let me know -- notify me to pull over.
13 Like I said, the next stop sign, I made a right turn.
14 After I made the right turn, I pulled into the
15 driveway on the lefthand side, two houses down from
16 the turn. That's when he put the blue lights on me.

17 **Q** Did the officer advise you that he was
18 stopping you for not coming to a complete stop at the
19 stop sign?

20 **A** Once he approached the vehicle, he had not
21 told me that. Like he said earlier, he said that the
22 came back and he said that he was calling for backup.

23 **Q** Okay. Did he call for backup when he come
24 to your car?

25 **A** When he left -- when he approached me, he

1 said he stopped me for a stop sign violation. That's
2 when he made the call.

3 Q And you knew Officer Hines from a previous
4 incident, is that correct?

5 A Yes, sir.

6 Q What was that time about?

7 A He had arrested me for Loitering to Engage
8 in Drug Activity, Interfering with Police Officer and
9 Possession of Marijuana. I went to magistrate court
10 and, I think, two of the charges got expunged. One
11 of the charges got expunged. At that time, as me
12 leaving the courthouse, leaving the courtroom
13 building, courtroom, he came out following behind me
14 and approached me and asked me -- and told me, he
15 said you one of the first person who beat my cases.
16 I asked him why he telling me that. He told me about
17 the case. I said if he feel as though something is
18 wrong, he should address it with the judge. After
19 that, I asked him was he through. So I continued to
20 walk on.

21 Q Okay. And this time in January 25th, 2010,
22 is that the next time that you saw this officer?

23 A Yes, sir.

24 Q Would you acknowledge giving the officer a
25 false name?

1 A No, I did not, sir.

2 Q But he knew who you were, is that correct?

3 A Yes, sir, from the previous arrest. The
4 previous arrest.

5 Q Now, this road that we're talking about
6 with the stop sign, is there like a light, like a
7 red, green, yellow light?

8 A There's no light. It's just a stop sign.

9 Q How many lanes are you talking about going
10 across?

11 A It's a two-way lane.

12 Q Two? So it's two lanes. One going one
13 way, one going the other, right?

14 A Yes, sir.

15 Q Is there a traffic block in between the
16 two?

17 A That's on the other side of Washington
18 Street. It's like when you get on the other side,
19 you have some like, some speed bumps on the other
20 side of Washington Street.

21 Q And when did the officer turn the blue
22 lights on?

23 A When I pulled into the driveway.

24 Q So it wasn't when you went through the stop
25 sign, you approached the stop sign and went through

1 the intersection? That was not until --

2 **A** No, the stop sign he said I ran, I went
3 pass, he did not put the blue lights on then. I got
4 to another stop sign. He didn't put them on then.
5 Like I said, he put them on when I pulled into the
6 driveway. After the second stop sign, he put them
7 on.

8 **Q** And this area that you were in that night
9 -- this is what time of night?

10 **A** After 9:30.

11 **Q** After 9:30. Is this a high crime area that
12 we're talking about?

13 **A** Yes, sir.

14 **Q** High crime area. And you were in a
15 Forerunner, is that right?

16 **A** Yes, sir.

17 **Q** A black Forerunner?

18 **A** Yes, sir.

19 **Q** And did you have anyone else in the car
20 with you?

21 **A** No, sir.

22 **MR. ROBINSON:** One second, Your Honor.

23 (Pause.)

24 That's all I have for this witness. Thank
25 you.

1 **THE COURT:** Any questions?

2 **MS. McCALL:** Just a couple of questions.

3 **CROSS-EXAMINATION**

4 **BY MS. McCALL:**

5 **Q** . Isn't it true that you weren't even allowed
6 to drive a car night?

7 **A** . Yes, ma'am.

8 **Q** . And you said you admitted you gave the
9 officer a false name when he pulled you over?

10 **A** . I did not.

11 **Q** . You admitted that -- you saying you did not
12 give him --

13 **A** . I misunderstood what he said.

14 **Q** . Well, isn't it true that you pled guilty to
15 giving false name to police?

16 **A** . Yes, ma'am.

17 **Q** . So you want us to believe that everything
18 that you just said is the truth when you pled guilty
19 to giving a false name?

20 **A** . The reason why I gave him the false name is
21 because at that time, I was going through so much. I
22 was trying to find a job. I had just got a job. So
23 I wanted to pay the fines and --

24 **MS. McCALL:** That's all that -- I don't
25 have any further questions.

1 **MR. ROBINSON:** I have no redirect, Your
2 Honor.

3 **THE COURT:** Okay. Thank you, Mr. Hutley.
4 You may step down, sir.

5 All right. Any additional arguments? Any
6 arguments regarding the evidence and the
7 suppression matter?

8 **MS. MCCALL:** The State would argue that
9 the stop was constitutional and that the
10 evidence should be -- should not be suppressed.

11 **THE COURT:** Okay. Good enough.

12 All right. Mr. Robinson, anything you need
13 to put on the record, sir?

14 **MR. ROBINSON:** Yeah. May it please the
15 Court. Your Honor, we've put on the record two
16 exhibits, the actual audio of the stop as well
17 as the dispatch report. Your Honor, at this
18 point, this motion has everything to do with
19 whether or not the stop was either illegal or
20 legal. We believe it was a pretextual stop,
21 that he didn't give him anything until after he
22 had gone over two or three blocks as far as, uh,
23 giving a ticket.

24 As the Court's aware, in the exhibit that
25 was not entered, originally, there's no ticket

1 that was put into evidence that he gave him a
2 warning ticket or a citation that he stopped him
3 or he pulled him over for a stop sign violation.
4 As the Court's aware, there's three difference
5 reasonings of how officers can stop you. This
6 would fall under the, uh, -- not reasonable
7 suspicion, but a traffic violation obviously.

8 Your Honor, there is a question as far as
9 the, uh, as far as whether or not a ticket ever
10 was given in this case. We don't have any
11 tickets in evidence in this matter. Without the
12 ticket, all they have is a stop that was not
13 done for any other reason. He may have known
14 this person from the past or something. Uh,
15 but, uh, he acknowledges that there was no
16 problem with the lights in the car. The tag was
17 valid. When he stopped him, he stopped him --
18 it was a pretextual, unconstitutional stop. He
19 shouldn't have stopped him.

20 Going back to the Snowden case, which is
21 the case that the prosecutor mentioned in the
22 beginning, the officer testified on the stand
23 that, uh, this false information, uh, this plea
24 that he did in magistrate, municipal court, that
25 was not -- he did not do that at that time. It

1 was one and a half months later. Mr. Hutley
2 testified as far as why he did that plea. A lot
3 of things going on, but he pled to day. And we
4 acknowledge that.

5 But Your Honor, we still believe that the
6 stop was illegal. There was no ticket given.
7 The officer stopped him because he had, uh,
8 wanted to stop him. Any reason. He found a
9 reason. He pulled him over. He started talking
10 to him. He gave false information. That was
11 after the stop, not before the stop. So coming
12 up to the stop, as far as the stop itself,
13 that's what we say is illegal in this case.

14 **THE COURT:** Okay.

15 **MR. ROBINSON:** We can't bring in a ticket
16 that was never issued in this matter. He had no
17 other reason to stop him.

18 **THE COURT:** Okay. You wanted to respond?

19 **MS. McCALL:** In regards to the ticket that
20 was never issued, that's what the electronic --
21 the reason why we don't have a ticket is because
22 of they get a copy as the officer testified.

23 **THE COURT:** Is it -- is the standard that
24 a ticket must be issued?

25 **MS. McCALL:** They don't keep all the --

1 **THE COURT:** I don't think that's the
2 standard. The ticket -- the standard is whether
3 there was a reason for the stop. That is an
4 articulate suspicion. I don't think there's any
5 case law that says there must be a criminal
6 citation issued because it doesn't have to even
7 rise to that level. So I don't know that that's
8 relevant to my consideration in this case.

9 **MS. McCALL:** The traffic stop is
10 reasonable.

11 **THE COURT:** Okay. Well, given the
12 testimony that I've heard in this case, I find
13 that the officer's testimony is credible with
14 respect to the reasoning for the initial stop.
15 And I believe that given the false name that was
16 given to the police, uh, that was a justifiable
17 reason for the arrest. I think there was a --
18 it was a legal stop incident to the suspicion of
19 having violated a traffic law. All right.

20 And I will also find that in keeping with
21 the Snowden case, the legality of the stop was
22 waived by and through the initial plea to false
23 name to police. All right. Okay.

24 Uh, you prepared to proceed, Ms. McCall,
25 with the introduction of evidence in this case?

1 **MS. McCALL:** I am.

2 **THE COURT:** Okay. How many witnesses do
3 you intend to put up?

4 **MS. McCALL:** He stipulated to change, so
5 just Officer Hines which you've heard the bulk
6 of his testimony and then the search officer.

7 **THE COURT:** Okay. Let's take a short
8 five-minute break and then come back in and
9 we'll take testimony.

10 **(WHEREUPON, a recess is taken.)**

11 **THE COURT:** All right. Ms. McCall, you
12 can call your first witness, ma'am.

13 **MS. McCALL:** I would call Officer Hines.

14 **THE CLERK:** You want me to put him under
15 oath again?

16 **THE COURT:** Uh, no.

17 **THE CLERK:** Okay.

18 **THE COURT:** I'll remind you, Officer, you
19 continue under your oath that you previously
20 took. Okay.

21 **THE WITNESS:** Yes, sir.

22 **THE COURT:** Okay. Good enough.

23 **MS. McCALL:** I'm just going to pick up
24 where we left off.

25 **THE COURT:** That is fine.

1 make sure he didn't have any kind of contraband due
2 to him moving around as much as he was moving around
3 in the back seat of my patrol car.

4 Q And once -- at that point, what happened
5 after that?

6 A Uh, once we, uh, -- I went ahead and filled
7 out his paperwork for his temporary commitment. Then
8 we proceeded to go on through the sally port. At
9 that time, a detention officer came and checked him.
10 They do the pat down and search -- well, it's not a
11 pat down, it's a search -- inside the detention
12 facility there to make sure that no contraband or
13 weapons of any sort is brought in. At that time, uh,
14 the defend -- I meant, uh, the defendant was, uh, --
15 I think the detention officer got down to his sock,
16 his left sock, and felt a bulge in the sock. Said
17 what's this.

18 MR. ROBINSON: Your Honor, I think that's
19 hearsay.

20 THE COURT: Is the other officer going to
21 testify?

22 MS. McCALL: He is. He's just basically
23 explaining what called him to do -- act next.
24 But he is going to testify.

25 THE COURT: Okay. All right. If he's

1 going to testify, I'm going to, uh, I'm going to
2 sustain the objection.

3 **THE WITNESS:** He stated, uh, what's this
4 as he felt the bulge there. I then grabbed his
5 sock there. He had, uh, four bags of white,
6 beige-looking substance, quite -- quite big, in
7 his left sock there. I then immediately took
8 the substance and held onto them as he finished
9 his search.

10 **BY MS. McCALL:**

11 **Q** Okay. And do you know whether any of this
12 was captured on the video?

13 **A** I do not.

14 **Q** And have you learned -- since this case,
15 have you learned anything about the video system?

16 **A** Yes, since the -- Yes, ma'am. Since this
17 case, I have.

18 **Q** What did you learn?

19 **MR. ROBINSON:** I'm going to object as far
20 as foundation. I don't know where this
21 information he's getting is coming from and how
22 he learned about it. I think it's goes to, uh,
23 -- relevance and also be considered hearsay. I
24 don't know how he's going to testify to
25 something that he's learned about or he's heard.

1 **MS. McCALL:** Basically --

2 **THE COURT:** Well, I need to rule on it.

3 **MS. McCALL:** What now?

4 **THE COURT:** I didn't rule on it. If he
5 has information about whether it exists or
6 doesn't exist, I'll let him testify to that. To
7 that extent, I'm going to overrule and sustain,
8 not hearsay testimony about what happened, but
9 about whether it exist or whether it doesn't.

10 **MS. McCALL:** Really, it goes to that he
11 doesn't know whether it exist. We'll just leave
12 it at that.

13 **BY MS. McCALL:**

14 **Q** I want to show you now, uh, -- we
15 stipulated to chain of custody, but I just wanted to
16 introduce these exhibits. So I'm showing you State's
17 Exhibits 5 through 8 and the corresponding Property
18 and Evidence sheets. Do you recognize these
19 exhibits?

20 **A** Yes, ma'am.

21 **Q** Now, are these items that you checked out
22 of Property and Evidence? I mean -- sorry. How are
23 you able to recognize these?

24 **A** Uh, these are the items that were located
25 in Mr. Hutley's sock in detention. I took them and

1 placed them in Property and Evidence.

2 Q Does it appear, uh, as it did back on
3 January 25th of 2010?

4 A Yes, ma'am.

5 Q Do they appear to be altered in any way?

6 A No, ma'am. The only difference here is the
7 J.M.A., which I believe is the drug analysis.

8 Q Okay. Uh, what did you do with those
9 substances when you retrieved them from the
10 defendant's sock?

11 A Once I retrieved them from his sock, I held
12 on to them. Uh, I then went outside the detention
13 center and field tested them for cocaine base. Uh,
14 it did come back positive as a cocaine base. I then
15 took the items to Property and Evidence and placed
16 them in the drop box at, uh, Property and Evidence.

17 Q Okay. And, uh, did you weigh the
18 substances, uh, at the time?

19 A I did. I weighed them prior to, uh, prior
20 to dropping them in the drop box. I left out also
21 filled out a drug analysis sheet.

22 Q Okay. And are they in the same condition
23 that they were when you turned them in to Property
24 and Evidence?

25 A Yes, ma'am.

1 **Q** We won't go into what Property and Evidence
2 is since the judge is familiar with that. Uh, how
3 did you submit these in Property and Evidence? What
4 time of night was this?

5 **A** Uh, it was at 12:27 a.m.

6 **Q** How did you submit it?

7 **A** I submitted it through the drop box because
8 Property and Evidence was closed. I had to put them
9 in the drop box.

10 **Q** Okay. Now, the Property and Evidence sheet
11 that I gave to you, is your signature on that?

12 **A** It is.

13 **Q** Did you fill out a P&E sheet?

14 **A** I did.

15 **Q** What is the date on that?

16 **A** January 26th, 2010 at 12:27 a.m.

17 **MS. McCALL:** Judge, since we already
18 stipulated to chain, I would submit that -- move
19 those exhibits in. Also, I want to add this as
20 an exhibit, the lab analysis, just so you can --
21 since we won't have James Armstrong going
22 through that.

23 **THE COURT:** Okay. Any objection to that?

24 **MR. ROBINSON:** I stipulate to that. No
25 objection.

1 **THE COURT:** Okay. Good enough.

2 **(WHEREUPON, State's Exhibits 5 through 9 are**
3 **admitted into the record.)**

4 **MS. McCALL:** I'm just going to get him to
5 read out just for the record what the --

6 **THE COURT:** Okay.

7 **MS. McCALL:** I'll wait until you -- I'm
8 sorry.

9 **THE COURT:** Don't talk and hand her
10 something at the same time.

11 **BY MS. McCALL:**

12 **Q** All right. Will you please tell the judge
13 what that is and can you read the weights of the
14 different items?

15 **A** Yes, ma'am. Uh, Item JSH-1 states bag
16 containing rock substances. Results, cocaine base
17 found, weighing 3.26 grams. Item JSH-2, bag
18 containing rock substance. Results, cocaine base
19 found, 12.10 grams. Item JSH-3, bag containing rock
20 substance. Results, cocaine base found, 8.35 grams.
21 JSH-4, bag containing powder substance. Cocaine
22 found, 8.58 grams.

23 **Q** Uh, after securing the evidence, did that
24 conclude your investigation in this case?

25 **A** It did.

1 **Q** After securing this evidence, did that
2 conclude your investigation in the case?

3 **A** Yes, ma'am. After, after I finished the,
4 uh, Property and Evidence, I had to go type my
5 report.

6 **Q** Do you see the defendant in the courtroom
7 today?

8 **A** I do.

9 **Q** Would you point to where he is.

10 **A** Yes, he is right there with the blue
11 jumpsuit on.

12 **MS. McCALL:** All right. Let the record
13 reflect that the officer is pointing to the
14 defendant. That's all I got. If you could
15 answer any questions from Mr. Robinson.

16 **THE COURT:** Mr. Robinson. Okay.

17 **MR. ROBINSON:** May it please the Court.

18 **CROSS-EXAMINATION**

19 **BY MR. ROBINSON:**

20 **Q** Officer, when you drove down to the, uh,
21 detention center with, uh, with Mr. Hutley, you said
22 that you heard him in the back shuffling and so
23 forth?

24 **A** Yes.

25 **Q** You are not telling the Court that anything

1 was found in the car after he was let out, are you?

2 **A** Uh, nothing was found in the car after he
3 was let out.

4 **Q** Now, when you go to the detention center
5 with a defendant, do you fill out something called a
6 Temporary Law Enforcement Commitment? Is that what
7 that is?

8 **A** Yes.

9 **Q** What is that?

10 **A** That is a sheet that we fill out and we put
11 the charges on. And then put out to the side the
12 ticket number or warrant number, if we have it at the
13 time.

14 **Q** Okay. And that's going to have all the
15 tickets that someone has that they've been charged
16 with, is that right?

17 **A** Uh, it will unless there's other charges
18 that comes later. Then we'd have to fill out another
19 one.

20 **Q** Okay. That's done every single instance
21 pretty much, isn't it?

22 **A** Uh, yes. Almost.

23 **Q** Almost? Pretty much every -- on something
24 like this, that would be pretty normal, right? This
25 kind of stop?

1 **A** Uh, if the judge isn't there, it's normal
2 to put them on the, uh, -- at that time, the judge
3 was not there. It's normal to put them in on the
4 citation and a temporary commitment.

5 **Q** So you would do what they'd call a
6 Temporary Law Enforcement Commitment, correct?

7 **A** Yes, sir.

8 **Q** Now, that would include everything up to
9 going through the detention center as far as
10 citations and things like that, but it's not going to
11 include stuff that may have happened afterwards,
12 right?

13 **A** Uh, if there -- for say, what I brought him
14 in on would have been on the temporary commitment at
15 the time. If there's other charges after the fact, I
16 would have to fill out another temporary commitment.

17 **Q** When you say after the fact, are we talking
18 about something that may have occurred when you were
19 in the car with him or ---

20 **A** No, sir.

21 **Q** --- something like that?

22 **A** No, sir.

23 **Q** What are you talking about?

24 **A** I'm referring to as the, uh, -- when I put
25 Mr. Hutley in on the temporary commitment, I did not

1 find the drugs on him before I took him inside. I
2 already -- I took him inside. At that time, that's
3 when the drugs were located. I had to go -- before I
4 could just charge someone with a substance, I have to
5 field test the substance and then get the appropriate
6 charges. Weigh the substance and get the appropriate
7 charges. Then I can come back and charge someone.

8 Q So the temporary law enforcement, that
9 would have the charges PWID and Trafficking, right?
10 You field tested those, correct?

11 A I did test the crack cocaine and the
12 cocaine.

13 Q Okay. And that would be the PWID powder
14 and trafficking the crack, correct?

15 A That's correct.

16 Q And that report then -- so there was a
17 Temporary Law Enforcement Commitment report filled
18 out and you actually sign the bottom, don't you?

19 A Yes, sir. We do.

20 Q I'm going to ask you to look at a document.

21 MR. ROBINSON: May I approach the witness,
22 Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. ROBINSON:

25 Q Let me ask you to look at this document.

1 Just -- do you recognize this document?

2 A Yes, sir.

3 Q And what is that document? If you can just
4 tell me the title of that document.

5 A This is a Temporary Law Enforcement
6 Commitment.

7 Q Okay. And is there a signature on that
8 document?

9 A Yes, sir.

10 Q Okay.

11 MR. ROBINSON: Your Honor, if I could -- I
12 would ask this be marked as, uh, Defendant's
13 Exhibit number 3.

14 THE COURT: You asking it be introduced or
15 just marked?

16 MR. ROBINSON: I'm going to show her
17 first.

18 THE COURT: Okay.

19 (WHEREUPON, there is a pause.)

20 MR. ROBINSON: I'll have this marked as
21 Defendant's Exhibit number 3. And I have shown
22 that to the prosecution.

23 THE COURT: Okay.

24 MR. ROBINSON: And there's no objection.

25 THE COURT: All right. That is introduced

1 into evidence as Defendant's Exhibit number 3.

2 **(WHEREUPON,** Defendant's Exhibit 3 is marked for
3 identification and admitted into the record.)

4 **BY MR. ROBINSON:**

5 **Q** And Officer, looking at Defendant's Exhibit
6 number 3, that's your signature on a Temporary Law
7 Enforcement Commitment when Mr. Hutley was booked
8 in. There is no indication in that report of a stop
9 sign violation.

10 **A** We don't have to put a stop sign violation
11 on there because he did not get a, uh, -- we don't
12 put warning tickets on our commitments. So no, sir,
13 the stop sign citation would not be on this report.
14 This is what he goes to jail on, not what he's pulled
15 over. I can actually write him a uniform citation
16 and not put it on there.

17 **Q** And you did not bring that uniform citation
18 to court?

19 **A** I believe that they have a copy of the
20 uniform citation.

21 **Q** When you got to the detention center with
22 Mr. Hutley, did you advise him that you stopped him
23 for going through a stop sign?

24 **A** I advised him once I got up to him and
25 approached on the traffic stop that the reason he was

1 pulled over was for stop sign violation.

2 Q There's no record of that stop sign
3 violation in that report that's marked Defendant's
4 Exhibit 3, right?

5 A No, sir.

6 MR. ROBINSON: Beg the Court's indulgence
7 for one second, Your Honor. (Pause.)

8 BY MR. ROBINSON:

9 Q Officer; I want to take a second and go
10 back to the, uh, back to the stop. I just want to
11 make sure -- I want to clarify some things if you
12 don't mind. You said that this citation for running
13 the stop sign and not stopping -- coming to a
14 complete stop at a stop sign, right?

15 A A warning citation for disregarding a stop
16 sign.

17 Q And you arrested Mr. Hutley for doing that,
18 is that correct?

19 A I arrested Mr. Hutley for false information
20 to police officer which occurred after the traffic
21 stop.

22 MR. ROBINSON: That's all the questions I
23 have.

24 THE COURT: All right. Thank you,
25 officer. You may step down, sir.

1 **THE WITNESS:** Yes, sir.

2 **THE COURT:** Your next witness, ma'am.

3 **MS. McCALL:** The State will call Steven
4 Babinsky.

5 **THE CLERK:** Sir, you're going to have a
6 hard time raising your right hand, but place
7 your left hand on the Bible please.

8 **STEVEN BABINSKY**

9 having first been sworn, testifies as follows:

10 **THE CLERK:** Thank you. Please be seated.
11 Please state your full name for the record.

12 **THE WITNESS:** Steven William Babinsky.

13 **THE COURT:** Officer, I know you got --
14 some of that evidence, I believe in your hand,
15 was all admitted into evidence.

16 **OFFICER HINES:** Okay. I apologize.

17 **THE COURT:** So just leave it. I know that
18 leaving crack cocaine just sitting around is
19 counterintuitive to you and to me. But inasmuch
20 as it has been admitted into evidence, we've got
21 to keep it now.

22 **OFFICER HINES:** Yes, sir. I apologize.

23 **THE COURT:** No, that's no problem. No
24 problem.

25 **DIRECT EXAMINATION**

1 **BY MS. McCALL:**

2 **Q** Where are you employed?

3 **A** Greenville County Detention Center.

4 **Q** How long have you worked there?

5 **A** Two years.

6 **Q** What is your current position?

7 **A** Detention officer.

8 **Q** What training and education did you receive
9 that aided you in that job responsibility?

10 **A** Three weeks at the South Carolina Criminal
11 Justice Academy.

12 **Q** Uh, were you working on the night of
13 January 25th, 2010?

14 **A** Yes.

15 **Q** Can you tell us what you were doing that
16 evening?

17 **A** I was working as a search officer in the
18 intake and release area.

19 **Q** Okay. Did you have a chance to come into
20 contact with, uh, this defendant?

21 **A** Yes, ma'am. I did.

22 **Q** And how so?

23 **A** Officer Hines brought him into the sally
24 port. And being the search officer, I conducted a
25 pat down search.

1 Q Could you real quickly tell what the sally
2 port is?

3 A The sally port is the area between the
4 judicial area and the actual intake and release where
5 they do the booking.

6 Q And why do you search inmates in the sally
7 port?

8 A To make sure they don't bring any sort of
9 contraband or weapons in the facility.

10 Q Okay. What happened during the search?

11 A Uh, while patting down Mr. Hutley, I got to
12 the outer part of left leg. I felt a bulge about the
13 size of my fist. I directed Officer Hines' attention
14 to it. He pulled it out. It was four bags. Three
15 to four bags bundled up.

16 Q Okay. And, uh, you directed Officer Hines'
17 attention. What happened at that point?

18 A Officer Hines then pulled it out.

19 Q You had any other involvement in this case?

20 A No, ma'am.

21 Q That's all that I have. Could you please
22 answer any questions that Mr. Robinson has.

23 **THE COURT:** Mr. Robinson.

24 **MR. ROBINSON:** Before I ask him -- could I
25 talk to my client one second, Judge, before I

1 start asking questions?

2 THE COURT: Yes, sir.

3 (WHEREUPON, Mr. Robinson consults with
4 Mr. Hutley.)

5 CROSS-EXAMINATION

6 BY MR. ROBINSON:

7 Q Officer, you did the pat down of Mr.
8 Hutley, is that correct?

9 A Yes, sir.

10 Q And before you started your pat down, what
11 was your understanding? Did you give Mr. -- did you
12 or Officer Hines give Mr. Hutley an idea of what he
13 was being charged with before you started searching
14 his pants?

15 A No, sir. I had nothing to do with -- with
16 -- I didn't know what he was being charged with.

17 Q You didn't say anything to him about what
18 he was being charged with?

19 A No, sir.

20 Q Were you ever given anything by Officer
21 Hines regarding what Mr. Hutley was being charged
22 with?

23 A We were supposed to receive a predetention
24 form and a Temporary Law Enforcement Commitment when
25 they entered the facility.

1 **MR. ROBINSON:** That's all I have, Your
2 Honor. Thank you.

3 **THE COURT:** Okay. Thank you. You may
4 step down.

5 You may call your next witness, ma'am.

6 **MS. McCALL:** The State rests.

7 **THE COURT:** Okay. All right.

8 Mr. Robinson, any motions or anything from
9 the -- any evidence you would like to present on
10 behalf of the defendant, sir?

11 **MR. ROBINSON:** Your Honor, I would
12 respectfully submit a motion for directed
13 verdict. The State has not, uh, put forth any
14 evidence to establish the two cases of
15 Trafficking and PWID. Obviously, it's going to
16 be construed in favor of the State as far as the
17 motion. But, Your Honor, we believe that there
18 has been no testimony or evidence put in that
19 would indicate that a crime took place. We
20 reserve again making an argument regarding the
21 illegality of the stop in this matter. Thank
22 you.

23 **THE COURT:** Okay. I'll respectfully deny
24 your motion. Any evidence you would like to
25 proffer into the record, sir?

1 **MR. ROBINSON:** Your Honor, I would like to
2 incorporate in the record in this case the
3 pretrial motions that were made, all the
4 evidence that was submitted and marked as
5 exhibits and in the pretrial hearing that we had
6 regarding the suppression, as well as the
7 exhibits that were presented in the case-in-
8 chief in this matter. I believe there were
9 three different exhibits that we put in for the
10 defense as well as the State. Our exhibits are
11 the audio, the dispatch report, as well as the,
12 uh, detention report. Those are the things I
13 would like to include in the record, Your Honor,
14 in this case.

15 **THE COURT:** Okay. Uh, those were included
16 and introduced as exhibits, were they not?

17 **MR. ROBINSON:** They were, Your Honor.

18 **THE COURT:** Okay. Then they are in. All
19 right. Anything further?

20 **MR. ROBINSON:** Your Honor, the, uh, -- Mr.
21 Hutley advised me he does not want to testify.
22 With that, the defense rests, Your Honor.

23 **THE COURT:** Okay. All right. Good
24 enough. Let us take up an issue then that I
25 have. It's a question as much as anything.

1 That is, I have two indictments before me, one
2 for Possession with Intent to Distribute and one
3 for Trafficking. Each of them, uh, has, uh, as
4 an essential element, the possession of this
5 particular quantity of cocaine. Can they both
6 exist contemporaneously? Or is the, uh,
7 possession subsumed by the trafficking case.

8 **MR. STEINBERG:** Well, the trafficking is
9 crack cocaine and PWID is powder cocaine. I'm
10 double checking the trafficking. Yep, it says
11 crack cocaine, cocaine base. And PWID is simply
12 cocaine, which is powder cocaine.

13 **THE COURT:** Okay. And introduced into
14 evidence is quantities of both crack cocaine
15 and, uh, powder cocaine?

16 **MS. McCALL:** There's one -- if you will
17 allow in the police report.

18 **THE COURT:** Yes, ma'am. I'm looking at
19 what's --

20 **MS. McCALL:** Uh, one bag of powder cocaine
21 and three bags of crack.

22 **THE COURT:** All right. I'm looking at
23 what's been introduced as State's Exhibit number
24 9. So Possession with Intent to Distribute is
25 for the powder cocaine because it came back as

1 8.58 grams, whereas, the trafficking is the
2 cocaine base which came back as 12.10 grams. Am
3 I correct?

4 **MS. McCALL:** It's really a total of --

5 **THE COURT:** I see there are 12.10, 8.35
6 and 3.65 and then cocaine in the amount of 8.58,
7 correct? Okay. All right. All right. Good
8 enough. I find in this case that based on the
9 weights of the crack cocaine and the weight of
10 the cocaine and the evidence that has been
11 presented, I find that the State has met its
12 burden of proving the defendant guilty beyond a
13 reasonable doubt. I find that the State's
14 witnesses were credible and introduced evidence
15 into the record that, in fact, Mr. Hutley did
16 have in his possession a significant quantity of
17 both crack cocaine and cocaine which was found
18 when he was taken into arrest and searched
19 incident to his being placed into detention at
20 the Law Enforcement Detention. I reiterate my
21 prior ruling regarding the legality of the stop.
22 Therefore, we may proceed at this time to
23 sentencing if y'all would like to approach
24 please.

25 **MR. ROBINSON:** May it please the Court,

1 Your Honor.

2 **THE COURT:** Yes, sir.

3 **MR. ROBINSON:** I think that in the outset,
4 Your Honor, you had said you were reserving the
5 ruling on the Snowden case.

6 **THE COURT:** And subsequent to the
7 suppression hearing, I reinstated it. Okay.
8 And I do again. Okay. So if y'all want to come
9 on up.

10 All right. Ms. McCall, it's my
11 understanding that on the, uh, Trafficking --
12 excuse me. Is this the, uh, -- on the
13 Possession with Intent to Distribute, is it a
14 first offense?

15 **MS. McCALL:** Your Honor, it's third
16 offense and above.

17 **THE COURT:** Third offense and above. So
18 is it 15 to 30 years?

19 **MS. McCALL:** 25 to 30.

20 **THE COURT:** 25 to 30. Under the old law
21 or under the new law?

22 **MS. McCALL:** New law.

23 **THE COURT:** Okay. What's the CDR code?
24 0185?

25 **MS. McCALL:** I don't know it by heart.

1 **THE COURT:** Okay.

2 **MS. McCALL:** The cocaine is 15 to 30. Is
3 that what you're asking? The trafficking is 25
4 to 30. That might be where you were confused.

5 **THE COURT:** Yeah. Yeah. That's right.
6 15 to 30.

7 **MS. McCALL:** For the cocaine. I'm sorry.

8 **THE COURT:** Okay. All right. Then for
9 the trafficking in cocaine?

10 **MS. McCALL:** Trafficking crack, third
11 offense.

12 **THE COURT:** Third offense.

13 **MS. McCALL:** 25 to 30.

14 **THE COURT:** 25 to 30. Okay. All right.
15 And what is his prior record please?

16 **MS. McCALL:** Uh, 1995, Driving Under
17 Suspension; 1996, PWID Crack, Failure to Stop,
18 Shoplifting; 1997, Possession of Marijuana; '98,
19 Driving under Suspension; 2009, Interference and
20 Hindering an Officer. That was all in South
21 Carolina.

22 In New Jersey, he had a 1993 drug
23 conviction. In New York, in '92, he had a
24 possession of cocaine. Then he had a federal
25 charge in 1997 of Distribution of Cocaine Base

1 and felony in Possession of Firearm where he
2 served 151 months.

3 **THE COURT:** Okay. And just real clear for
4 the record, uh, the three prior drug offenses, I
5 know that I heard the Possession of Intent to
6 Distribute and then another drug offense, is
7 that correct?

8 **MS. McCALL:** In '93.

9 **THE COURT:** Okay. And he --

10 **MS. McCALL:** And I can --

11 **THE COURT:** He --

12 **MS. McCALL:** I have the certified
13 convictions of those if you need to see those.

14 **THE COURT:** Okay.

15 **MS. McCALL:** As far as getting the third
16 and above, the federal charge was '97 and then
17 in South Carolina, we have a '96 PWID crack.
18 Those two. Then you have the two way back, '92
19 for Possession of Cocaine in New York and then
20 the '93 is -- they call it Criminal Possession
21 of a Controlled Substance 5th degree.

22 **THE COURT:** Okay. All right. All right.
23 Mr. Hutley, you heard that recitation of your
24 prior records. Does that sound like a fair
25 account of your prior record?

1 **MR. HUTLEY:** Yes, sir.

2 **THE COURT:** All right, sir. All right.
3 Uh, Mr. Robinson, anything you'd like to tell
4 me, sir?

5 **MR. ROBINSON:** Your Honor, Mr. Hutley made
6 a decision today that spared jury expense and
7 jury time to go forward. Primarily, the biggest
8 issue for Mr. Hutley was whether or not the stop
9 was legal or not. He did not put the court or
10 the system through a jury trial, putting through
11 state expenses and so forth. Uh, I believe that
12 that may, that may mitigate in terms of the
13 higher sentence. He should get the lowest
14 sentence. Obviously, the court knows what the
15 lowest sentence is. We'd ask it be done
16 concurrently obviously.

17 But, uh, I believe that he has spared
18 significant time for a jury to be hearing this
19 case. We don't know what would have happened in
20 this case. The jury heard it obviously. But
21 once the drugs did come in, he didn't have to
22 put through any sort of trial that took a jury
23 and so forth. We'd ask the Court for the
24 minimum sentence in this case.

25 **THE COURT:** What -- how much time has Mr.

1 Hutley done already?

2 **MS. McCALL:** Uh, I'm sorry. I don't have
3 the most updated time. But he's been on federal
4 probation. That's what he's been in jail for.
5 Not for the --

6 **THE COURT:** Let me ask this, when were you
7 arrested on this charge? What was the date on
8 it? January 25th, 2010?

9 **MS. McCALL:** He got back out.

10 **THE COURT:** That's okay.

11 **MS. McCALL:** Okay. Okay. I just wanted
12 to make sure. Okay. Sorry.

13 **THE COURT:** Okay.

14 **MR. HUTLEY:** I got arrested back on May
15 19th. I been in here since May 19th, 2010.

16 **MS. McCALL:** Yeah.

17 **THE COURT:** May 19, 2010.

18 **MS. McCALL:** That is correct.

19 **THE COURT:** Okay. How many days did you
20 do initially?

21 **MR. HUTLEY:** What you mean?

22 **THE COURT:** You got arrested on January
23 25th. Did you bond out the same day?

24 **MR. HUTLEY:** No, I stayed a day. A day.

25 **THE COURT:** A day?

1 **MR. HUTLEY:** Yeah.

2 **THE COURT:** So May 10th, 2011 is when you
3 started doing time?

4 **MR. HUTLEY:** No. I came in May 19th.

5 **THE COURT:** May 19th. I'm going to give
6 you time -- credit for time since May 18th which
7 gives you credit for that one day that you did.
8 Okay. Mr. Hutley, is there anything you'd like
9 to tell me, sir?

10 **MR. HUTLEY:** You saying you giving me
11 credit for one day?

12 **THE COURT:** No, no. I'm giving you credit
13 since May 18th, 2011.

14 **MR. HUTLEY:** Okay.

15 **THE COURT:** You said you came in on May
16 19th?

17 **MR. HUTLEY:** Uh-huh.

18 **THE COURT:** And you did a day before, so I
19 backed it to May 18th.

20 **MR. HUTLEY:** Okay.

21 **THE COURT:** It makes the calculation a
22 little bit easier. I don't do good math because
23 I'm an English major. Okay. Anything you want
24 to tell me, Mr. Hutley?

25 **MR. HUTLEY:** No, sir.

1 **THE COURT:** All right. On your
2 trafficking crack cocaine, 25 years in the
3 Department of Corrections concurrent. Credit
4 for time served since May 18th. On Possession
5 with Intent to Distribute third offense, 15
6 years in the Department of Corrections
7 concurrent. Credit for time served since May
8 18th. Good luck to you.

9 **MR. ROBINSON:** Thank you, Judge.

10

11

END OF PROCEEDINGS

12

Court 60

RECEIPT FOR EXHIBITS

M 381911

County Guilford
 Case No. 10-2817, 19
 Plaintiff State of SC
 Defendant Mallin Hutley
 Date trial started 10-10-11

Judge Stilwell
 Plt's Attorney Kayce McCall
 Def's Attorney Scott Robinson
 Date ended _____

Plaintiff's Exhibits:

1. ticket
2. _____
3. _____
4. warning record
5. crack
6. crack
7. crack
8. cocaine
9. Lab Report
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____
20. _____
21. _____
22. _____
23. _____
24. _____
25. _____

State's #5, 6, 7, 8
rec'd [Signature]
60 for Jeffrey Hines

Defendant's Exhibits:

1. DUD
2. Call log
3. Temp. L.E. Commitment
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____
20. _____
21. _____
22. _____
23. _____
24. _____
25. _____

Received from Mary DiGudano Court Reporter, for the above case.

10-10-11 (date)

By: Mary Jones
 Clerk of Court's Office

Form S-438
Rev. 12/06

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Greenville VERSUS
FIRST NAME Martin MIDDLE NAME Jamelle LAST NAME Hutley
STREET AND NO. CITY STATE ZIP CODE

STATE LICENSED SC DRIVER'S LICENSE NO. 0100017966 CDL YES NO DRI. LIC. CLASS IP
VEH. LIC. NO. STATE SC MAKE OF VEH. YEAR 2007 98 COMM. VEH. AUTO PASGR. VEH. COMB. HAZ. MT. MOPED MTRCYCL. OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER Hutley STREET AND NO. 406 N. Main St

DATE OF TRIAL 2/12/10 TIME OF TRIAL 11AM CITY Greenville STATE SC ZIP CODE 29601

VIOLATION - COURT APPEARANCE REQUIRED - YES NO False Name to Police VIOLATION SECTION NO. 124217

OWNER OF VEHICLE DATE OF ARREST 1/25/10

ADDRESS OF OWNER DATE OF VIOLATION 1/25/10

BAIL DEPOSITED NAME OF ARRESTING OFFICER Hines, JS RANK DC

RACE B.M. SEX M DESCRIPTION OF ACCUSED 191, 5'10, BRN, BRN, 160, BRN COUNTY Greenville NUMBER 23

DATE BAIL REC'D. BY 20 BADGE 203 DISTRICT 3

CASE BEFORE MAGISTRATE MUN. COURT CIRCUIT COURT FAMILY COURT FEDERAL COURT

NAME OF TRIAL OFFICER Hutley TIME OF VIOLATION 2:55 WEATHER C

DEFENDANT... DID NOT APPEAR APPEARED DISTANCE IN FEET FROM INTERSECTION mulberry st

NOLLE PROSSED DISPOSITION AND HAMPSHIRE AVE MILES 1

FORFEITED BOND PLED: NOLO CONTENDERE HWY NO. 676 CITY Greenville

TRIAL BY: TRIAL OFFICER JURY

VERDICT OF TRIAL IF ANY: GUILTY NOT GUILTY DATE OF TRIAL IF ANY 20

JAIL 15 SUSPEND 0 FINE 200 AMT. COLLECTED 0 AMT. SUSPENDED 0

COMMITTED TO: Vehicle Searched NO Arrest as Result of Collision NO OFFENSE CODE 94 B.A. LEVEL ---

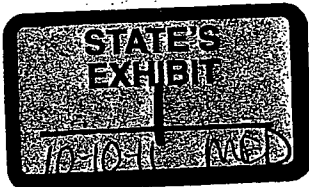
CERTIFIED CORRECT [Signature] DATE 3/4/10 93121 FB

TRIAL OFFICER'S COPY

\$470.00

3-A-100-1181

DOCKET NO. 10-11385



CLERK OF COURT
Pamela A Larson SS
9-19-11 date
This is to certify that this is a true copy

LAST NAME	HUTLEY
FIRST NAME	MARLIN
MIDDLE	JAMELLE
DOB	
VIOLATION CODE	42
OFFENSE CODE	
OFFICER NAME	BINES JS
DATE	1/25/2010
LOCATION	W. WASHINGTON ST
OFFENDER RACE	Black
OFFENDER SEX	Male
OFFICER RACE	White
OFFICER SEX	Male





County of Greenville

"...At Your Service"

DEPARTMENT OF PUBLIC SAFETY

Page 1 of 1

DRUG ANALYSIS REPORT

Department: **Greenville Police Department**
Officer: **Hines, J.**
Subject: **Hutley, Marlin Jamelle**

Case Number: **02-2010-011383**
Report Number: **1**
Incident Date: **01/26/2010**
Received From: **Property & Evidence**
Received Date: **02/24/2010**

This is an official report of the Greenville County Department of Public Safety Crime Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no examinations of evidence submitted in this case have been or will be conducted by any other laboratory or agency.

*James M. Dorriety, Assistant County Administrator
Department of Public Safety*

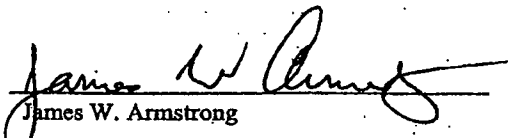
EXAMINATIONS CONDUCTED

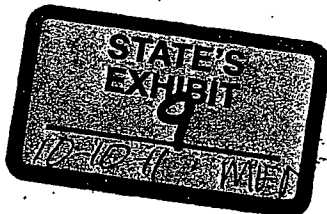
CHEMICAL TEST MICROSCOPIC INFRARED SPECTROSCOPY
 ULTRAVIOLET SPECTROSCOPY GAS CHROMATOGRAPHY MASS SPECTROSCOPY

ITEMS OF EVIDENCE:

- Item JSH1: Bag containing rock substance
Results: Cocaine base found, 3.26 grams C-II
- Item JSH2: Bag containing rock substance
Results: Cocaine base found, 12.10 grams C-II
- Item JSH3: Bag containing rock substance
Results: Cocaine base found, 8.35 grams C-II
- Item JSH4: Bag containing powder substance
Results: Cocaine found, 8.58 grams C-II

I am a Criminalist employed by Greenville County to perform chemical and physical examinations on evidence submitted by law enforcement agencies in criminal cases, and to testify in courts of record in the state of South Carolina on such examinations.

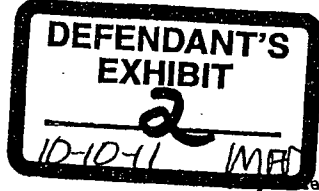

James W. Armstrong 03/04/2010



Scanned by
IPB

11 MAR 2010 10:04

Hines



GREENVILLE POLICE DEPARTMENT
Date: 09/12/11 Time: 19:30

PAGE: 000001
led By: JULIAN, MONIKA

INCIDENT RECALL

Incident	Time	Type	Pri	Dispo	Address Location	Bldg Apt	Callers Name Callers Address Callers Phone	P-unit	Close Date/ Time	Operator
CP10011383	21:53	56TS	3A	5	HAMPTON AVE&MULBERRY ST			CP/E8	10/01/26	CP644
					CPE1	CP	CP			01:30

Date	Time									Operator	
10/01/25	21:53	Primary Event; MAIN Opened: 10/01/25 21:53								16	
10/01/25	21:53	Incident Initiated By: CP/BOSTON, LAKEISHA								BOSTON, LAKEISHA	
10/01/25	21:53	BLK TOYT UNK								16	
10/01/25	21:53	Plate Number	CHANGED		To: 3C-FTK184					BOSTON, LAKEISHA	
10/01/25	21:53	Stat CP/E8	6 -ONSCENE		Loc: HAMPTON AVE&MULBERRY					BOSTON, LAKEISHA	
10/01/25	21:53	Officer 1 Name: HINES, JEFFERY			Officer 2 Name:					BOSTON, LAKEISHA	
10/01/25	21:53	Primary Unit	CHANGED		CP/E8			16		BOSTON, LAKEISHA	
10/01/25	21:53	Units Recommended	CP/D7	CP/C8	CP/A7	CP/B8	CP/H7			BOSTON, LAKEISHA	
10/01/25	21:53	Stat CP/D7	5		Loc: HAMPTON AVE&MULBERRY					BOSTON, LAKEISHA	
10/01/25	21:53	Officer 1 Name: BURDETTE, DOYLE			Officer 3 Name:					BOSTON, LAKEISHA	
10/01/25	21:58	Stat CP/D7	6 -ONSCENE		Loc: HAMPTON AVE&MULBERRY					BOSTON, LAKEISHA	
10/01/25	21:58	Officer 1 Name: BURDETTE, DOYLE			Officer 2 Name:					BOSTON, LAKEISHA	
10/01/25	22:03	Unit CP/E8	Timed Out							UNKNOWN	
10/01/25	22:03	Officer 1 Name: HINES, JEFFERY			Officer 2 Name:					UNKNOWN	
10/01/25	22:08	Unit CP/D7	Timed Out							UNKNOWN	
10/01/25	22:08	Officer 1 Name: BURDETTE, DOYLE			Officer 2 Name:					UNKNOWN	
10/01/25	22:16	Units Recommended	CP/E7	CP/D8	CP/F7	CP/F8	CP/C8			BOSTON, LAKEISHA	
10/01/25	22:17	DUTY NOTIFIED AT 2217								14	
10/01/25	22:25	Stat CP/E8	5		Loc: 1046 DETN					MCKINNEY, MARTHA	
10/01/25	22:25	Officer 1 Name: HINES, JEFFERY			Officer 2 Name:					BOSTON, LAKEISHA	
10/01/25	22:25	Stat CP/E8	6 -ONSCENE		Loc: 1046 DETN					BOSTON, LAKEISHA	
10/01/25	22:25	Officer 1 Name: HINES, JEFFERY			Officer 2 Name:					BOSTON, LAKEISHA	
10/01/25	22:33	Stat CP/D7	8 -AVAILABLE							BOSTON, LAKEISHA	
10/01/25	22:33	Officer 1 Name: BURDETTE, DOYLE			Officer 2 Name:					BOSTON, LAKEISHA	
10/01/25	22:38	Unit CP/E8	Timed Out							BOSTON, LAKEISHA	
10/01/25	22:38	Officer 1 Name: HINES, JEFFERY			Officer 3 Name:					UNKNOWN	
10/01/26	00:05	Units Recommended	CP/E7	CP/D7	CP/D8	CP/F7	CP/F8			NEAS, MIKE	
10/01/26	00:11	Units Recommended	CP/E7	CP/D7	CP/D8	CP/F7	CP/F8			CROLLY, AMANDA	
10/01/26	00:26	Units Recommended	CP/E7	CP/D7	CP/D8	CP/F7	CP/F8			CROLLY, AMANDA	
10/01/26	00:29	Units Recommended	CP/E7	CP/D7	CP/D8	CP/F7	CP/F8			BOSTON, LAKEISHA	
10/01/26	00:36	Units Recommended	CP/E7	CP/D7	CP/D8	CP/C8	CP/A7			BOSTON, LAKEISHA	
10/01/26	00:40	Units Recommended	CP/E7	CP/D7	CP/D8	CP/C8	CP/A7			BOSTON, LAKEISHA	
10/01/26	00:50	Units Recommended	CP/E7	CP/D7	CP/D8	CP/C8	CP/A7			BOSTON, LAKEISHA	
10/01/26	01:30	Unit CP/E8	Status Comment		Added	9SXA	CP/C8			BOSTON, LAKEISHA	
10/01/26	01:30	Officer 1 Name: HINES, JEFFERY			Officer 2 Name:					MILLER, TAMMY	
10/01/26	01:30	Stat CP/E8	8 -AVAILABLE							MILLER, TAMMY	
10/01/26	01:30	Officer 1 Name: HINES, JEFFERY			Officer 2 Name:					MILLER, TAMMY	
10/01/26	01:30	Route Closed: MAIN	7W	9M	9M					MILLER, TAMMY	
10/01/26	01:30	Disposition	CHANGED		7W	MAIN			16	MILLER, TAMMY	
10/01/26	01:30	Disposition	CHANGED		9M					16	MILLER, TAMMY
10/01/26	01:30	Disposition	CHANGED		9M					16	MILLER, TAMMY
10/01/26	01:30	Incident Closed: 10/01/26 01:30								16	
										16	

GREENVILLE POLICE DEPARTMENT
Date: 05/12/11 Time: 19:30

PAGE: 000002
Requested By: JULIAN, MONIKA

INCIDENT RECALL

Incident	Time	Type	Pri	Dispo	Address Location	Bldg Apt	Callers Name Callers Address Callers Phone	P-Unit	Close Date/ Time	Operat
					BEAT	TEAM/Dist	AREA			
10/01/26	07:03	10-29	CODE 4	UNIT 207	LOWE			16		HENDERSON, RYAN
10/04/07	04:25	Disposition		CHANGED	Fx: 7W		5	14		JULIAN, MONIKA
10/04/07	04:25	Disposition		CHANGED			7W	14		JULIAN, MONIKA

Vehicle / Subject Information

10/01/25	21:53	Vehicle:	Role:VS01	Color:	Year:	Make:	Model:			BOSTON, LAKEISHA
10/01/26	21:53	Style:		Plate:FK184	State:SC	Type:				BOSTON, LAKEISHA
10/01/25	21:53	Misc:								BOSTON, LAKEISHA
10/01/25	21:53	Prob. Cause:		Search Typ:		Searched:	Property:			BOSTON, LAKEISHA

TEMPORARY LAW ENFORCEMENT COMMITMENT

DEFENDANT'S EXHIBIT
3
 10-10-11 MED

TO: JAIL ADMINISTRATOR
 GREENVILLE COUNTY DETENTION CENTER

FROM: J.S. Hines
 ARRESTING OFFICER'S NAME (PRINTED)

GPD
 DEPARTMENT/AGENCY

SUBJECT: TEMPORARY COMMITMENT

DATE/TIME: 1 / 25 / 10 @ 2306 HOURS

REQUEST THAT YOU CONFINE THE PERSON NAMED BELOW TEMPORARILY UNTIL SUCH TIME AS MY DEPARTMENT CAN OBTAIN A JUDICIAL COMMITMENT FROM:

(CIRCLE ONE)

COUNTY MAGISTRATE
 CITY RECORDER

Marcia Hutney
 SUBJECT'S FULL NAME (Last, First, Middle)

B M
 RACE/SEX

DATE OF BIRTH

CASE NUMBER(S)	CHARGE(S) TO BE ARRAIGNED ON	TRIAL JUDGE(S)	TICKET/WRNT NUMBER(S)
10-11383	No State DL	Hawsey	9312cfB
6-11383	False Name to Police	Hawsey	93121 FB
	PWID Cocaine		
	PWID 1/2 mde Cocaine		
	Trafficking Crack		
	PWID Crack 1/2 mile		

MAGISTRATE TRIAL DATE/TIME: 1 / 1 @ HOURS

NOTE: ALL CASE NUMBERS, WARRANT NUMBERS AND CHARGES MUST BE LISTED. USE ADDITIONAL FORM IF NECESSARY.

ARRESTING OFFICER'S SIGNATURE: [Signature]

STAR NUMBER/UNIT NUMBER: 603 Unit 203

255

Scanned By BLC

WITNESSES

Jeffery Scott Hines

Greenville Police Department

1/26/2010

ARREST WARRANT NUMBER

M381909

ACTION OF GRAND JURY

TRUE BILL

Anna Shiverette
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Per Ct Trial

Foreperson of Petit Jury

10 OCT 11 Date:

DOCKET NO. 2010-GS-23-
KHM

002817

DAK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December TERM 2010

10-10-11

THE STATE

vs.

MARLIN JAMELLE HUTLEY

Indictment for

✓
0452

TRAFFICKING COCAINE BASE (CRACK
COCAINE)

VIOLATION § 44-53-0375

OS
ENTERED
ACCT

RECEIVED

APR 20 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING COCAINE BASE (CRACK COCAINE)

At a Court of General Sessions, convened on DEC 14 2010 the Grand Jurors of Greenville
County present upon their oath:

That MARLIN JAMELLE HUTLEY did in Greenville County, on or about the 25th day of January, 2010,
knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial
assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was
knowingly in actual or constructive possession of more than 10 grams of Cocaine Base (Crack Cocaine). This is
in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

WITNESSES

Jeffery Scott Hines

Greenville Police Department

1/26/2010

ARREST WARRANT NUMBER

M381911

ACTION OF GRAND JURY

TRUE BILL

Ann Shaverette
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty
Benjamin T. Hines

Foreperson of Petit Jury

Date:

10 OCT 11

DOCKET NO. 2010-GS-23-
KHM

002819

DAK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December TERM 2010

10-10-11

THE STATE

vs.

MARLIN JAMELLE HUTLEY

Indictment for

0185

POSSESSION OF COCAINE WITH INTENT TO
DISTRIBUTE

VIOLATION § 44-53-0370

[Signature]
ENTERED
ACCT

RECEIVED

APR 20 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

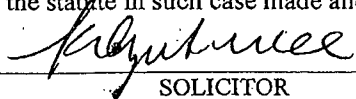
INDICTMENT FOR
POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE

At a Court of General Sessions, convened on DEC 14 2010 the Grand Jurors of Greenville

County present upon their oath:

That MARLIN JAMELLE HUTLEY did in Greenville County, on or about the 25th day of January, 2010, possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Cocaine, a controlled substance, such possession not having been authorized by law. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
Marlin Jamelle Hutley)
 AKA: _____)
 Race: BLACK Sex: M Age: 38)
 DOB: _____ SS#: 6)
 Address: _____)
 City, State, Zip: _____)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#: 2010GS2302817
 A/W#: M381909
 Date of Offense: 1/25/2010
 S.C. Code § : 44-53-0375(C)(2)
 CDR Code #: 0349

SENTENCE SHEET

*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 in crack - 10 g or more, but less than 28 g - 3rd or sub.

in violation of § 44-53-0375(C)(1) of the S.C. Code of Laws, bearing CDR Code # 0452
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Kathryn Harper 72567
 McCall, Kathryn Harper SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. SINCE MAR 18, 2011
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: _____ \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)		\$
TOTAL		\$

Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____
 Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickensimer
 Court Reporter: M. Di Sialama
 SCCA/217 (03/2011)

Presiding Judge _____
 Judge Code: 2158
 Sentence Date: 10 OCT 2011

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
 Marlin Jamelle Hutley)
 AKA:)
 Race: BLACK Sex: M Age: 38)
 DOB: / / SS#:)
 Address:)
 City, State, Zip:)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

1288224

INDICTMENT/CASE#: 2010GS2302819
 A/W#: M381911
 Date of Offense: 1/25/2010
 S.C. Code §: 44-53-0370(B)(1)
 CDR Code #: 0185

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: PWID Cocaine - 3rd or sub. offense

CONVICTED OF or PLEADS

in violation of § 44-53-0370(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0185
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST McCall, Kathryn Harper SC Bar# 72567 Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. MAY 18, 2011
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ plus 20% fee: \$
 Payment Terms:
 Set by SCDPPPS

PTUP days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other:

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)		\$
TOTAL		\$

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.


Clerk of Court/ Deputy Clerk Paul B. Wickens
 Court Reporter: M. Distadems
 SCCA/217 (03/2011)

Presiding Judge [Signature]
 Judge Code: 2518
 Sentence Date: 10 OCT 2011

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

This 26th day of November, 2012


Dayne C. Phillips
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED
NOV 27 2012
SC Court of Appeals