

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM FLORENCE COUNTY

Thomas A. Russo, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JIMMY WILSON, JR.,

APPELLANT

APPELLATE CASE NO. 2011-198488

RECORD ON APPEAL

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

STATE OF SOUTH CAROLINA)
STATE,)

TRANSCRIPT OF RECORD
09-GS-21-336

v.)

JIMMY L. WILSON, JR.,)
DEFENDANT.)

March 10, 2010
Florence, South Carolina

BEFORE :

THE HONORABLE THOMAS A. RUSSO, JUDGE;
AND JURY

APPEARANCES:

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Assistant Solicitor

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Circuit Court Reporter

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(WHEREUPON, counsel approached the Bench for an on-the-record discussion.)

THE COURT: Yes, ma'am.

MS. WINGARD: Judge, at this time I understand the State will be calling the case of Jimmy Wilson, Jr. Mr. Wilson has not appeared today, and I would ask the matter be continued and give us an opportunity to try to locate him. Moreover, Your Honor, it is now 3:25, and when we talked earlier I indicated that I needed to be in downtown Columbia by 5:15 and I just don't see how I'm gonna be able to do it. And I told the solicitor when he decided to do the bond hearing first that I needed to get out of here and that you had promised me I'd be able to leave in time to get to Columbia by 5:15 and he chose to go forward with the bond hearings first.

THE COURT: If we get started on this thing I'll have you out of here before 4.

MS. WINGARD: Okay, if you think we can do it? It is critical I make this meeting.

THE COURT: I know. All right, well, at this time I'm gonna deny the motion to continue and we'll get this done.

MS. PARR: Issue a bench warrant?

THE COURT: Motion for bench warrant is granted seeing that he's not here. Is Frank going to work on that?

MS. WINGARD: Yes, sir, I've given Frank the information. Could we reserve all other motions and not swear the jury until tomorrow so I —

THE COURT: Absolutely we'll do that.

(End of on-the-record Bench conference.)

THE COURT: Can I get the indictment please. The State has called the case of the South Carolina versus Jimmy Wilson, Jr. Mr. Wilson is charged under indictment number 2009-GS-21-336. And as I told you on Monday, and of course this is true with all criminal cases, the indictment is simply a charging document. It is not evidence in any way and is not to be considered by you as evidence of guilt. It is simply — and it is certainly not evidence of the allegations that it contains. It's just simply allegations that the State has made. To this indictment Mr. Wilson has pled not guilty and that places the burden of proof on the State to prove his guilt beyond a reasonable doubt.

Under this indictment Mr. Wilson is charged with possession of cocaine base or what is commonly referred to as crack cocaine. And the indictment

alleges that Jimmy Wilson, Jr., did in Florence County on or about September the 16th of 2008 violate Section 44-53-375(a) of the Code of Laws of South Carolina 1976 as amended and that he did knowingly and intentionally possess 0.45 grams of cocaine base or what is commonly referred to as crack cocaine, which is a controlled substance, such possession not having been authorized by law and that is against the peace and dignity of the State of South Carolina and contrary to the statutes and such case made and provided. That is the allegation that's against Mr. Wilson. Is there any member of the jury panel who knows anything about this case, if so, please stand.

(There was no response.)

THE COURT: Thank you. There are none.

Ms. Parr, if you would introduce yourself.

MS. PARR: My name is Patricia Singleton Parr, and I'm one of the assistant solicitors from the Twelfth Judicial Circuit.

THE COURT: All right. Is there any member of the jury panel related by blood, connected by marriage, or who has any close business or personal relationship or who has been represented by Ms. Parr in the past, if so, please stand.

regarding jury selection from the State?

MS. PARR: No, Your Honor.

THE COURT: Any motions regarding jury selection from the Defense?

MS. WINGARD: Nothing, Your Honor.

THE COURT: All right. Can I get y'all to step up here real quick.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

THE COURT: Just so y'all know, Ms. Wingard has to be at an appointment. She's heading out so that's your first clue that we're not going to start this trial today.

(Ms. Wingard exits courtroom at 3:50 p.m.)

THE COURT: We are gonna begin this case first thing in the morning. I would ask that you — I got to take up another matter. If you would get here in time where you can find a parking space because you know that's not easy. It will be easier because all these people won't be here. But get here early enough to be in your jury room at 9:30, okay. Please, if you would, wear that little orange thing when you're here in the courthouse 'cause that lets people know you're a juror on a case.

I send you home with this request, and that

is, that you have no conversation with anybody about this case and I realize you don't know much about it. But when you go home your loved ones are gonna want to know did you get picked on a jury. You can tell them yes, you were, you have been picked on a jury, you got to be back tomorrow. They're gonna want to know what kind of case it is, who is the defendant. And what you need to tell them if they ask any other questions is, all I can tell you is I'm on a case, I can't tell you anything about it. And the reason is, is something as innocent as just saying I don't know, it's a drug case or it's a crack cocaine case, something as innocent as that may elicit a response from that person that could somehow affect your ability to be fair and impartial. And it's very important that when you come back here at 9:30 in the morning you don't know anymore about this case than you know right now, all right? So please ask your family member and loved ones to be patient. When the trial is over you can let them know that you'll tell them everything they want to know. But until that time you're not allowed to talk about it, all right. So I'm gonna excuse y'all and ask that you be in the jury room tomorrow morning at 9:30, okay.

(WHEREUPON, the jury was removed from the courtroom and court resumed at 9:45 p.m. on March 11, 2011.)

(WHEREUPON, State Exhibit Nos. 1 and 2 were marked for identification only.)

THE COURT: I apologize, Ms. Parr, it didn't dawn on me that rather than sit around and waste this time we could be taking up these pretrial motions so remind me. So let's go ahead and deal with anything that we need to deal with pretrial while we wait. And Candy or Ed, would y'all so we'll go ahead proceed with these matters because they are pretrial matters anyway so.

MS. WINGARD: May it please the Court.

THE COURT: Yes, ma'am.

MS. WINGARD: Judge, first I would like to renew my motion to have this matter continued and I wanted to put some additional information on the record; yet at lunch time Ms. Parr and I sought your advice on this matter and saw you back in chambers. At that time I asked to have the matter continued. We were not able to locate the defendant. He was not in court. And I, of course, would not object to a bench warrant being issued for this man. There was a bench warrant issued for him later. But at

the time that we were in chambers I was told that this was the only case left for the Solicitor's Office to try; and therefore, I had to draw this jury and we had to proceed to a trial in absence. There was no mention that there was a witness that needed to be heard who was going to be out of pocket or that there would be some issue with a witness in this case in the future. So I did want to put that on the record although we put on the record in a side bar yesterday prior to the jury being drawn, but I do want to expand on that and make sure it was clear that there was no exigent reason that the Solicitor's Office had to call this case for trial yesterday and that was the reason that we were given for their wanting to proceed with the case.

THE COURT: Well, Ms. Parr, I'll be happy to hear from you on that issue.

MS. PARR: Your Honor, at the time I talked to you all on yesterday in chambers in regards to this matter I also mentioned that this matter had been on the trial docket for months now. And in January, no, in December I told Ms. Wingard that the plea offer was off the table if he did not plead and then that that matter would be tried in the next coming term. We did not get to it in

January, and so I sent out all the notices Mr. Wilson was on the trial docket. It wasn't anything that just happened this week or yesterday or the day before yesterday. We had notified all of our witnesses and cleared everything with SLED to get them here for this particular case. I told her on Monday that we were trying this case this week. It's not something that just came up.

In terms of what other people had, I told you, I didn't really know that what anybody else had, that I knew what I had. And a lot of my cases pled already this week that was on the trial docket. I am ready to proceed with this case.

Now Mr. Wilson chose not to come; that's his business. But the State gave him ample time in order to be here. I told him personally with Ms. Wingard in December that this case was coming to trial. He called on Monday and said that he was in — or somebody called — and said he was in the emergency room. Okay, to date we still have not had an excuse for Monday. On Tuesday he did not show. He wasn't admitted in the hospital. Ms. Wingard said she talked to Kiki (ph) or Nickie or whoever and said they would have him come up. He still didn't come up.

THE COURT: And he wasn't here yesterday.

MS. PARR: And he did not come yesterday as well.

THE COURT: Ms. Wingard, has Frank made any in roads in locating him or?

MS. WINGARD: No, sir, he has not, Judge. I do want to say —

MS. PARR: And can I put one other thing? And also, I talked with my officers, and they wanted to go ahead and to proceed with this case. I talked to them yesterday before we came up here and draw the jury, and drew the jury.

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

MS. WINGARD: Judge, I will say that it was not December, but it was rather January because I have very extensive note about what the plea bargain was and what the offer was. And it was in January, not December —

THE COURT: All right.

MS. WINGARD: —to clarify that. I'm not saying that this was not on the list to come to court. What I'm saying is that it seems to me to be not a very efficient use of court time to do this trial in absence, and I just wanted to make it clear that there was no reason that this particular case

had to be tried this week in terms of witnesses not being available in the future.

THE COURT: Well, the difficulty we run into and this seems to be a textbook case of that, is that — and I do note that this is not a case that was called at the last minute; it's been on the trial roster. It was supposed to have been reached before now, and it didn't get reached but it was still remaining on the trial roster. Notice was given to the defendant. We can't continue every case that a defendant decides they're not gonna show up. And the only reason that I've heard — y'all can correct me if I'm wrong. The only reason I've heard that this case shouldn't go forward is because Mr. Wilson is not here. If Mr. Wilson was here we probably wouldn't even be entertaining this conversation. So the only reason that I see that the continuance being requested is solely because Mr. Wilson has chosen to violate the conditions of his bond and not be in court when he's summoned to be here. So I'm gonna respectfully deny the motion to continue based on those issues.

MS. PARR: Your Honor, for the record I would note this is a 2000— this incident happened in 2008.

THE COURT: I've got no problem -- again, the State has done what they're to do, and if Mr. Wilson was here we wouldn't even be having this. And correct me if I'm wrong, Ms. Wingard, if Mr. Wilson was here you'd not be making a motion to continue. The basis of your motion is he's not here.

MS. WINGARD: Yes, sir, that is --

THE COURT: Okay. And that --

MS. WINGARD: --correct.

THE COURT: And I understand it's a valid motion to make, but I don't find it to be sufficient to -- in other words, Mr. Wilson has created this issue by his conduct of not being here when he's supposed to be here, and we can't hold up the criminal justice system for every defendant that doesn't show up for trial. He's had ample notice. He is, for whatever reason, now it may -- it may come to light down the road that he was deathly ill and had no way of getting here, but none of that is before the Court. As a matter of fact, the last communication with someone, either member of family or close to him, indicated they'd have him up here so, anyway, I'm gonna deny the motion to continue.

MS. WINGARD: Judge, also I need to renew

Rule 5 and Brady motions. Let me tell you that for the record, I have only received a four page incident report. The last two pages contain virtually no information, as well as six pages of chain of custody document and a SLED report which I received yesterday.

I would ask, Ms. Parr, if there are any other documents, any other incident reports that I should have —

THE COURT: All right, Ms. Parr, anything further?

MS. WINGARD: —in the file?

MS. PARR: Your Honor, not that I know of. But Ms. Wingard, I'll be happy — I'll be happy for her to look in my file to see if there's something in it.

THE COURT: You got it right there. We trust you.

MS. WINGARD: I'll be glad to look at it if she wants me to.

MS. PARR: Here you go.

THE COURT: Let's go ahead and make that exchange or whatever to make sure so that everything that the Defense is entitled to have they have.

(File is tendered to Ms. Wingard and attorneys

confer.)

THE COURT: You've been through that then?

MS. WINGARD: Yes, sir, and they are making some copies. While they're making copies at this time, Judge, I would make a motion to sequester the witnesses. This case is purely a circumstantial case. There is no direct evidence, at least no direct evidence that appears from any report that I have seen that has drugs on Mr. Wilson. So I believe the consistency of the testimony is going to be crucial in the State being able to establish a case beyond a reasonable doubt, and so I would ask that the witnesses be sequestered.

THE COURT: All right. Ms. Parr, any objection to that?

MS. PARR: Your Honor, in this particular case as I say in all of them, the witnesses, you know, had different perspectives as to what each one of them did, and I don't see where that is an issue here. We would ask that the motion for sequestration be denied.

THE COURT: Well, I think it's a pretty routine motion and especially in a situation where the evidence is circumstantial in nature. I'm gonna grant the motion and ask that the witnesses be

sequestered other than you're allowed to have obviously your leading investigator to be with you. Let me ask you, though, to do this if I can. Ms. Parr, are you going to be flying completely solo on this? In other words, Candy, are you gonna be in here? Candy, let me tell you why I ask. It's cumbersome when witnesses are sequestered that we don't go get the other witness until you call them because then it takes a couple of minutes to go get him and bring him in and all this stuff. And if we could have some — as a matter of fact, I have a way to instant message Christine if there's -- Ms. Parr, if you could give me, if you have an order that you intend to call your witnesses I would instant message her and let her know that we need Mr. and Ms. So and So next. Well, you know what, and here I am thinking that you're gonna send them all the way down to your office. They can be sequestered back here with the door closed and then they'd be right here so we'll do that.

MS. PARR: Okay. So we won't make it that technical then.

MS. WINGARD: Judge, I know that these are all professional, but I would ask you to remind them they can't discuss their testimony.

THE COURT: Guys, just to remind you, you're not allowed to talk about your testimony. Just wait till you're called, okay?

All right, anything else we need to take up before we bring the jury out?

MS. PARR: The State doesn't have anything else.

MS. WINGARD: I just want to make sure there's — this is the only exhibit now?

MS. PARR: Other than the drugs that have been marked for identification.

(Ms. Wingard reviews exhibits at the Solicitor's desk.)

THE COURT: All right. State ready to proceed?

MS. PARR: Yes, Your Honor, State's ready.

THE COURT: Defense ready, in light of your motion?

MS. WINGARD: Yes, sir.

THE COURT: Ms. Joe, if you would ask the jury to join us.

(WHEREUPON, the jury was returned to the courtroom at approximately 10:18 a.m., and the following proceedings commenced in open court.)

THE COURT: Good morning, ladies and gentlemen. I hope everyone had a good evening and ready to go to work now. Ladies and gentlemen, as I told you as you're aware from yesterday from jury selection, we're about to try this case, the State versus Jimmy Wilson, Jr. Now before I begin, before we begin the trial I want to let you know that more than likely this trial is gonna be very different from trials that you've seen or experienced before. Most people do not have the opportunity to sit in on an actual jury trial such as you're doing here today. Most people's exposure to jury trials are what they've watched on television or in the movies or what they have read in books. And of course, all of those trials are full of high drama and rivetting circumstances. There's always something keeps you on the edge of your seat. And while any one of those things may occur during the course of this trial, what I need you to understand and know is that this trial is not for your entertainment. It is a fundamental part of our democracy. It is a search for the truth in an effort to make sure that justice is done between the parties that are before the court. In searching for the truth oftentimes can be slow, deliberate, sometimes repetitive. In

attorneys as they ask their questions and they go through the trial, and listen to the Court. Please try not to let your thoughts wander or your mind wander but stay focused so that at the close of this case you can take the testimony, take the exhibits, take everything you've gathered evidentiary back into the jury room and then deliberate and reach a verdict that speaks the truth.

Now before I recognize Ms. Parr for her opening statement, let me ask first, Ms. Parr, are there any objections or exceptions to the Court's opening remarks to the jury?

MS. PARR: No, Your Honor.

THE COURT: Anything, Ms. Wingard, from the Defense?

MS. WINGARD: None.

THE COURT: Thank you, ma'am. All right, ladies and gentlemen, if you would please give the attorneys your undivided attention as they address you with opening statements.

MS. PARR: May it please the Court, Ms. Wingard.

MS. WINGARD: Ms. Parr.

MS. PARR: Good morning, ladies and gentlemen of the jury, we're here for a case trial

against Jimmy Wilson, Jr. He has been charged with possession of cocaine base, also known as crack cocaine. Today we will present evidence in order to prove this charge, and at the close of this case the State will come before you again and ask that you find the defendant guilty as charged. We believe the evidence will show that on September 16th, 2008, about 4 p.m. in the afternoon that the defendant was riding in a vehicle that the officers were suspicious of. We also believe the evidence will show that the officers from the Florence Police Department observed that vehicle on McQueen Street. And when the vehicle turned on to Dixie Street the officers turned right behind that vehicle. We also believe the evidence will show that the defendant in an effort to get away from the officers — the driver of the vehicle accelerated and disregarded several stop signs. We also believe the evidence will show that the officers were behind him continuously. We also believe the evidence will show that the defendant and the other person in the vehicle jumped out of the car also, or bailed out of the car is what's commonly known, and that the officers ran behind the defendant in an effort to stop them after the officers put their blue lights

and siren on. We also believe the evidence will show that the defendant was eventually caught; and right where the defendant jumped the fence, that the officers found a radio that the defendant had been carrying right on top of the grass along with a container believed to contain crack cocaine.

Now you will hear more details about the case, but we would ask that you listen to all the evidence that you hear. And once you've had an opportunity we ask that you find the defendant guilty. Now the judge told you that you're the finders of fact. And as you're listening to the testimony we would ask that you listen to what the judge, or take into account what the judge has told you about the believability of the witnesses and the witnesses — I'm sorry, the believability of the witnesses and also the manner in which the witnesses had an opportunity to see the defendant. Now once you've done that, as I said before, I'm gonna come back to you and ask that you find the defendant Jimmy Wilson, Jr., guilty of possession of cocaine base also known as crack. Thank you.

THE COURT: Thank you, Ms. Parr.

Ms. Wingard.

MS. WINGARD: May it please the Court.

Ms. Parr. Ladies and gentlemen of the jury, my name is Carrington Wingard. We of course met yesterday. I'm an attorney here in Florence. I have a little law office a couple of blocks from here, but then I'm also one of the public defenders. And in that capacity I'm representing Jimmy Wilson, Jr. As we are in court today Mr. Wilson as all Americans, in fact, all people whether they're Americans or not, who are charged in a criminal matter is presumed to be innocent and that presumption of innocence remains with Mr. Wilson unless and until the State proves him guilty to your satisfaction beyond a reasonable doubt. As I understand the evidence that the State intends to prove, no one, no law enforcement officer ever saw any drugs in Mr. Wilson's possession. They never saw any drugs on him. They didn't get any drugs off of him. It is purely a circumstantial case. What the State is trying to get you to believe is that they found some drugs in an area where Mr. Wilson had been, and therefore, Mr. Wilson is guilty of possessing these drugs. There is no direct evidence of Mr. Wilson's possessing drugs, of Mr. Wilson's guilt. So I would ask you please to pay close attention to the evidence as I know you will, keeping in mind that

every citizen, every person who comes into this court charged in a criminal matter is presumed to be innocent and he remains innocent until the State presents credible evidence beyond a reasonable doubt that he is guilty for being here.

I thank you for your time and attention. We would all rather be other places, but this is how our system works and our system cannot function without you citizens being on the jury. Thank you.

THE COURT: Thank you, Ms. Wingard.

Ms. Parr, you may call your first witness.

MS. PARR: Your Honor, at this time we would call John Calhoun to the stand.

THE CLERK OF COURT: Please place your left hand on the Bible and raise your right hand.
WHEREUPON,

JOHN CALHOUN,

having been duly sworn by the Clerk of Court, testified as follows:

THE CLERK OF COURT: Please be seated, then state your name for the record.

THE WITNESS: I'm John Calhoun.

D I R E C T E X A M I N A T I O N

BY MS. PARR:

Q And Officer Calhoun or Sergeant Calhoun, where

are you employed?

A I work for the City of Florence Police Department.

Q And how long have you been with the City of Florence Police Department?

A Just shy of 22 years.

Q Okay. And how long have you been in law enforcement?

A Just shy of 22 years.

Q Would you please tell us in what capacity you work for the City of Florence Police Department?

A I'm currently the supervisor of the narcotics unit.

Q How long have you been in that capacity?

A Since 2000. About ten years.

Q Okay, and what are your duties?

A Primarily is the investigation of prosecution of drug crimes. We also do weapons charges and gang investigations.

Q Now have you had any special training for your job?

A Yes, ma'am. All law enforcement officers of course go through the basic Criminal Justice Academy, and then since that time I've also received a special training in narcotics enforcement,

narcotics investigations, narcotics supervisory classes, and so forth.

Q Okay. And is one of your duties to assist in investigation of drug activities?

A Yes, ma'am.

Q Now are you familiar with the so-called Miranda warnings of a suspect's right?

A Yes, ma'am.

Q And on occasion have you had an opportunity to give those warnings?

A Yes, ma'am.

Q Now were you working on September 16th, 2008?

A Yes, ma'am.

Q Okay. And where were you working?

A In Florence in the city limits.

Q And do you recall what time you came on that particular day?

A No, ma'am, I don't.

Q Did you have an occasion to become involved in a matter involving the defendant Jimmy Lee Wilson, Jr.?

A Yes, ma'am.

Q Would you please tell us how that came about?

A Typically one of the things we do is patrol around in the higher crime areas of Florence in

unmarked cars. Unfortunately our budget doesn't allow us to have numerous cars so we usually drive the same car for a good while, and it becomes known in the neighborhoods that that's a police vehicle even though it's unmarked car. We were driving on McQueen Street, which is really not too far from here, several blocks from here. And we were traveling north on McQueen, and we observed a vehicle traveling towards us which was a orange and blue older model car like a Crown Victoria. And it was kind of decorated as a Florida Gators car. It had a front license plate with Gators on it and numerous stickers and so forth on the vehicle.

That vehicle is a vehicle that we had received information on that may be involved with drug sales so when we saw it coming towards us we were kind of looking at it. And it turned. As it was approaching us it turned west on to Dixie Street and so we were coming up to that same intersection and we turned west behind the vehicle. As we proceeded to the next intersection which would have been Sanborn Street, it was a stop sign and the vehicle stopped. And when it accelerated — a lot of times I guess in law enforcement we see this quite often but, you know, when you're behind a car

and it really accelerates the back end kind of gives a little bit. And usually, especially in older model cars, you'll see a lot of exhaust or smoke so he kind of took off at a little bit higher rate of speed than normal traffic would. And at that point it came to the next stop sign on the next block which was Chase Street and there was a vehicle already stopped at the stop sign. The Florida Gator car, the suspect's car, just zoomed around it, you know, full speed and went through the intersection. At that point you know, it was obvious that it was either eluding us or whatever reason driving recklessly.

MS. WINGARD: Objection, Your Honor, that would be speculative.

THE COURT: All right, sustained.

BY MS. PARR:

Q Would you rephrase that.

A At any rate, he disregarded the stop sign and ran through the stop sign in an extremely reckless manner at full speed; and so of course, at that point we activated our blue lights and began pursuit of the vehicle.

Q And who was driving? Who was driving your car?

A The police car? It was me.

Q Okay. Go on, I'm sorry.

A The vehicle continued west on Dixie Street for several blocks and then made a right turn on a street called Cumberland Street. From where he turned right Cumberland is only two blocks long, and then Cumberland comes to a sharp I guess you would call it a 90-degree turn. Kind of dead ends and 90-degree turn is right there. And in that 90-degree point there's a house on the right which would be the last house on Cumberland, and then as it turns it becomes Patterson Street and then there's a house on the right there. But then that V where the actual 90-degree turn is vacant. It's a real low area. I guess they can't build there whatever because it's always kind of wet. The vehicle ran up into that vacant area and then the occupants jumped and ran from the vehicle.

Q Okay. And who was the occupants of that vehicle?

A The driver obviously is on the driver's side. He jumped and kind of ran towards the left. And then the occupant was just in the front passenger seat. He jumped out and was on the right side of the car seat. He kind of ran off towards the right direction. I'm the older one of our group and so, and the supervisor, so I stayed with the vehicles

and the other officers pursued the two subjects on foot so I stayed and secured the vehicles.

Q Okay. And did you see the defendant on that day?

A Yes, I did. We saw him jump from the right-hand side of the car and take off running.

Q Okay. And he was the passenger?

A Yes, ma'am.

Q Okay. And when — tell us what, if anything, you saw when he jumped out of the vehicle?

A He had an object in his hand appeared to be a radio and which we kind of thought was odd, but you know, he took off running. Like I said, I stayed and secured the car.

Q Okay. I'm gonna show you what has been marked for identification as State's Exhibit Number 2.

MS. WINGARD: I have no objection.

THE COURT: All right, without objection.

MS. PARR: Your Honor, no objection, then the State would move this into evidence.

THE COURT: All right, that's State's Exhibit Number what? State's Number 2.

MS. PARR: It's Number 2, Your Honor.

THE COURT: Right, without objection.

(WHEREUPON, State Exhibit No. 2 was admitted into evidence.)

BY MS. PARR:

Q Sergeant Calhoun, if you could come down and outline.

A I'm going —

MS. PARR: Ms. Parr, if you would, I'm gonna ask that the sergeant stand on that end and face Ms. Ray so that she can hear everything he says.

BY MS. PARR:

Q And if you would mark the route you took.

A Give me one minute. This is McQueen Street right here.

Q Okay. And you can actually draw on it.

A Okay. All right, the police car, I'm gonna just use a P for police if that's all right. We were traveling this direction. And the suspect's car, use an S for that, was traveling this direction. As we were approaching he made this — this would be west on Dixon. He made this turn. This would be the first stop sign, put a little red dot there that he came to, and that's when we saw him accelerate, you know, through the stop sign. He came to a stop but he got on, basically, in layman's terms so to speak. This next street is Chase Street. And this is where the vehicle was parked, or not parked but

stopped at the stop sign. As he approached the vehicle he just went around it and went straight through.

Q Can I interrupt you just one moment.

A Yes, ma'am.

Q I'm not sure the jurors over there are able to see. They cannot?

A All right. This is McQueen Street. The building we're in is kind of maybe back down about right over here a couple of blocks away. And we were traveling this direction. The suspect was traveling in this direction. And this is Dixie Street right here.

This is where he turned, and this first stop sign he stopped and this is where he really accelerated, came through and he just, you know, complete disregard for safety at this particular stop sign.

Passed the vehicle on the left and at full speed just rode through the intersection. We continued

down Dixie Street, and there's several stop signs along here I think like every other, not all the streets but there's one here and there's one here.

And then as he came down this is — this will be Cumberland Street right here. This would be where we turned. And he came through this one stop sign here. All right, and this is the sharp curve I was

telling you about earlier. There's a house, I guess right here, and then a house right here. This area is real low. And this other street right back here is Ingram Street. If any of you are familiar with Florence this is where North West Community Park is. They're building a new tennis complex a little bit further down this street. But these two areas, they're not connected by road. This area right here is just really, really low and I'm just guessing that's why they don't build there. But anyway, he came in here and just kind of parked right here, and that's where they jumped and ran basically in that direction.

Q And where did your vehicle stop?

A We stopped right behind the, I mean, we came up behind them and stopped.

Q And then so that's where you stopped there?

A Yes, ma'am. I stayed and secured the vehicle that they ran from, of course the defendant police car, and I just stayed with the vehicles.

Q Okay, all right. And if you would darken with your pen the direction again from the start?

A From the start?

Q Yeah.

A Okay.

Q So the jurors would be able to see it.

A We were -- we were traveling this would be north and on McQueen Street and the vehicle was traveling south, turned west on Dixie Street. And I think there's a stop sign right here too. All these where the red dots are stop signs. They just blew through those. They never slowed down. Once they -- once they went through this first stop sign when we saw the acceleration, the back-end drop, they never slowed down until they came to this curve or this turn where they turned at.

Q All right. Do you recall the weather condition?

A It had recently rained. I don't think it was raining at the time, but it had recently rained.

Q Okay, and what -- how do you know it recently rained?

A It had been raining like earlier. Everything was wet.

Q Okay. And then when was -- when did you see the defendant next?

A After he jumped and ran from the vehicle. This would be the passenger, the defendant. He was captured a short time later by the other officers.

Q Okay. And was he brought back to your location?

A Yes, ma'am.

Q All right. And did you identify who that was at that time, or was he identified at that time?

A Yes, ma'am, the defendant Jimmy Wilson.

Q Okay. Now you indicated that when he ran, got out the car, ran out the car, he had an object in his hands?

A The — it was later found to be the radio from the car.

Q Okay. And did you see that?

A Yes, ma'am.

Q All right. And now was that obtained, subsequently obtained after the defendant was —

A I mean, it was obtained by us but at the time it was — I mean, it belonged to the car and so, you know, we just put it back in the seat of the car and when they came and towed the car it was sent with the car.

Q And do you recall who that car was registered to?

A I can't recall off the top of my head.

Q Okay. But was it the defendant or the occupant?

A It was not the defendant.

Q Okay.

MS. PARR: Beg the Court's indulgence.

BY MS. PARR:

Q Now are you familiar with that section of Ingram

Street?

A Yes, ma'am.

Q Okay, and would you describe that area?

A It's where Ingram Street dead-ends. A lot of smaller houses, they used to call them, I guess, the old shotgun houses, just kind of real small, kind of I guess you go in the front you kind of see straight through to the other end. It's at the dead-end. It's near north west park. It's relatively quiet because it's -- they call it the bottom. The area is called the bottom. But this particular street is fairly quiet there. There's really no thru-traffic because it doesn't lead anywhere, just kind of loops back around and comes back out, so very little vehicle traffic at all.

Q Okay. And was there any other vehicle traffic that particular afternoon?

A No, it was fairly light, you know, like, it was a pretty dangerous pursuit. There wasn't a lot of cars on the road. We probably would have called it off if there had been a lot of cars.

Q Now do you respond to a lot of calls in that particular area?

A Not in that particular block of Ingram Street, no, ma'am.

Q Okay. And so you do respond to calls on Ingram Street; is that correct?

A Ingram Street is kind of a -- I don't know, it's as far as not a lot of houses along Ingram Street except that one block because the block prior to that is where the park is so there's not a lot of houses. But that one particular block does have a lot of houses. But as a general rule, no, ma'am, we don't respond very often, if at all, to that one thousand block.

Q Okay. And now do you identify areas as a high drug traffic area?

A Yes, ma'am. In Florence there's several, you know, areas where there's a lot of foot traffic, a lot of people that hang out maybe at stores or near apartment complexes where there's just a higher amount of foot traffic. And people that sell drugs, especially street level dealers, who would sell drugs in that area and try to blend in with all the foot traffic. You know, there's several areas in Florence that we classify as a high drug area.

Q Okay. And was that Ingram Street section where you were considered one?

A No, ma'am. Like I said, there's very little foot traffic because it just doesn't lead anywhere and

very little or minimal vehicle traffic.

Q Now the people that live in that area, do you know whether or not they're transient or have been there a long time?

A From my knowledge that it's always appeared they've been there for a pretty good while. It's not a real high -- I don't guess they move a lot. I hadn't seen, I hadn't noticed it anyway.

Q All right. Would you please answer any questions Ms. Wingard may have for you.

A Yes, ma'am.

C R O S S - E X A M I N A T I O N

BY MS. WINGARD:

Q Sergeant Calhoun, who was in the car with you on this afternoon?

A It was myself. At the time it was Corporal Drulis. He's since been promoted so it would be Sergeant Drulis, Officer Nida, and Officer Spears.

Q So there were four of you in one car?

A Yes, ma'am.

Q And tell me now why you were in this area.

A Well, we initially were on McQueen Street when this was initiated. McQueen Street is located near Sanborn and Chase Street areas, you know, kind of a little bit higher drug trafficking area or drug area

so we were just kind of riding through the area.

Q Okay. Well, you talked about where you ended up as not being a high drug area. Come take this and show me where you think it switches from a high drug area to not very high drug area. Come down and show us. Now you were patrolling up here. You knew this as a high drug area, right?

A Well, obviously if you're patrolling higher drug trafficking areas or drug areas you'd have to get from one area to the other so we don't necessarily or always in a high area. We have to drive from one place to another. So one of the areas near where we were at would be Chase Street, and this is Marion Street. This area here has generally got a lot of drug activity. And then you got, let's see, trying get my bearing straight. Roosevelt Street, this area here, generally got a lot going on. This area, this is North West Park right here. And this area where this road dead-ends right there has got a lot going on. Let's see -- excuse me one minute. This is West Marion Street area, this area down here. So these are just some of the areas that we go to. Obviously we'd have to just, you know, we ride around. I mean, we patrol. We ride around and look for stuff.

Q So there are pockets of high drug areas all over this portion of Florence that is shown on this map that's been introduced?

A Yes, ma'am.

Q Thank you. You can return to your seat.

A Okay.

Q Now let's talk a little bit about who you say was Mr. Wilson getting out of the passenger side of the car; is that correct?

A Yes, ma'am.

Q So he was not driving the car?

A No, ma'am.

Q He was not the owner of the car?

A No, ma'am.

Q He was merely a passenger in the car?

A Yes, ma'am.

Q So all of this running of stop signs and reckless driving as you characterized it, that was not Mr. Wilson clearly?

A Well he was in the vehicle.

Q But he wasn't driving?

A He wasn't driving.

Q Whoever was driving the vehicle was doing all that?

A Yes, ma'am.

Q Okay. And when he got out you thought that he had something that he was carrying?

A It was the radio from the vehicle.

Q Okay. When you first saw it what did it appear to be to you?

A It was like a gray metal box that looked like a radio from a vehicle.

Q How large? Can you give me a description?

A Maybe a little bit bigger than this Bible.

Q Did it appear to have been installed in the vehicle?

A Well, once we got to the vehicle and looked inside the radio was gone. And subsequent to the pursuit of Mr. Wilson we found the radio that had wires dangling from the back of it.

Q You didn't find it?

A Correct.

Q When you observed him how was he carrying this object?

A He just had it in his hand. I just saw it briefly. I saw it. He had a radio in his hand as he was running. I mean, it's something that's, you know, it's odd, you notice it.

Q How long did it take him to get out of the car?

A He was getting out pretty quick. I mean, he was

trying to get away so he was moving pretty good.

Q Okay, but can you give me in terms of ten seconds, five seconds, a minute, how long?

A It was just moments. I mean, it was, you know, I mean, as the car was stopping doors were opening they were getting out and getting away. It was just mere seconds.

Q What was he wearing?

A I don't recall.

Q Cannot recall what he was wearing, but you can recall specifically that he had an object?

A Yes, ma'am.

Q All right. Do you have any photographs of this object? Did you preserve it? Did you try to process it for fingerprints or anything?

A No, ma'am. Like I said, once I got to the vehicle, and you know, just began to look through the vehicle I noticed that the radio was missing. And once they -- once the other officers located Mr. Wilson they returned with the radio so we just put it in the car. At the time it didn't seem to be of any evidence as far as, you know, that we would need so we put it back in the vehicle and left it.

Q Okay, this is mid September in the afternoon?

A Yes, ma'am.

Q I'm assuming that it is not cold. We're talking 4:00 mid September; is that right?

A Yes, ma'am.

Q So I would then assume -- and correct me if I'm wrong -- that Mr. Wilson would not have been wearing gloves or anything covering his hands?

A I don't recall anything like that.

Q So you get this radio and that you say has been in this defendant's possession, and you don't in any way check it for fingerprints or DNA or any indicia that it has been in Mr. Wilson's possession?

A There was no reason to, ma'am. The radio was seen in his hands, it was missing from the vehicle, and it was returned to the vehicle. There was no reason to fingerprint the radio.

Q But it wasn't found -- it wasn't found on him, was it?

A No, ma'am.

Q You signed off on this report that I believe Officer Nida wrote; is that correct?

A Yes, ma'am.

Q And you're familiar with your report?

A To a certain extent, yes, ma'am.

Q Is there anything in your report that suggests that when this defendant jumped out of the passenger

side of this car, that he had a radio in his possession?

A I don't know. I could look at the report.

Q Let me let you look at it.

A (Witness reads the document.)

Q The only mention of the radio is that there was a radio found on the ground on behind a house on Ingram Street; is that correct?

A Yes, ma'am.

Q What did you do with this vehicle?

A I don't recall if it was towed or if the owner arrived and claimed it. I really don't recall.

Q Thank you.

MS. PARR: Nothing further for this witness, Your Honor, and we would ask that he be allowed to be excused.

THE COURT: Any objection?

MS. WINGARD: I have no objection. I know if something comes up and we need him we can track him down.

THE COURT: All right. Thank you, sir. You're free to go.

MS. PARR: Your Honor, at this time we would call Kendrick Spears to the stand.

THE CLERK OF COURT: If you would, sir,

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place your left hand on the Bible, raise your right hand.

WHEREUPON,

KENDRICK THOMAS SPEARS,

having been duly sworn by the Clerk of Court,
testified as follows:

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

THE WITNESS: Kendrick Thomas Spears.

D I R E C T E X A M I N A T I O N

BY MS. PARR:

Q Agent Spears, where are you employed?

A With the Florence Police Department.

Q And how long have you been with the Florence
Police Department?

A Seven years.

Q Okay. In what capacity do you work for the
Florence Police Department?

A The special investigations unit.

Q Okay. And what is the purpose of that particular
unit?

A We investigate drugs, narcotics, vice logs,
things of that nature.

Q All right. And did you have any prior law
enforcement experience before coming to Florence

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Police Department?

A No, ma'am.

Q Now how long have you been working in the special unit?

A Four years.

Q Now what are your duties in that particular unit?

A I look into drug complaints. Anything that deals with drug laws, drug investigations I investigate those crimes.

Q Now have you had any special training for your job?

A Yes. I've had classes provided by the Criminal Justice Academy along with DEA which is the Drug Enforcement Administration. They provide you with basic narcotic investigation classes. And also I was a task force officer with the Drug Enforcement Administration for approximately a year.

Q Okay. And that's with the federal drugs?

A With the federal, yes, ma'am.

Q And are you a certified law enforcement officer?

A Yes, ma'am.

Q Now on September 16th, 2008, were you working that day?

A Yes, ma'am.

Q Okay. And where were you working that day?

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A The west Florence area.

Q All right. And do you recall what time you came on that particular day or what shift you were on?

A I was on day shift so I was in around 9:00.

Q Okay. Now on that particular afternoon did you have an occasion to become involved in an investigation involving the defendant Jimmy Lee Wilson?

A Yes, ma'am.

Q Okay. And would you please tell us how you became involved with this investigation?

A Myself, Sergeant Calhoun, Corporal Nida, and Sergeant Bob Drulis were at the west Florence area traveling on McQueen Street in an unmarked vehicle. We saw a vehicle that was a Ford Crown Victoria orange and blue in color. We received complaints about this vehicle that drug dealers were driving this vehicle making drug deliveries. We were traveling north on McQueen. The vehicle was coming south towards us. At that time the vehicle made a right on to Dixie Street as we made a left on to Dixie Street.

Q Okay. Now who turned first on Dixie Street?

A The Crown Vic. The Ford Crown Victoria turned first on Dixie and we proceeded behind it.

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Q All right, go on.

A At that time the vehicle came to a stop at Sanborn Street. At the stop sign it proceeded across Sanborn Street still traveling westbound on Dixie Street. We were attempting to catch up with the vehicle just to see who, whether or not we were familiar with the driver, passengers inside of it due to the fact we were able to receive information that it was a drug activity going being, just a vehicle being used for drug activity. As we were attempting to catch up with it a car was parked at Dixie Street and Chase Street at stop sign, stopped at the stop sign. At that time the vehicle, the Crown Vic, went around the stopped car at the stop sign and proceeded through the stop sign disregarding it. At that time we activated our blue lights which the vehicle failed to stop for the blue lights and proceeded west on Dixie Street until it came to a street called Cumberland. The vehicle made a right on to Cumberland Street where it went into -- it came to a stop at a wood line at the end of Cumberland where the driver and passenger both jumped out and ran.

Mr. Wilson, I -- all the agents exited the vehicle to pursue both subjects that were in the

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car, the driver. Mr. Wilson was the passenger in the car. I pursued Mr. Wilson through the wooded area and to a residential area where he was running northbound. He pretty much had a good distance away from me due to the fact it had been raining, and it was real muddy in the area and it kind of slowed me down running through the muddy area so but I was able to keep sight of him until I chased him into Corporal Nida's area where he was waiting for him.

Q Now would you recall how the vehicle was traveling?

A How was it traveling?

Q Yes.

A At a high rate of speed, yes. He was trying to get away from us before we even activated blue lights.

MS. WINGARD: Objection, Your Honor, that's speculative.

MS. PARR: Your Honor.

THE COURT: Driving at a high rate of speed?

MS. PARR: He said he was trying, the vehicle was trying to get away from them.

THE COURT: All right, sustained as to that.

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BY MS. PARR:

Q But the vehicle was traveling at a high rate of speed?

A High rate of speed, yes, ma'am.

Q Okay, all right. And you say was that a residential area?

A Yes, ma'am, residential area.

Q And is it fair to say it was traveling faster than the speed limit in that area?

A Yes, ma'am.

Q Now, and so when the vehicle — describe how that vehicle came to a stop.

A As he — as the vehicle went around the parked car proceeded through that stop sign, it continued at a high rate of speed until the vehicle made a right on to Cumberland Drive. Cumberland Drive dead-ends at a wood line area where vehicle didn't have anywhere to go so it stopped there at the dead-end at the wood line which is a path that a lot of people walk through going to and from these two separate neighborhoods. And due to the fact he had no where else d to go that's where they jumped out of the vehicle at and ran.

Q Okay. Now I'm gonna show you what has been entered in State's — entered in evidence as State's

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Exhibit Number 2. Would you please come down for me. Can everybody see? Use this highlighter.

Would you mark where you were.

A From beginning of the —

Q Yes.

A We were traveling on McQueen Street, traveling north on McQueen Street and this area.

Q Okay, and then you can highlight the street.

A Okay.

Q All right. And then where was that vehicle when you first spotted it?

A Vehicle was in this area approaching, approaching Dixie Street, this area right here.

Q Okay. And then would you just color the whole area which you all went?

A Okay. The vehicle made a left — a right on to Dixie Street. We made a left and proceeded this whole, which is westbound on Dixie Street, before making a right on to Cumberland Street which is this street right here. Okay, as the vehicle made its right on to Cumberland it came to a dead-end in this area which is the wooded area which leads to another neighborhood.

Q And then where did you run, or where they did run?

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A The passenger which was Mr. Wilson, he jumped out the front seat of the car and he ran and he ran north in this area as I followed him. And at that time, like I said, he had a good distance on me due to the fact that I didn't take the same path he took. I was thinking he may have veer -- veered off to --

Q Now what street is this?

A This is west Ingram Street right here.

Q Okay.

A So he crossed over Ingram Street and there's several houses all the way down Ingram Street right here. Maybe, in this block it's maybe six houses. He ran behind the second house where I continued to follow him.

Q Okay now, this is Dunbar Street here. This is Ingram there?

A This is Ingram Street.

Q So the houses would be on this side here?

A Yes, ma'am.

Q Okay.

A Right here are the houses. So I continued chasing him on foot, and he end up turning behind this first house right here at the end of Ingram and Dunbar Street. And I continued chasing him this way

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until I lost sight of him due to the fact he jumped several fences. But I — Corporal Nida was in this particular area so he was able to pick up on a foot chase after I lost sight of him.

Q So you lost sight of him in this area right here?

A This area, yeah, just before this area right here. There's a fence that he crossed over.

Q Would you mark that right there?

A The fence was right here I think.

Q Okay, all right. Now when he got out of the vehicle could you see the defendant when he got out the vehicle?

A Yes, ma'am.

Q Okay. And would you describe how he got out the vehicle and what, if anything, you saw?

A While the car was still in motion he jumped out, and I recall he had on a greenish shirt. And because I was on the passenger side of the vehicle we were riding in that's why I pursued him. At that time he had a black box in his hand running with that and which we later found out it was a radio that was removed from the vehicle.

MS. WINGARD: Objection, Your Honor, that's speculative. That's not in evidence.

MS. PARR: Your Honor, I —

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MS. WINGARD: He can say what he observed. He can not say that that came out of the vehicle.

THE COURT: He can testify to what he saw and what he subsequently observed but...

MS. PARR: Okay.

THE COURT: Sustained.

BY MS. PARR:

Q What did you see when the defendant got out of the vehicle, what did he have?

A He had a black object in his hand which we later found out it was a radio, car stereo.

Q Okay. And —

MS. WINGARD: Objection, Your Honor, he can't say that —

THE COURT: He can testify again to what he saw and all matters subsequent to the investigation that he actually observed, but not to speculation.

MS. PARR: Okay.

BY MS. PARR:

Q Now did you see — did you see that vehicle?

A Yes, ma'am.

Q Okay. Did you subsequently have an opportunity to look in the vehicle?

A Yes, ma'am.

SW - K. SPEARS - DIRECT

Q Okay. And what, if anything, did you find missing from that vehicle?

A Car stereo.

Q Okay. And ---

MS. WINGARD: Judge, again, he doesn't know whether there was ever a car stereo in there. He can testify that when he looked into the vehicle there was a hole but...

THE COURT: All right, sustained to that.

MS. WINGARD: I'm just asking him to follow the rules. I don't mean to be unpleasant.

THE COURT: No, you're exactly right. Sustain the objection.

MS. PARR: Your Honor, I'll rephrase.

BY MS. PARR:

Q Did you get an opportunity to do an inspection of the vehicle?

A Yes, ma'am.

Q Okay. And where did you look when you did an inspection of the vehicle?

A I searched the whole interior of the vehicle.

Q Okay. And would you please tell us ---

A We --- because we were towing the vehicle we pretty much had to do an inventory of it to list any items that may be missing or any items of value

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inside the vehicle.

Q Now did you see a stereo in the car?

A No, ma'am, no stereo was in the car.

Q Okay. And how do you know one was not in there?

A It was a hole of where the stereo was located with wires that were hanging loose from it.

Q Okay. And when you got, subsequently got that box ---

A Uh-huh.

Q ---or what was later obtained ---

A Yes, ma'am.

Q ---did you attempt to put it in that area?

A Yes, ma'am, it was -- it was placed back in that general area where the radio was at.

Q Did it fit in that area?

A Yes, ma'am.

Q Okay. And that was an area for a radio stereo system?

A Yes, ma'am.

Q And how do you know that?

A It was a perfect fit. And I'm familiar with Crown Victorias and I know that's the area for a radio.

Q And did those wires fit that radio that was found?

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A Yes, ma'am.

Q Now you are not — okay, and so who apprehended or caught Mr. Wilson?

A Corporal Nida.

Q Okay. Now tell us about the condition that particular day.

A It was real wet, muddy, rain — water was sitting on the ground from the rain fall we had.

Q Okay. Now that — did you handle that radio?

A No, I didn't. Corporal Drulis, he located the radio.

Q But did you see it?

A Yes.

Q Okay. And can you describe the condition of it?

A It was dry, dry and sitting on top of the ground behind a residence where Mr. Wilson was running.

Q Okay. Now you say it was — the radio box itself was dry?

A Yes, ma'am.

Q Okay. But you said that it was very wet in that area; is that correct?

A Yes, extremely wet.

Q Beg the Court's indulgence.

THE COURT: Yes, ma'am.

BY MS. PARR:

SW - K. SPEARS - CROSS

Q So after he was arrested or brought back to the vehicle you said that you were not the one that actually arrested him or stopped him; is that correct?

A No, it wasn't.

Q All right. Please answer any questions Ms. Wingard may have for you.

CROSS - EXAMINATION

BY MS. WINGARD:

Q Office Spears, did you tell us that you physically put the stereo into the car?

A No, I believe it was Sergeant Calhoun was the one that matched everything up, the stereo with the car.

Q So if you testified that you put the stereo in the car and it was a perfect fit, that was a misstatement?

A It was -- I had a visual of him doing it. I didn't physically do it.

Q You never handled the radio --

A No. No, ma'am.

Q --yourself? And you recall that this was black

A Yes, ma'am.

Q --; is that right? You lost sight of Mr. Wilson; did you not?

SW - K. SPEARS - CROSS

A Yes, ma'am, as he turned around the house.

Q And you indicated that you took two different paths; is that right?

A He took -- in the general wooded area he sort of went to the right of me and I took to the left just in case he would have decided to double back.

Q So then you would have lost sight of him in the wooded area?

A No, I could see through it. It was very thin, very thin. I kept eyes on him the whole time.

Q Were you behind him or in front of him?

A Behind him.

Q And do you have any pictures of this wooded area so we can understand what it looks like?

A I don't.

Q You indicated, though, that there was a path through this area?

A Yes, ma'am.

Q Did you remain on the path or did he remain on the path?

A I pursued him through the path.

Q And where did he go?

A He ran through the woods through the wooded area. It's just a very -- it's a small patch of woods right there. He ran through the wooded area which

SW - K. SPEARS - CROSS

Q And tell me then what was between you and Mr. Wilson?

A Well, he was ahead of me. It was just mainly weeds, small, small pine trees maybe.

Q So you've got tall trees in this wooded area and then you've got ground debris, weeds, and ---

A Yeah, it's a mixture, yes, ma'am.

Q ---things of that nature?

A Yes, ma'am.

Q And how far were you apart in terms of feet, if you can recall?

A Maybe 20-yards maybe.

Q So that would be about 60 feet, 20 yards, and he was in this wooded area. At that point were you the only officer pursuing him in this area in the wooded area?

A No, I wasn't.

Q Okay. Who else was pursuing him?

A Myself, Corporal Drulis, and Corporal Nida.

Q And where were they then at this point?

A We all went different, different directions. My understanding Sergeant Drulis, Sergeant Drulis ---

Q Let me ask you this, did you lose sight of Sergeant Drulis and the other officer?

SW - K. SPEARS - CROSS

A Yeah, I lost sight of Sergeant Drulis.

Q How about the other officer?

A I saw he was running westbound so —

Q Was —

A —away from where I could see.

Q So he was pursuing the driver; is that right?

A Yes, yes. He was, I said westbound, eastbound.

He was running eastbound. Corporal Nida was running eastbound.

Q All right, let's understand. There are three of you pursuing the two individuals. The driver is unknown?

A Yes, ma'am.

Q And then Mr. Wilson who was the passenger?

A Yes, ma'am.

Q Sergeant Calhoun remained with the vehicle.

A He remained with the vehicle.

Q So what I'm asking is when you were in the wooded area part of the pursuit —

A Uh-huh.

Q —you had lost sight of Officer Nida?

A No, I didn't.

Q Okay. Then I'm asking, where was he?

A Okay. Corporal Nida was to my right. He was running wide right to my right just in case in

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attempt to maybe cut him off if he decide to.

Q So he was trying to get in front of him to cut him off?

A He was already ahead of us. He was already ahead of us.

Q I'm sorry, Corporal Nida was already ahead of you?

A No, Mr. Wilson was ahead of us. Corporal Nida was -- he -- I pursued behind Mr. Wilson. So I'm behind Mr. Wilson. Corporal Nida went to my right, wide, just running sort of parallel with Mr. Wilson but not directly behind him.

Q Was Corporal Nida then in the wooded area?

A Yes, that's where the chase began.

Q All right.

A The foot chase began.

Q So the foot chase was immediately within the wooded area?

A Yes, ma'am.

Q Now what I -- and I don't mean to belabor this but it's very important. You lost sight of the other officer who had gone after the driver; is that correct?

A My understanding he pursued Mr. Wilson also. I mean, I'm not sure. I can't give details about it.

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Q So you think everybody pursued Mr. Wilson and nobody pursued the driver; is that —

A I can't really — I can't really say but he was behind him so...

Q You don't know where the third officer was at this point? You know that you and Corporal Nida were pursuing Mr. Wilson?

A Yes, ma'am.

Q Okay. Now what I'm trying to ascertain is as you were going through the wooded area you have told us that you were about 20-yards, 60 feet away from Mr. Wilson?

A Maybe a little closer than that but that, yeah, in that area. He had a good distance on me but I still had a visual on him.

Q Where was Corporal Nida in relation to you?

A Okay, we both took off through the wooded area. We were together, but as we got on to Ingram Street Corporal Nida veered off to the right.

Q Okay. But as you were going through this wooded area you and Corporal Nida were together?

A Yes, ma'am.

Q All right. And Mr. Wilson was in the wooded area?

A Yes, ma'am.

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Q Now you indicated that there was a path that a lot of people went through in this wooded area; is that correct?

A Yes, ma'am.

Q So this is a heavily traveled area?

A That particular wooded area, yes, ma'am.

Q And where is 1023 Ingram Street in relation to this heavily wooded area with the heavily traveled path through it? Where is that located?

A It's — if you travel through the path where we first started the foot chase you have to cross over Ingram Street. 1023 would be five or six houses down once you cross over Ingram Street from where we, the chased began.

Q And when you say down would it be east or west from the path?

A It would be east, east from the path.

Q So that you would go through the wooded area and it would be a right turn?

A Yes, ma'am.

Q And this would be — this address on Ingram Street would be between the heavily traveled path and the park; is that right?

A Yes, ma'am.

Q Okay. You did — you indicated that you lost

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sight of him?

A Yes, ma'am, as he was crossing over the fence.

Q Okay. And where was Corporal Nida at that point?

Could you see, still see Corporal Nida?

A No, we got separated.

Q So —

A As I proceeded behind the residence that was lined up with 1023 Ingram Street I lost sight of Corporal Nida.

Q And you lost sight of Mr. Wilson as well?

A As he was crossing over the fence, yes.

Q Did you see anything in his possession at that point?

A No. As he was crossing over the fence I didn't see anything.

Q Now how many fences did he cross over, if you know?

A I — only one that I saw.

Q You only saw him cross over one fence?

A Right.

Q And where was that fence located?

A Right before 1023 I think.

Q I'm sorry?

A Right before 1023 I think.

Q Before?

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A It's the residence right before that residence of 1023 Ingram Street.

Q So it was -- you saw him cross the fence before 1023 Ingram?

A If I recall. I think that's where the fence was.

Q Now you did an inventory search of the vehicle you had indicated?

A Yes, ma'am, inventory search was conducted.

Q There is no mention in any report that there were any drugs found, any money found, any indicia of drug dealing within that vehicle so I'm assuming that you found nothing since there's nothing in any of the reports to indicate that?

A No, ma'am, nothing was inside of it.

Q Thank you.

MS. PARR: Beg the Court's indulgence.

THE COURT: Anything on redirect,

Ms. Parr?

MS. PARR: One moment, Your Honor.

THE COURT: All right, sure.

MS. PARR: Nothing further for this witness, Your Honor.

THE COURT: All right. Thank you, sir. You may be excused.

MS. PARR: Your Honor, at this time we

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THE COURT: All right. Sergeant Drulis, come around please.

THE CLERK OF COURT: If you will, sir, place your left hand on the Bible, raise your right hand.

WHEREUPON,

ROBERT RAYMOND DRULIS,
having been duly sworn by the Clerk of Court,
testified as follows:

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

THE WITNESS: My name is Robert Raymond Drulis, Jr.

D I R E C T E X A M I N A T I O N

BY MS. PARR:

Q Officer Drulis, where are you employed?

A I'm employed with the Florence Police Department.

Q And what do you for the Florence Police Department?

A I'm currently a sergeant with the south region.

Q And how long have you been with the Florence Police Department?

A Going on 12 years now.

Q Okay. And have you had any other law enforcement experience?

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A Yes, ma'am, I have.

Q Okay.

A For the prior seven-and-a-half years -- well, for the first four years of that seven-and-a-half year period I was assigned to the Drug Enforcement Administrations drug task force here in Florence which we covered it's a -- that would be -- it was a DEA federal agency. We covered -- my specific area covered from the north corner of South Carolina down through towards Horry County and over into -- over into Lee County as well which included Marlboro and Williamsburg and everything else like that. Then I was promoted to a corporal within the police department and was assigned to the Florence Police Department's narcotics unit for the remainder of three-and-a-half years before I was promoted to sergeant back on the street.

Q So how long have you been in law enforcement?

A About 12 years, and prior to that I was on the street before I went to DEA.

Q Okay, and so when did you start with the Florence Police Department?

A In nineteen ninety--

Q 1990?

A '98.

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Q '98, okay.

A Yes, July of '98.

Q And what are your present duties?

A I'm a sergeant with the — I'm sergeant with the patrol unit. I'm assigned to the south region. I supervise anywhere between probably nine to twelve people. It would be depend on the man power. I have two corporals under me. The region I supervise extends from Alligator over to Irby Street down to Cherokee out into West Florence, which includes the mall area and some of Hoffmeyer and further out west.

Q Now have you had any special training for your job?

A Yes, ma'am, I've had extensive training.

Q Would you please tell this Court what training you've had.

A Yes, ma'am. When I was with the DEA that they sent me to basic narcotic school, several other specialized methamphetamine schools which includes dismantling identification and safety officer in a clandestine methamphetamine laboratory situation. I've also been sent to different drug identification schools, just you know, like street identification type schools, undercover school, interrogation

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school. Most of it strictly, you know, towards the realm of narcotics. I've also been to several SWAT schools which included the, you know, prior to all that of course the South Carolina Criminal Justice Academy which certified me as a police officer.

Q Okay. And did you have an occasion to become involved in this particular case involving Jimmy Lee Wilson?

A Yes, ma'am, I did.

Q And were you working on the date of this incident September 16, 2008?

A Yes, ma'am, I was.

Q And where were you working?

A I was working with the Florence narcotics unit at the time. I was the assistant supervisor with them.

Q And who were you with that particular day?

A That day I was with Sergeant John Calhoun, Agent Spears, and Agent Nida -- well, Corporal Nida now.

Q Okay. And do you recall what time you started your shift that day? If you don't, that's fine.

A Yes, ma'am. I know it was, if not mid-morning it'd be after noon, around there.

Q Okay. Now on or about 4 that afternoon please tell us where you were.

A Yes, ma'am. We were all -- we were all in a

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vehicle together and we were, I believe we were heading north down McQueen Street. And to preface this, the unit itself, we had information that there was a blue and orange Caprice. And the way it's described is a box Caprice, which the different type, the different type vehicles. You have the round sort of — or Caprice type vehicle. The Caprices and the Crown Vics kind of have that same boxy look from the early '80's into, you know, into late '80s, maybe early '90s. Whereas the new Caprices and the newer Crown Vics have a more smooth out aerodynamic called a bubble look. We had information that a blue and orange box type Caprice was, or box type vehicle, was going around the east Florence and north and west Florence areas with drugs in it, and that it was known as the Gator car.

When we were going north on McQueen Street we had an occasion — and when I say "we", it was myself, Sergeant Calhoun, and Investigator Nida, and Corporal — or I'm sorry, Investigator Spears and Corporal Nida. We saw the vehicle traveling south on McQueen Street and then make a right on to — the vehicle would make a right — it would be my left — make a right on to Dixie Street. Would you like me to continue?

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Q Yes.

A Okay. At that point we came up to -- and it'd be the -- you have to excuse me, it's been a little while. It would either be the next street which would have been Sanborn Street or the street after. There was a vehicle stopped at a stop sign. And when the Florida car, when the Gator car, when the blue and orange car made the right on to Dixie Street we followed them behind them. When that vehicle got up to the vehicle that was stopped at the stop sign, the vehicle, the Gator car did not stop. It went around the car at the stop sign and kept on going past. Of course, that's a violation of South Carolina law. It's improper passing; it's failure to stop for a stop sign. At that point Sergeant Calhoun attempted to stop the vehicle.

Q And how did he attempt to stop the vehicle?

A He stopped that vehicle. He initiated his blue lights and initiated a siren. Blue lights in state of South Carolina means we're the police, you need to stop. The vehicle at that point, you could -- we could see it -- no, I could see it. It squatted. Like if you when you hit the gas when your engine goes your rear-end takes trash in and the vehicle usually just squat down in the back. I saw the

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vehicle squat and a little bit of smoke come out of the exhaust, which indicates somebody really hit the accelerator hard. And they did; they took off going down Dixie Street. Obviously we pursued after them. The vehicle, the vehicle did not stop for quite a few stop signs on Dixie Street, accelerated at a very high rate of speed. Whenever we do pursue we do have to take account — even before we are pursuing a vehicle we still have to use due caution and take interest in that vehicle so we're gonna have to, you know, make sure, you know, that no one is coming at those stop signs. So we're going to very, you know, at the very least we're gonna slow down to make sure that no one is coming. Continued down Dixie Street.

The vehicle then made a right on to Cumberland Street, which is all this was over in the west Florence part of town. Made a right on to Cumberland Street, and then continued down Cumberland Street to where Patterson and Cumberland — I don't want to say it's a dead-end but it's where, I guess, it is a dead-end. Where Cumberland stops and Patterson comes, you know, you would turn on to Patterson. There is a -- there's a make shift path where there's, I believe, it's like

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a little pump station or something to do with a sewer or something that's right in that area. There's a pump station with a little path right there, and the vehicle went off the road and maybe 50 feet or so. Went off the road, stopped, and the driver and the passenger jumped out of the car and ran down through the path. We came up to -- we got to the vehicle. Sergeant Calhoun stayed with our vehicle and the suspect's vehicle. And Investigator Spears and Corporal Nida, they took out and gave chase behind the two suspects first while I was third in the chase. I'm not quite as fast as I used to be. And when they were running the driver beared off I believe more to, more to the right where Investigator Nida and Investigator Spears stayed on the passenger which was running more in line with the Ingram Street/Carver Street side of the, side of what's called the bottom. The bottom is typically known as Ingram Street/Carver Street and then Pennsylvania Street at the end. And then Dunbar Street runs on the side.

We then gave chase down through some very, very, very muddy, mirky grass all but -- well, because of a lot of rain. There was a lot of water and mud and everything that was through there. The

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suspect kept running. Investigator Nida went, if I'm correct, if I'm not mistaken I'm sorry, went on the Ingram Street side and myself and Investigator Spears went on the Carver Street side but between the houses. I mean, we were still -- we were in between the house I was chasing after the suspect. The suspect crossed a couple of different fences, and I did not see Investigator Nida apprehend the suspect but we -- he apprehended him along the fence line and the thousand block of between Carver and Ingram Street, more on the Ingram Street side on those houses.

At that point we started backtracking where the suspect ran. And when I was backtracking by the fence where the suspect where on the fence the suspect had jumped over. If I'm not mistaken it was at 1023 Ingram Street I believe where the suspect jumped over. Right on top of the grass there was a square semi-translucent, you know, like a cloudy type plastic type box about that big. And you know, I saw it sitting right on top of the grass right by the fence right in, you know, in the back of someone's yard. I picked it up, opened it up right where the subject had just ran through, and there was five, six small pieces of crack cocaine in that

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box. At that point, you know, I secured the box. We secured the suspect. I turned the box over to Corporal Nida and let him know what I found. Yes, ma'am?

Q I'm gonna show you what has been marked as State's Exhibit Number 1 [sic] for identification at this time. You recognize that?

A Yes, ma'am, that's the box I found.

Q And where was this box?

A That box was sitting right beside the fence in which the suspect and that Mr. Wilson had ran. And there was about medium height grass right beside right by the fence right there. And like I said, it was, the ground was very sloppy, very muddy. We had mud all up our pants legs and all from our back from running through there, and the box was sitting right on top of the grass. And like I said, about medium length grass and the box was completely dry. In my, you know, in my opinion the box had just been dropped down.

Q And you said the box was dry?

A Yes, ma'am, the box was dry.

Q Okay. Now...

(Attorneys confer.)

MS. WINGARD: I do object.

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MS. PARR: Okay, we can wait.

BY MS. PARR:

Q And now you said that you went back and obtained this; is this correct?

A Yes, ma'am, I did.

Q And now did you see the defendant jump the fence?

A From a little bit of a distance away, yes.

Q So you saw him jump this fence?

A Yes, ma'am.

Q And was this fence, was this found by that fence?

A Yes, right where he jumped, yes, ma'am.

Q Now did you see the defendant with anything else?

A I did not see him with anything else in the direct path that he was running. There was also a radio that was dropped, a car radio that was dropped, and that we also -- we also took possession of that. And you know, due to really no identifying features like serial numbers or anything on the property, we then put that property back into the vehicle and because, you know, there was no way of us knowing that whether it was stolen or anything. You know, even if someone is a suspect, is committing a crime or we believe is committing a crime, we have to still preserve their right to their property so we secured that with the vehicle.

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Q Okay. Now, and where was that radio found in relations to this?

A It was probably about 15 to 20 feet away.

Q Okay. And if we're in this courtroom from where you are would you tell us where it was found.

A I say it's approximately where you're standing, about that far.

Q And where was the crack found?

A Probably about where I'm standing, right along the fence line.

Q And would you please describe the condition of the radio?

A Yes, ma'am. The radio, it looked like it was just pulled out, that just pulled out of the car. You know, there was -- or I should say of the car, of a vehicle. There was some wires hanging out the back. The radio itself also, you know, it was also -- the top side of it was also, you know, dry.

Obviously with the heavy, with something heavy like that you throw it on the ground and the ground is wet, the bottom of it is gonna be wet. But the top was dry. It wasn't, you know, it wasn't busted up like it's been there for, you know, three or four months.

Q And so the radio was dry as well as this

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packaging here?

A Yes, ma'am.

Q And when you retrieved the radio and that box what did you do with it?

A I turned them over to Corporal Nida.

Q Okay. Now where was the other person or the person was operating the car in relations to where the defendant was running?

A Ma'am, I really don't -- we -- I lost contact of him. I know he wasn't in the vicinity where we were whatsoever.

Q Okay. And so the path that the defendant took, was the other person going that same direction?

A No. No. As soon as they left the car, once they got through that little wooded path they, like I said, I believe, you know, we -- I know I lost track of them. I believe he may have went off to the right somewhere. I know there's other fields, and I know there's a field on this side and that side, I'm not sure but, you know, I kept on the path running behind Investigator Nida and Investigator Spears along with Mr. Wilson.

Q And so the other person was not -- did not scale the fence where Mr. Wilson was going?

A No, he did not.

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Q Okay, was there anybody else in the fence line where Mr. Wilson was?

A I did not see anyone else there.

Q And now what — would you please describe the general condition of that fence line and the items around it on the ground?

A Yes, ma'am. The fence line was grown up a little bit. You know, the house itself, you know we had — obviously we, I'd been working in the area for quite a bit of time, and we had several drug complaints further down, further down the road. But that specific house itself we have never heard any drug complaint. I don't recall ever arresting anyone there other than Mr. Wilson on this incident. You know, the fence that was grown up a little bit. Like I said, the grass by the fence was about medium height. Now in the yard itself out, you know, you could see that the yard, that the individuals that lived there had been taking care of the actual yard itself. But along the fence line it was, you know, it was — they had been pulling the weeds off the fence.

Q Now that particular area where Ingram Street, where that house was, is that considered well-known drug area?

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A The entire area itself that — if the members of the jury isn't familiar with those two — there's a couple of blocks of the city of Florence right there. Like I referred to before, it's called the bottom. That area is a well documented drug area. Like anywhere else there's some very, very, very good and great people who live in those areas. You know, just because the house right beside you, you know, or three houses down may be selling drugs that's considered your area, you're doing absolutely nothing wrong, it's your house. So I mean, you know, the house like I said, the property in which that the drugs were located on, we had no — we had no other complaints of drugs being on that property. Now the area itself, yes, we had — we have complaints all the time of drug activity occurring in that area.

Q Now would that be the other side of Ingram Street?

A Yes, ma'am, it would be.

Q Further down the road?

A Yes, ma'am.

Q Now is there a lot of foot traffic right in that particular area?

A In that particular area? Not in that particular

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area. Not at the house, no, ma'am.

Q Now once you — when you — did you ever see the other individual that was, had gotten out the car with the defendant?

A After he got out the vehicle, no.

Q Okay.

A Huh-uh.

Q And he wasn't found in that particular area where the defendant had gone; is that correct?

A No, ma'am. No, ma'am. And if I might say too in that area, when I did find the box of crack, lack of better term, it has also been in my experience that if someone, if someone —

MS. WINGARD: Objection, Your Honor. I believe he's gonna be conclusory. Moreover, he is not responding to a question.

THE COURT: Sustained. Go ahead and ask your question.

MS. PARR: Okay.

BY MS. PARR:

Q Now how long have you been investigating drug activity?

A For about seven-and-a-half years, four — over four of them for the federal government.

Q And about how many drug investigations have you

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done during that time?

A Would you like the answer — well, I shouldn't say that. A lot if you — a whole lot. If you'd like me to give a specific answer, 5, you know, 52 weeks in a year, five a week for three years, I back at the city, you know, over 150 conservatively speaking just for those three years and then federally, whatever.

Q Okay.

A But a lot.

Q So you've been doing this it's fair to say a whole lot?

A Yes, ma'am, a whole lot.

Q And in your experience have you testified for in regards as an expert witness in doing drug investigations?

MS. WINGARD: Objection, Your Honor. There's a matter we need to take up out of the presence of the jury.

THE COURT: Ladies and gentlemen, let me get you to step into your jury room. Please have no conversation about the case. I'll bring you back out shortly.

(WHEREUPON, the jury was removed from the courtroom at 12:14 p.m., and the following

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proceedings commenced in open court.)

THE COURT: Yes, ma'am.

MS. WINGARD: Judge, I have no idea where she is going with this but certainly —

THE COURT: Sounds to me like she's trying to qualify him as an expert witness.

MS. WINGARD: Yes, sir. And certainly we have not been noticed that she intends to call any expert witness other than, of course, the drug chemist so I would object to that. But if she wants to proceed I believe we need to first do it outside the presence of the jury and see where we are.

THE COURT: All right. Ms. Parr.

MS. PARR: Your Honor, Officer Drulis has been, you know, listed in the report and Ms. Wingard did have a copy of the report.

THE COURT: Well, he's not listed as an expert witness though.

MS. PARR: No, Your Honor, but he has been —

MS. WINGARD: And it says in the report, for the record, let me say specifically what it says, Agent Drulis went to the fence where subject number one Wilson crossed over at 1023 Ingram and located a clear, hard plastic case lying on the

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ground that contained some cocaine base and then there's an approximate amount.

THE COURT: Clearly you are noticed that Sergeant Drulis is a witness. The concern I've got is that -- maybe I'm wrong -- but it looks like you're changing gear, changing course in the middle of stream. And you've taken what was simply a fact witness, and you're now trying to qualify him as an expert to use him in that fashion. Is that fair to say?

MS. PARR: Yeah.

THE COURT: And again, we're outside the jury's presence. What exactly are you trying to elicit that is necessary for expert testimony?

MS. PARR: Your Honor, he can testify in his experience, you know, what he has found when this type of activity generally occurs. And we can just hear from him and you can decide whether or not.

THE COURT: Well, let me just hear from him. Let's see what we got. Go ahead and go down this road and we'll see. Ask the question.

MS. PARR: Okay.

P R O F F E R E X A M I N A T I O N

BY MS. PARR:

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Q You were getting ready to say in your experience as a, doing investigations on the drug activities in the years you've had, what activity that just — that the course that the defendant take, what does that usually indicate?

A Usually when you find a container, whether it's a plastic, you know, a hard plastic, whatever type of container that has drugs in it, if you find it directly on top of, you know, directly on top of a bunch of grass like that, that isn't — that is not indicative of someone who is trying to hide drugs. In my experience when drug dealers who typically do not hold their drugs on their person they will quote/unquote stash it in a bush over here, in a mailbox over here, in the weeds over here. They just do that. They stash it. They try to hide it so that no one else, the police can't get it, other drug dealers can't get it, or a drug addict can't get it. In this fashion this particular box was not just trying to be hidden. To me it looked like it was dropped there while the individual was running.

THE COURT: Let me ask you, Ms. Parr, certainly Sergeant Drulis can testify to what he observed. He can testify, from your observation did it appear that this item was being hidden in the

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grass. He can testify, well, it was laying right on top, it was in plain view, clearly where it could clearly be seen. And then he can further testify to everything he observed. That is, there were heavy rains, everything in the area was wet but this item. But I mean, these are all things that can be testified to and that is all that a fact witness would testify to. I think for what you're — and he certainly is capable of testifying to everything that he observed, and any inferences that can drawn from that certainly you can argue in closing. And you can't argue that drug dealers hide their drugs; but you can argue that based on the fact, I mean, it just doesn't appear this is testimony necessary for an expert witness.

The concern I have is — and I can tell you from my knowledge of Sergeant Drulis, in my court I always qualify him as an expert when it comes to drug investigation because I think he's as good as anybody. But my concern is that the Defense wasn't put on notice that he was gonna be used in this fashion which would have given them an opportunity then to possibly explore that area and hire an expert on their own. And so I'm not gonna allow the testimony to be done from that of an expert witness,

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but you certainly are allowed to go down the road about everything he observed.

MS. PARR: Okay.

THE COURT: Okay?

MS. PARR: Okay.

MS. WINGARD: Judge, I would ask that in that ruling you make it clear that he cannot draw any conclusions from what he observed. He can only say, as you have suggested, it was on top of the ground, etc.

THE COURT: Yeah. It was where it was, it was in plain view, all these things.

MS. PARR: And you said he can testify that it didn't appear to be hidden —

THE COURT: Well, no, it's just —

MS. WINGARD: No.

THE COURT: He can testify that it was — he can say it wasn't hidden in the grass, it was right on top. I mean, that's an observation, but of a fact that he observed. But when you're trying to go a little further and say that someone who doesn't want something to be found will hide it, now you're getting over into the area of what an expert witness will testify to. And as I said, nothing — Sergeant Drulis is clearly an expert in this area; but he

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hasn't been noticed as an expert, and so in this case he won't be qualified as an expert.

MS. PARR: Okay.

THE COURT: Okay?

MS. PARR: All right.

THE COURT: All right. Bring the jury back out.

(WHEREUPON, the jury was returned to the courtroom at approximately 12:21 p.m, and the following proceedings commenced in open court.)

THE COURT: All right, Ms. Parr, you may continue with your direct examination.

BY MS. PARR:

Q Officer Drulis, from your observation where was this box, the item that's been entered or marked as State's Exhibit Number 1, the plastic container containing what appeared to be crack?

A Yes, ma'am. It was not hidden in the grass. It was sitting on top of the grass.

Q And was this in plain view?

A Yes, ma'am, it was in plain view. The grass around the area, like I stated before, it was very wet and murky and muddy. Like I said, we had mud all up our legs and up our back from running.

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Q And was that on that container?

A No, it was not, it was dry.

Q And now you say that area was grassy; is that correct?

A Yes, ma'am.

Q Okay. And about how tall was that grass along that?

A Where like the grass where along the fence where the box was found, it was about what I consider medium height, you know, maybe about this high, around there.

Q Okay. And this being the bottom of it?

A Yes, ma'am, this being the ground. It would be about that high. Of course, now along the fence —

MS. WINGARD: Could the record reflect that you appear to be, what, would that be 12-inches or so?

THE WITNESS: I say maybe about 9 inches.

MS. WINGARD: Very good. Thank you.

THE WITNESS: Approximate right there.

BY MS. PARR:

Q So the grass was 9 inches?

A Approximately from the base of the grass on up. Of course that's an approximate.

Q And where was the plastic box found in relation

SW - R. DRULIS - DIRECT

to that?

A It was sitting on top of the grass along right, was sitting on top of it. It was, like I said, along the fence line, you know, sitting on top of the grass on the fence line, yes, ma'am.

Q And did you have any problems seeing it?

A No, ma'am, not at all.

Q Okay. And the radio that was found, where was that sitting?

A That was -- that was on top of the grass as well. It was further down the fence line, you know, where Mr. Wilson had been running. If I remember correctly the -- I can't remember if the radio itself was in the higher grass right there towards the fence line or if it was more over off into where like the grass had been kept up a little bit more. But it was in the same line going the same direction in which he was running, like I said, about 20, 25 feet away from where the box was.

Q And what was the condition of that?

A Like I said, the top of that, the way it was sitting, the top of it was dry, the bottom of it it was of course damp. You know, when you have something heavy sitting on ground, if the ground is wet the bottom of it is gonna be a little damp just

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from contact.

Q And both of those items were turned over to Agent Nida?

A Yes, ma'am, they were.

Q Okay.

MS. PARR: Beg the Court's indulgence.

THE COURT: Yes, ma'am.

MS. PARR: Would you please answer any questions Ms. Wingard may have for you.

THE WITNESS: Yes, ma'am.

CROSS - EXAMINATION

BY MS. WINGARD:

Q Sergeant Drulis, where were you in the car?

A If I remember correctly I believe I was in the rear behind the driver if I'm not mistaken.

Q And Sergeant Calhoun was driving?

A Yes, ma'am.

Q And who was in the front passenger seat?

A Ma'am, I can't remember if it was Investigator Spears or Corporal Nida. I can't remember now, I'm sorry.

Q So you took after because you were on the driver's side and Calhoun was staying with the car. You took after the driver; is that correct?

A No, ma'am. I ran behind where the other officers

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were running.

Q Okay. So nobody took up after — nobody went after the driver of the — of the four of you nobody went after the driver?

A No.

Q So you're saying that you were with Corporal Nida and Agent Spears during this entire time?

A With — could you clarify with?

Q After everybody left the car, after the car was stopped.

A Uh-huh.

Q You were right with the other two officers who gave chase the whole time?

A I was with them chasing them. They're a little quicker than me now so I was not right beside them.

Q Okay. So how far back were you?

A Like I said, I never saw Investigator Nida actually apprehend and make the arrest of Mr. Wilson. I was behind Investigator Spears and Mr. Wilson when they cleared that first fence. I was a little slower on getting around the fence.

Q How many fences do you say Mr. Wilson cleared all together?

A I'm not certain of all the fences. Like I said, I wasn't right there when the apprehension was made.

SW - R. DRULIS - CROSS.

I know it was in, it was right around that area. I do know he went over the one right there at 1023 Ingram Street.

Q Were you with these officers at the beginning when they were going through the wooded area?

A I was behind them, yes, ma'am.

Q And so you would not have had as good a picture of Mr. Wilson as the other two officers did because you were behind them?

A Yes, ma'am, that is correct.

Q Where was the driver at this point?

A If I remember correctly, when the car -- when we -- like I said, they were driving -- when they were coming on Dixie Street they were driving at an extremely high rate of speed ignoring every stop sign. So we're obviously gonna have to, you know, for the safety of the public and our safety as well we're gonna have -- there was no way we could be going at their same speed because we have to slow down and make sure no is coming just so we don't T-bone someone at one of those stop signs so we're going to be back a little bit. When they -- when we came around -- or when we came around Cumberland going toward down towards Patterson they were, if I remember correctly, they were about half way down

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Cumberland. When they got down to the dead-end they went into the, they went into the grass area. We were coming down. Both of them, both of them came out the car. I cannot remember specifically if the driver came out first and ran and took off or if Mr. Wilson was lagging behind if that's why, you know, we stayed on him. I know that I know the reason why I stayed with the other officers and Mr. Wilson is because one, you know, we don't understand why that individual was running. And if you have two officers, you know, if you have two officers in an unknown situation running you want to have a third there to make sure the safety of the officer is secure, also to make sure the safety of the general public is secure as well.

Q As you were following behind Mr. Wilson, though, you know that he was the passenger in this car; is that correct?

A Yes, ma'am.

Q And no one pursued the driver?

A At that — no, ma'am. We had, you know, Officer Calhoun had to stay with the suspect vehicle, one, you know, to preserve the property of that vehicle, you know, of that vehicle and to make sure that, you know, the police vehicle is all right as well or the

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police owned vehicle is all right.

Q And you're saying that you did not see him jump the fence?

A No, ma'am, I saw him go over the fence.

Q How far away were you? I'm sorry, I misunderstood. I thought you were pretty far back. Where were you?

A I didn't see the apprehension of Mr. Wilson, but I saw him go over the fence.

Q Okay, and put us then in perspective. He went over the fence and that fence is 1023 Ingram Street?

A Yes, ma'am.

Q Where at that point was Officer Nida?

A If I'm not mistaken Nida was on the -- he should -- I believe he was on the south side of the fence where agent, where Investigator Spears should have been on the south side going.

Q How was Mr. Wilson ---

A Because he was running ---

Q How was Mr. Wilson jumping? When you say south side was Mr. Wilson jumping a fence that was running north and south or east and west?

A Mr. Wilson jumped the fence at the back of 1023 Ingram Street which would have been running parallel with Ingram Street which both sides are fac--- I

SW - R. DRULIS - CROSS

guess the sides would be facing north and south.

Now at the end of that —

Q Okay, let me stop there so —

A Yes, ma'am.

Q —so I'll understand. Okay, so this fence that you saw him jump is running east and west?

A Correct.

Q All right. Now tell me then in relationship to the fence when he was jumping the fence —

A Uh-huh.

Q —where were you?

A I was further back running behind Agent Spears.

Q So I'm asking you where were you? Were you still on Ingram Street because this —

A No, ma'am, we were — we were in between the houses. You have Ingram — if y'all can, Ingram Street and Carver Street run parallel, and there's houses on Ingram.

Q Come down and use this.

A Sure. Your Honor?

THE COURT: Yeah, and if you would, let me get Sergeant Drulis to be on the side facing the court reporter so she can hear everything.

BY MS. WINGARD:

Q Let me acclimate you. This is Ingram Street.

SW - R. DRULIS - CROSS

A Yes, ma'am.

Q And this would be, it says state road but that's Carver Street.

A Yes, ma'am, that's correct.

Q All right.

A And we're running this way.

Q Okay.

A And then you have houses on Ingram Street on here, and then you have houses on Carver Street here and then there's a fence. There are several fences. You have several fences because one fence doesn't connect all of them. I mean, each property owner owns their own fence. So there's, you know, some houses have a fence, some houses don't. And there's the fences that run this way and then each house — some of the houses have a fence that go this way as well.

Q And that's what I'm asking. What fence did you see Mr. Wilson jump and in which direction was that fence running?

A Ma'am, if I'm not mistaken the fence where the cocaine base was found was -- it was right at a corner of the two fences up there.

Q Now I'm not asking you what —

A Ma'am, I —

SW - R. DRULIS - CROSS

Q That's not the question I said. I'm asking you what fence you saw him jump.

A I know. I know what you're asking. Okay, you have the two fence built like this. If I remember correctly he jumped the east fence going over right at about 20 feet or so away from this fence. And then he continued running.

Q Now as you saw him jump that fence where were you?

A Where was I? Right around here? Is that what you're asking me?

Q Yeah, I'm asking you where you were when you saw him jump that fence?

A I was probably, I was probably about from me to Kendrick away from Kendrick, and so I probably was about I'd say about 20, 25 feet away from him.

Q Okay. And where then was Sergeant Nida?

A Corporal Nida, if I'm not mistaken Corporal Nida, I didn't see Corporal Nida. Like I said, I did not see him apprehend him. If I'm not mistaken Corporal Nida was on, was on — I believe he was on the south side over in here somewhere.

Q So does that mean that he was on the other side of the fence that you saw Mr. Wilson jump? And if you don't know that's fine.

SW - R. DRULIS - CROSS

A I'm kind of confused. Like I said, I saw him go over one fence, okay. There's multiple fences in that neighborhood. I don't know where Corporal Nida was in relationship to where Mr. Wilson jumped the fence at as opposed to where he was being arrested at. I mean, you're —

Q Okay, I'm just — you don't know where Corporal Nida was at the time that you saw Mr. Wilson jump the fence?

A That is correct. That is correct. That is correct. I got it straight now.

Q Did you originally tell us that you did not see him jump the fence?

A No, ma'am.

Q So it's always been your testimony that you saw him jump the fence?

A Yes, ma'am, I believe so.

Q All right. Your description of this vehicle, the suspicious vehicle, was a Caprice?

A Yes, ma'am, it was like I said, when I — when you're on the street, when you hear people say a box Caprice and it may be a misspeak or as well. But a box Caprice can also, when you're on the street, you know, it can either be the box Crown Vic, could be you know, a box you know, K car Dodge type thing.

SW - R. DRULIS - CROSS

It's known as a box car because the, you know, it's very boxy.

Q But that was your information?

A Yes, ma'am.

Q And it turned out to be a Crown Vic?

A Well, okay. And it was painted blue and orange, which was very distinguishable.

Q Did you find both the drugs and the radio?

A Yes, ma'am.

Q So if in the report it says that Agent Spears located a radio that would be an error? You actually located it?

A I suppose so.

Q And but you're sure that you're the one that located it and this would be a mistake?

A Yes, ma'am.

Q And did you locate the drugs first or the radio first?

A No, I located the drugs first. The radio was an after — when I started backtracking I located the drugs first, and I continued along where in the direction that Mr. Wilson ran.

Q So if, in fact, Mr. Wilson discarded these items, the radio would have been discarded before the drugs?

SW - R. DRULIS - CROSS

A No, ma'am. Like I just said, I went back to where I saw him go over the fence and found the drugs first. Then continued along his path and then the radio was found. So that means that he, I would assume that he would, and from an assumption, dropping it here, then continuing to run, and dropped the radio.

Q So you were not backtracking. I thought that you indicated that you were going in a backtracking way and found the drugs first and then the radio.

A Okay, I — you're absolutely right. I wasn't back— I was tracking. I went back to where he first went over the fence, started there and kept on going from there.

Q So the drugs would have been dropped before the radio?

A Yes, ma'am.

Q Okay, in the path that he was crossing if, in fact, he had these drugs. The radio was on top of 10 or 9 inches of grass?

A I can't remember if the radio was in the higher grass, what I consider higher grass. I keep my grass short. But what I consider higher grass or if it was in the more kept part of the yard. And like I said, you know, that — the distance right there

SW - R. DRULIS - CROSS

could be, you know, a matter of foot; it could be a matter of two feet between the two. I really can't, I can't remember that as well.

Q How about the drugs in the little container?

A Uh-huh.

Q They were on top of 9 inches of grass; is that —

A Yes, approximately. Where, you know, where we have thick grass growing up by a fence they were sitting on top. Now obviously if you had the grass standing like that they weren't sitting right like that. I mean, you know, that wouldn't make sense. You know, they were sitting on top of the grass.

Q So they were down in the grass? They —

A No, they were not down in the grass. They were on top of the grass where I could see them.

Q But the grass was bent down.

A What I'm trying to say is, a piece — one piece of grass or four pieces of grass, anyone with any kind common sense is going to know it's not going to be, it's not going to sit there and hold up. So what I'm saying is the box was on the top of the grass. Not sitting on top of the stalks of grass for lack of a better term, but sitting on top of the grass, if you understand what I'm saying.

SW - R. DRULIS - CROSS

Q Okay. How far from the fence itself were these items?

A Well, the -- if I remember correctly the box that contained the crack was right by the fence if not within a foot of the fence. The -- like I said, the radio, he went down along the fence and I can't remember if, like I said, if the radio was out further or a little closer. I know the radio was within 6 feet of the fence line.

Q Approximately, I think you gave Ms. Parr an estimate, you do hundreds of drug cases; is that correct?

A Yes, ma'am, I do. Well, I did.

Q And so now you are a regular patrol supervisor; is that correct?

A Yes, ma'am.

Q You -- did you process or do anything with the evidence other than turn it over to Corporal Nida?

A No, ma'am. Well, when I found the box I opened it and you know, I do not have small hand, you know, and the box is small. So when I opened it obviously, you know, there wouldn't be -- I don't if it prob-- but there wouldn't be anything as far as fingerprints. I wouldn't contaminate any fingerprints on it. I opened it, saw it was crack

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inside, closed it. And when Corporal Nida got back to, got back to us or when we got back up I then turned them over to Corporal Nida, said this is what I found at this location.

Q And Sergeant Drulis, I know that you said that it was muddy and had been raining. Was it actually raining during this chase?

A Not at all.

Q So it was dry then?

A Yes, ma'am.

Q And do you have any idea for what period of time it had been dry?

A I cannot remember if it was raining heavy that night or that morning. But I know, you know, there hadn't been any — I know it hadn't rained in, you know, at least since we were out on, out working.

Q And this happened at 4 in the afternoon and you think the rain was either the night before or that morning?

A Yeah, either that night or in the morning, yes, ma'am.

Q Thank you.

A Thank you.

THE COURT: Anything on redirect?

R E D I R E C T E X A M I N A T I O N

SW- R. DRULIS - REDIRECT

BY MS. PARR:

Q Now did you have gloves on?

A No, ma'am, I didn't.

Q And so you actually picked up both of these items; is that correct?

A Yes, ma'am.

Q And so you were the one that handled them?

A Yes, ma'am, I did.

Q Okay. And you saw the defendant go over the fence; is that correct?

A Yes, ma'am, I did.

Q And did you go back, go right there where he went over and found the box what appeared to be crack cocaine?

A Yes, ma'am, I did.

Q And how long after did you give those things to Agent Nida?

A It couldn't be anymore than five to ten minutes after, you know -- like I said, obviously we had to apprehend him, you know, make sure he didn't have any weapons on him and, you know, secure the area.

Q All right. Nothing further for this witness.

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

(WHEREUPON, counsel approached the Bench

the State was still presenting their case and so I would recognize Ms. Parr for her next witness.

MS. PARR: Your Honor, we would call -- I forgot the first name, I'm sorry -- Officer Nida.

THE CLERK OF COURT: Place your left hand on the Bible, raise your right hand.

WHEREUPON,

WILLIAM JOSEPH NIDA,

having been duly sworn by the Clerk of Court, testified as follows:

THE CLERK OF COURT: Please be seated, state your name for the record.

MS. PARR: It's William Nida.

THE WITNESS: William Nida.

D I R E C T E X A M I N A T I O N

BY MS. PARR:

Q Agent Nida, please tell us your full name.

A It's William Joseph Nida.

Q Agent Nida, where are you employed?

A Florence Police Department.

Q And what do you do for the Florence Police Department?

A I'm a corporal with the special investigations unit or narcotics unit.

Q And how long have you been with the Florence

SW - W. NIDA - DIRECT

Police Department?

A A little over eight years.

Q And you say that you are a corporal in the special investigations unit?

A Yes, ma'am.

Q Have you had any special training for your job?

A Yes, ma'am. I went to Drug Enforcement Administrations, basic for a narcotics investigator, or DEA, clandestine lab, certified. I've been to narcotics commander schools and various other drug related schools and also just in law enforcement itself training.

Q Okay. And so and you are a certified law enforcement officer?

A Yes, ma'am.

Q Now do you have any prior law enforcement experience before coming to the City?

A No, ma'am.

Q Now what are your duties as a agent in the special investigations unit?

A Mostly we handle any drug related incidents but also anything else that would fall under an organized crime of gambling, prostitution, alcohol violations, and such things like that.

Q Now did you have an occasion to become involved

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in an incident that occurred on September 16th, 2008?

A Yes, ma'am.

Q And when did you become involved in that matter?

A While traveling in a vehicle along with the rest of the agents. Sergeant Calhoun was driving.

Q Okay. And do you recall the time?

A I believe it was approximately 4 p.m. in the afternoon.

Q Okay. And you said that Sergeant ---

A Sergeant Calhoun was driving at the time.

Q And where were you in the vehicle?

A The front passenger seat.

Q Now would you please tell us what occurred that day?

A Again, we was McQueen Street. We observed the car, turned on to Dixie, and we had information on it. When ---

Q You had information on what?

A Information on the vehicle in reference to drug violators and selling drugs basically and having drugs transported in the vehicle.

Q Okay, and what kind of vehicle was that?

A It was an orange and blue Ford, a vehicle done up in like a Gator, Florida Gator's colors with

SW - W. NIDA - DIRECT

stickers and stuff.

Q All right. Now there have been some testimony that it was box type Capri or whatever. Would you describe it?

A It was actually a Ford was the make on it, four door, and again the color scheme was painted up in orange and blue.

Q Okay. And what was the body make?

A The Ford Crown Vic.

Q And so when you saw that vehicle tell us what happened?

A We pulled in behind it; and when it turned westbound on Dixie Street, as we attempted to get in behind it that's whenever again it went -- we stopped at the first stop sign. When we passed through Sanborn Street we come up on Chase Street. Another vehicle was parked or stopped at the stop sign, not parked but they were stopped there. And the --

Q So that vehicle was --

A It was in traffic; they were stopped. And while they were stopped at the stop sign the suspect vehicle accelerated around it disregarding the stop sign, and then just continued, continued on.

Q Now is this a residential area?

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A Yes, ma'am, it is.

Q And is it in the city limits of Florence?

A It is in the city limits of Florence, yes, ma'am.

Q Okay, and go on.

A And again we continued on. Sergeant Calhoun activated his blue lights and siren, and they refused to stop. Continued on to Cumberland all the way down Dixie, turned a right on to Cumberland and then went to a dead-end portion there where it turns into Patterson. At that point they both jumped out of the vehicle, quickly exited, and took off running on foot.

Q Okay. And what did you do?

A I was on the, again, front passenger seat and I was on the side of the passenger which would be Jimmy Wilson, Jr., and that was the one that I concentrated on to pursue on foot.

Q Okay, all right. Now it was asked whether anybody pursued the driver.

A Right.

Q Okay. To your knowledge was he pursued?

A No, he wasn't. By the time we exited for myself, Jimmy Wilson, Jr., the suspect, he continued straight through the little wooded area. I went straight behind where off to the side where he was

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at. I did not take the path that was off to the left-hand side. The driver of the vehicle, once we got through the wooded area, he took a right and continued in a different direction than where the suspect had went. And I continued on with the suspect: (a) because he was closer; and (b) there was no way I would be able to catch up with the other suspect. He had done stepped off a good little distance, and I concentrated on the one that I'd seen originally come out the vehicle.

Q Okay. Now when Jimmy Wilson got out the car what, if anything, did he have or appear to have?

A He had an object in his hand and his arms that had like a black front to it like a metal object that we seen him grasp as he was running that he was carrying it and he took off.

Q And at the time what did you think when you saw that item?

A Unknown at the time. We just see that he's carrying an object. It was like just somebody said it was about the size of that Bible but unknown from the distance. We assumed that he was carrying something.

Q Okay. Now did that make you suspect anything?

A Obviously, suspect of — want to make sure it's

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not a weapon or just a lot of unknown there.

Q Okay. Now, and so you -- basically you all took off after him; is that correct?

A Yes, ma'am, start chasing him on foot.

Q Okay. And tell me where that chase led.

A After we -- as soon as they exited and we started chasing them we went again through the wooded area and you come out on to Ingram Street. He, being Jimmy Wilson, Jr., started to go toward some houses that are on the furthest point of Ingram Street. As he started to go behind them the other two agents were also there just on foot chasing too. I went up all the way up to Dunbar. There's a little cut-off street right there on the end. Do you still have the map? It's --

Q Do you have the map?

A But I continued straight up the side of the house is when I seen him flink off and they were following him behind a residence. I went up Dunbar to Carver Street and then took a right just in case the subject would, or one of the other two parties, would come over in my direction I would be able to cut them off. And that is where Jimmy Wilson, Jr., did happen to come over the fence and would be on the side where I was at.

SW - W. NIDA - DIRECT

Q Okay. And would you please come down and show us.

A There's where the car, where they stopped. Again, there's a little path area here and the wooded area where we ran through. Ingram Street is here. It's already marked with the little residence and stuff. As we come up again, run behind the residence in this area. I continued up Dunbar and would be through here, and this street behind it is Carver Street. And there's basically, you know, you're going to have houses on this side of Carver and then you have houses there on Ingram here. And the fence line that would run hit and miss on some of them, but there's a fence that would run separating the property. And Jimmy Wilson, Jr., he end up jumping the fence that is, again, at 1023 Ingram Street and would put him over into a yard on the Carver Street side. That's where I first seen him coming over the fence and running towards me.

Q So you saw him come over the fence?

A I saw him come over the fence, yes, ma'am.

Q And then what did you do? Where were you when you saw him come over the fence?

A On Carver Street as looking in between the houses and I saw him coming over. It was a taller chain

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link fence and not a real short one. He was coming over the taller one. I started running towards him. When he saw me coming towards him he then continued going and jumped the fence and was traveling eastbound, and we end up jumping over a couple of fences that way. And then the third one we got to was -- it wasn't all -- it was falling down a little bit. He hurdled it and there was mud on the other side. He slipped and fell. And he cont-- got to his feet and started to go. I jumped it and end up the same way. I slipped and fell and got real muddy. And at that point I got to my feet. He started getting to his to run again; and I administered my tazer, struck him in the lower back area, and stopped him right there.

Q Okay. Now and at what point did you see Agent Drulis?

A They were on the other side of the tall fence that was here, and it had -- it wasn't clear. It had vines and stuff that was on it so you could see something was behind it, but it was not a clear sight. There was vine and stuff like that that was growing on it.

Q Okay, all right. You may have a seat.

A (Complies.)

SW - W. NIDA - DIRECT

Q And what was the weather condition?

A It had been raining but was not raining at the time, but the ground was very wet and muddy.

Q Okay. And when you saw the defendant jump the fence did you see what he had in his hand?

A He had nothing in his hands at that time, no.

Q At which fence at this?

A The tall fence, when he come over that he had nothing in his hands at that point.

Q Okay. And after you tazed him what did you do?

A I placed him in handcuffs. I got on the radio and advised them that I had him in approximate location. Again, I didn't know the address of the house. We went over several fences before I actually was able to apprehend him. Again, I put him in handcuffs, got my location. A marked unit pulled up. We was able, searched him to make sure he didn't have any weapons, nothing on him. He was placed in the back of the patrol car and then was transported back to the incident location where they actually jumped out of the vehicle.

Q Okay. Now at what point was -- did you instruct Agent Drulis to go back where he was?

A I didn't know -- they met me back when we left out. We all met back at the location and advised

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they'd found the case, the hard plastic case that had some cocaine base with crack in it, and also a radio which then was pieced in that that was the item, could have been the item that subject was carrying matching the size and everything that we'd seen him with.

Q Okay. And so you handled both items?

A The radio was placed in the vehicle, and the vehicle was towed. It was towed. I have a tow sheet. The tow company actually came and took the vehicle, and then I took possession of the hard plastic case, and it was taken to the evidence room at the County Complex where a Best Pack was completed. And a Best Pack is just an evidence pack where we send it to SLED to get it analyzed.

Q Okay. I'm gonna show you what has been marked as State's Exhibit Number 1 for identification purposes. Do you recognize that?

A Yes, ma'am.

Q And how is it that you're able to recognize it?

A This is the item that was given to me, the hard plastic case that Sergeant Drulis found at the fence line. And these are the rock-like items which is the cocaine base or crack that were inside of this plastic box.

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Q Now who packaged the Best Pack?

A I put in from the Best Pack at evidence to be sent off to SLED.

Q Okay. And when you did that did anybody else, up until then, did anybody else have custody of it?

A Once I seal it we place it in a locker and our evidence custodian, which either Lieutenant Harrell or Sergeant Becker, will then take it out and they log it in to evidence and then from there it's sent off to SLED.

Q Okay. Now when it's in evidence room is that Best Pack ever opened or was that one opened?

A No. Once we place it into the Best Pack it seals. The green portion up here more less like a tape you'd say. But once I put it in there I seal that across, and it remains sealed until SLED gets it and then they have a policy and procedure that they follow in reference to handling the stuff. I can't speak on that behalf. But on my end, it's sealed and put it into evidence.

Q And you were the one that placed it in evidence; is that correct?

A Yes, ma'am.

Q Now were you able to find the other, the driver of the vehicle?

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A No, ma'am.

Q Okay. Now what, if anything, you did to try to determine who was operating the vehicle?

MS. WINGARD: Objection, Your Honor.

There's a matter I need to take up outside of the presence of the jury.

THE COURT: All right. Ladies and gentlemen, if you will retire to your jury room. Please have no conversation about the case.

(WHEREUPON, the jury was removed from the courtroom at 2:30 p.m., and the following proceedings commenced in open court.)

THE COURT: Yes, ma'am.

MS. WINGARD: May it please the Court, I'm not sure where Ms. Parr is going, but I did want to nip this in the bud because in his incident report it says the other suspect was not arrested, and suspect number one Wilson would not tell us who he was. I don't think that would be proper testimony, and I just wanted to — I know that he also has a license and that, of course, is proper but I just thought we'd, rather than risking a mistrial or something do that.

MS. PARR: I wasn't planning to do that.

MS. WINGARD: Because that question was a

little open-ended.

THE WITNESS: I can't state what he told me?

THE COURT: Well, let me go ahead and -- go ahead and ask your question and let's make sure that...

BY MS. PARR:

Q What effort did you make to determine who was the other person in the car driving the car?

A Basically I attempted to question and talk to Jimmy Wilson, Jr., in which he would not have any conversation with us and wouldn't say a word. Once he was Mirandized he wouldn't acknowledge it, nothing, so we stopped right there at that point.

Q And then so -- and then what else did you do?

A Conducted an inventory. The other agents conducted an inventory of the vehicle and in which they found the registration who would show ownership of. And also, there was an ID card in the vehicle with the same name on it as the registration card.

MS. WINGARD: And I would object to that part about questioning Mr. Wilson. He obviously has a right to exercise his right to remain silent.

THE COURT: Sure, he does. He has a right to do that; but I mean, I don't think it's improper

to ask him, did you attempt to question the defendant. And the officer, I mean, if his testimony is he did not want to answer any questions so we didn't pursue it.

MS. WINGARD: Judge, but he would have a right not to answer any questions.

THE COURT: Sure, he has a right.

MS. WINGARD: And I don't think that is a matter that the jury has a right to know.

THE COURT: That he exercised his right to remain silent?

MS. WINGARD: Yes, sir, that cannot be commented on in any way or brought to the attention of the jury that — and he has a right to remain silent.

MS. PARR: And he exercised that right, but he gave him his Miranda warnings, and he —

MS. WINGARD: And he exercised his right to remain silent. He has that right.

MS. PARR: And then he didn't do anything else.

THE COURT: I understand that. But if the testimony went such as this, you place him under arrest, did you read him his Miranda rights, I did. Did he answer any questions? He exercised his right

to remain silent. And you're saying that that cannot be acknowledged?

MS. WINGARD: Yes, sir, I think that it is — you cannot get that in. I don't think that is permissible because —

THE COURT: It comes in all the time. It comes in all the time when they choose not to exercise their right to remain silent.

MS. WINGARD: Well, that would be — that would be different. I just, you know, note my objection. I —

THE COURT: Here's what I'm gonna do. I'm just gonna keep it clean.

MS. PARR: Your Honor, could I say one thing before you make a ruling?

THE COURT: Yeah.

MS. PARR: Your Honor, I just think it's important so they can know that the Officer followed the proper protocol as to what he, you know, what he did that he gave — he — well, after he was arrested because he was the one that actually arrested him. He gave him his Miranda warnings and he did — he followed proper protocol and I think that's important.

THE COURT: Well, I'll let you ask it this

way. I'll — think about it and I'll let you respond, Ms. Wingard. What did you do after you placed him under arrest, we read him his Miranda warnings, did he give you any statements, no. I think that would be appropriate.

MS. PARR: That's different.

THE COURT: Is that?

MS. WINGARD: I think that's better. I think that's a better way.

THE COURT: But —

MS. WINGARD: I would still like to have my objection noted.

THE COURT: And I understand your concern and not to say what did you do in an attempt to identify the other driver.

MS. PARR: Okay.

THE COURT: We asked the defendant, but he wouldn't talk to us. That I don't think would be proper. But you can go through — and let me caution this cause, again, I'm trying to let the State prosecute your case but I'm trying to keep it clean. You know, you can ask him, you placed him under arrest, after that what did you do. We read him his Miranda rights. Did he make any statements, he did not. Did you make any efforts to determine

who the driver of the vehicle was, we did. What did you do. Then he can say we searched the vehicle, we found the registration, and we found this, and go from there.

MS. PARR: I was trying not to have so many leading questions.

THE COURT: But not to tie in ---

MS. PARR: All right.

THE COURT: ---in your investigation and trying to identify the driver what did you tell him, you know what I'm saying.

MS. PARR: All right.

THE COURT: Okay. You got it?

MS. PARR: All right.

THE COURT: All right. Ask the jury to join us please.

(WHEREUPON, the jury was returned to the courtroom at approximately 2:36 p.m., and the following proceedings commenced in open court.)

BY MS. PARR:

Q Who arrested Mr. Wilson?

A I did.

Q Okay. And what did you do after arresting Mr. Wilson?

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A He was transported back and was Mirandized, read his rights.

Q Okay.. And did he make any statements?

A No, ma'am.

Q All right. Now what effort did you make to try to identify the owner of the vehicle of the car?

A An inventory of the vehicle was conducted prior to the tow truck taking it, and in the inventory a registration card was retrieved from the vehicle who would show the ownership of the vehicle, and also there was an ID card in the vehicle with the same name on it as the registered owner of the vehicle.

Q But it wasn't a driver's license, or was it a driver's license?

A It was an I.D. card. It was green. It was a South Carolina identification card.

Q Okay. And then before the defendant was arrested and while you were chasing him, what effort did you make or what effort was made to try to get him to stop?

A Verbal commands, stop, you're under arrest.

Refused to stop. And then again, as he was coming over the fence and sit on this side when he crossed over he seen me. Again, verbal commands to stop and refused to.

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Q An he continued running?

A Yes, ma'am.

Q And so did you apprehend him right as he crossed the big fence or was it further down?

A It was further down. Once he crossed the tall fence, the big one, he saw me approaching and he took a right which would be going eastbound and crossed over. We crossed over, I believe it was two, four fences or four foot fences, if you may, and then there was a third one I believe was the one actually down that was just a little bit off the ground that you would jump it while we're running. That's where both of us slipped and fell at that point, and it was in that back yard where I pulled the Tazer and he was placed under arrest at that point in time.

Q And what was the condition of the surroundings where you all were chasing the defendant?

A It was very wet and very muddy in the yards in all that area.

Q Okay. Beg the Court's indulgence.

THE COURT: Yes, ma'am.

BY MS. PARR:

Q Now when you were chasing the defendant and you told him to stop, he was under arrest, did you have

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any clear markings to indicate that you were a police officer?

A Yes. We have our badge that's around — and we're plain clothes officer. I had my badge, a duty issued weapon, radio on one side which I keep it hooked on my pocket. And you wouldn't be able to see the handcuffs in my back, but I did have my badge displayed on the front. Obviously with the blue lights and the truck and the siren and everything too to let them know it was law enforcement conducting that traffic stop on it.

Q Okay. Now were there any other persons other than law enforcement in that particular area where the defendant was apprehended?

A No, ma'am. There was nobody else on my side of the road where I was located, which would be approximately the 1000 block of Carver Street. As far down as I could see where we were at there was nobody else even in that area. Now there was some individuals on the northern side of the road which would be still the 1000 block, but they were in the opposite side of the street nowhere near where we were at.

Q Okay. Now you monitored that particular area or in the northwestern part of the county near the city

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for drug activity; is that correct?

A Yes, ma'am.

Q Now was that purpose that you were over there that day?

A Yes, ma'am.

Q All right. Now in the area of 1023 Ingram Street has that been an area that you have gone through in the past?

A Not 1023 Ingram Street, no, ma'am.

Q Okay. In that particular area itself what's the traffic like?

A Traffic is slow unless individuals are cutting through Dunbar Street, which is the little three blocks, if little short blocks. But most of the traffic is Alexander and up. But on that particular end it's fairly slow on vehicle traffic.

Q Okay. Now would you -- could you show us where the Dunbar is?

A Dunbar, again, is just this road here that there's only -- there's three rows that connect to it: Ingram, it turns, Carver and Pennsylvania. So it's only three, three roads tie into it. I guess two blocks.

Q And what's the traffic like there?

A It's slow. This in here it's very slow.

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Q And where would be your big traffic area?

A Large traffic area, most common road used going into would be Alexander is your main ride up. And then going into Ingram connects to everything else this way so Alexander and Ingram would be your most common routes on that end.

Q And is that where you all concentrate or you have your complaints, your drug activity?

A The biggest part of the drug activity at this point we're getting is right there on Ingram Street. This part is in the county up in here. But the city part that we concentrate on has already been circled. Numerous drug arrests here and then this portion right here.

Q And but you made any right there?

A No, ma'am, we have not.

Q And you were the recording officer; is that correct?

A Yes, ma'am.

Q And how did you all determine who was recording officer?

A Guess I was the low man on the totem pole. No, Agent Spears would have been the low man but I actually took it. We split up our cases while we're working and I just end up being the one who took

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this particular case.

Q Okay. And were you the one that made the arrest as well?

A Yes, ma'am.

Q So is it fair to say you were the first one that got to the defendant?

A I was the first one to get him, placed him under arrest, and from there on the case became mine.

Q All right. Would you please answer any questions the Defense may have for you?

A Yes, ma'am.

CROSS - EXAMINATION

BY MS. WINGARD:

Q Corporal Nida, as you were chasing behind Mr. Wilson you knew that he was the passenger in the car; did you not?

A Yes, ma'am, he was the passenger.

Q And let me also ask you, you said you sought to identify the owner of the vehicle and you found certain information within the vehicle, that was not Mr. Wilson?

A No, ma'am, it was not.

Q So Mr. Wilson did not own the vehicle?

A No, he did not.

Q What were you arresting him for?

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A Well, the traffic stop in itself would be a custodial arrest; and for him to resist and run from that is fleeing the scene, also carrying —

Q He was not driving, was he?

A No, he was not driving, no, ma'am. He was a passenger in the vehicle; but still trying, you know, fleeing from law enforcement, carrying unknown item which again —

Q He can flee if he hasn't committed a crime and he's not being arrested.

A That's what we're trying to figure out.

Obviously something was going wrong for him to run from law enforcement. That's what we were —

Q So you think that every time somebody runs from you he's committed a crime?

A I would believe that. I don't think they're trying to get exercise just because I'm behind them.

Q But you knew at the time you were chasing behind Mr. Wilson that, in fact, he was a passenger in this vehicle?

A He was a passenger, yes, ma'am.

Q And you tazed him. Explain to the jury how that works and how you happened to do it this, on this afternoon.

A The tazer I believe is 50,000 volts. It has a

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cartridge on the end of it that deploys two prongs up to 21 feet. So within 21 feet we're able to use this to assist in apprehending somebody. I mean, it was a great tool for this particular case that, you know, he was within that range that I was able to deploy it to stop the chase because, again, he was refusing to stop and attempting to get up to go again so I deployed the tazer and he was placed under arrest.

Q And tell me when you deployed the tazer what happened.

A It fires the two darts, they make contact, and it — I don't know the whole science. But it completes the circuit I guess, but it actually incapacitates you to where you have no muscle control. You stop; you're incapacitated.

Q It's like being, getting an electrical shock.

A It is, yes, ma'am.

Q And did Mr. Wilson then fall to the ground?

A Yes, ma'am.

Q And was it painful?

A I got shocked with it; it hurts.

Q I'm a little confused about the driver of this vehicle and which way he went. So could you come down and show me on this if you will and we'll see

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if we can understand this.

A Yes, ma'am. Again, the parked car.

Q Okay, now let me ask you, the driver and Mr. Wilson came through the wooded area?

A Yes.

Q Now as they were coming through the wooded area you were where?

A Now I can't speak for the driver because, again, I was on the passenger side of the vehicle and my main interest was concentrating on him since he was my closest one to me. But whenever the passenger Jimmy Wilson, Jr., when he exited, the little path again where people walk through here, Jimmy Wilson ran straight through this little wooded portion and that's where I followed. The driver, I can't speak on which — I didn't see which way he went, but I do know that he cut through the right and was continuing further on and Jimmy Wilson was going in this direction.

Q So after Mr. Wilson got to Ingram Street he crossed Ingram Street?

A Yes.

Q And proceeded —

A Jimmy Wilson did cross over and continued up again to where these houses are here. And the

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driver, I don't know again which way he went. I don't know if he went through the path or the trail, but he ended up going further on down in this direction, and again, was a good distance ahead of where Jimmy Wilson, Jr., was at.

Q And then you did not follow behind the cut-around?

A Yes, ma'am. Come up, was following here, and the other two agents was following him. I went to the next block and come down here which ended up cutting him off. He did. I was hoping to get lucky and him cross over, and he actually did cross over the fence and came right where I was at.

Q How did you get back with Mr. Wilson to the car?

A A marked unit, a city unit. Once I radioed our approximate location — again, I didn't have the exact address on the house. He come by and he saw us, he was placed in the back of the patrol car and was transported back, which he couldn't go — patrol car can't drive through the path so they had to take the road down Alexander to Harmony, back up to Cumberland to get back to where they abandoned vehicle and took off running on foot.

Q So you put him in the patrol car prior to finding or having the other officers find either the drugs

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or the radio?

A He was placed in the vehicle first. Again, I'm on the opposite side of the fence and I'm even down several houses from where Sergeant Drulis and Agent Spears were located.

Q You did not see him with any items in his hand?

A No, ma'am, other than when he exited the vehicle with the unknown object that he was carrying.

Q And when you saw that he is going away from you?

A Away, yes, ma'am.

Q And you don't know what it is?

A At that point, no, ma'am.

Q When you arrested him he did not have anything on his person, any kind of weapon or drugs or anything; is that correct?

A No weapon or drugs, no, ma'am.

Q Did he have any identification?

A I don't recall if there's identification on him or not, I don't. I don't recall if he had that on him.

Q At what point did you learn that there had been a radio and drugs found?

A Once we get back to the location that's where they brought back the items, and again, they were given to me. The plastic case that contained the

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cocaine base or crack was given to me to take possession of, and the radio, which was put back in the vehicle.

Q And so you have no firsthand knowledge of where these were found? This is just what ---

A No, ma'am, I wasn't in that area ---

Q ---what you'd been told?

A ---on that side of the fence was.

Q And the vehicle was searched?

A Yes, ma'am.

Q Nothing was found in the vehicle?

A No, ma'am.

Q And would you say that from the description of this vehicle it sounds pretty distinctive?

A Yes, ma'am, it was.

Q I mean, we have a lot of Gamecock and Tiger fans around here. We don't have any Gator fans?

A That's true.

Q So it was a very, very distinctive car?

A Yes, it was.

Q Thank you so much.

A You're welcome.

MS. PARR: Nothing further for this police officer.

THE COURT: Thank you very much. You may

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witness.

MS. WINGARD: I have no questions of this witness.

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

MS. PARR: Your Honor, at this time we would call Douglas Robinson.

THE COURT: All right, ask Mr. Robinson to join up please.

THE CLERK OF COURT: If you will, sir, place your left hand on the Bible, raise your right hand.

WHEREUPON,

DOUGLAS ROBINSON,

having been duly sworn by the Clerk of Court, testified as follows:

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

THE WITNESS: Douglas Robinson,
R-O-B-I-N-S-O-N.

D I R E C T E X A M I N A T I O N

BY MS. PARR:

Q Mr. Robinson, where are you employed?

A The South Carolina Law Enforcement Division commonly known as SLED.

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Q Okay, and what do you do with SLED?

A I'm a forensic chemist assigned to the drug analysis department.

Q Okay, and how long have you been with SLED?

A Just over two years.

Q Okay. And what do you do for SLED?

A I am assigned to the drug analysis department. My main assignment is the analysis of controlled substance that are submitted from various agencies.

Q Okay. And what is your title?

A Forensic chemist.

Q And what is a forensic chemist?

A A forensic chemist is a scientist that's trained specifically to perform chemical analysis on various submissions, in this case controlled substances.

Q Okay. Now would you please tell us about your educational background?

A Yes, I received my bachelor of science in chemistry from the University of South Carolina. After graduation I spent approximately three years performing chemical analysis in the environmental chemistry field. Upon coming to SLED I completed law and legal training at the South Carolina Criminal Justice Academy as well as in-house training through SLED in the analysis of controlled

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substances. I've also attended the Drug Enforcement Administration's forensic chemist seminar.

Q Okay. And have you been certified in order to perform chemical analysis?

A Yes.

Q Now and where did you get that certification from?

A That would have been a result from the training through SLED in controlled substance analysis.

Q Okay, now have you testified in court before?

A Yes, ma'am.

Q Okay, and how many times have you testified?

A Three.

Q Now and how long have you been analyzing controlled substances?

A Just over a year-and-a-half.

Q Now how many controlled substances have you analyzed during this time?

A It would be in the thousands.

MS. PARR: Your Honor, the State would move to have Douglas Robinson declared an expert.

MS. WINGARD: Without objection.

THE COURT: All right. Without objection.

MS. WINGARD: And I assume it's an expert in chemical analysis.

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MS. PARR: Chemical analysis, uh-huh.

THE COURT: Chemical analysis. And ladies and gentlemen, let me briefly explain to you and I'll give you more detail. But the difference between a lay witness and expert witness is simply this, that because of someone's expertise in a particular area of science or whatever field they're in, they get qualified as an expert witness. They're allowed to give their opinion as to their findings and to their conclusions, whereas a lay witness is not allowed to give opinion testimony. I would tell you that any testimony that you hear from the witness stand, whether it be an expert witness or a lay witness, is to be given whatever weight you feel is appropriate. So that's just so you'll understand the main difference between a lay witness and an expert witness is that Mr. Robinson will be allowed when asked to give his opinion as to the conclusions from his study.

BY MS. PARR:

Q Mr. Robinson, I'm gonna show you what has been marked as State's Exhibit Number 1 for identification at this time. Would you please tell us what that is and how you're able to recognize it.

A This is actually -- the outer packaging here is

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what we refer to as a K-pack. It's a heat sealed bag that we would use to re-seal evidence after analysis. In this case across the bottom there is a heat seal with my initials and the date that it was sealed. The inner packaging is what we call a Best evidence sample testing kit or a Best Kit.

Q Okay. And did you have occasion to receive that?

A May I refer to my notes please.

Q Sure.

A Yes, I did.

Q And when did you receive that?

A I received this piece of evidence on October 7th of 2008.

Q Okay. And upon receiving that piece of evidence what did you do?

A The evidence would have been received from the evidence control department. I would have taken it up to our secure area and stored it until time of the analysis. At the time of analysis I would have performed a preliminary and confirmatory test after having taken the weight of the substance.

Q Okay. Now prior to getting that when you got that Best Pack do you examine it?

A Yes, I do.

Q Okay. And when you received it, would you tell

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the Court whether or not it had been tampered with or appeared to be tampered with.

A First of all, no, it did not appear to be tampered with. When we inspect the Best bag once it comes up, it's actually been folded in half at this point to fit into the K-pack. This bag by design, if you can see the blue loops that they're actually around all four sides, these loops are designed to make this bag tamper evident. That is, if anyone were to attempt to open or access the evidence in any way it would be readily apparent. In this case there was no tampering. This is noted on my worksheet as well as on the actual Best Kit. We also look to see that where this green is on the top, this is where the officer would have actually sealed it. There's a pull-away strip in blue and sealed here. That was also noted that the seal was intact. It had not been tampered with.

Q And so after you made that inspection that it was intact, the evidence was intact and had not been tampered with, what did you do?

A At that point I would have made an incision in the bottom of the bag. Which is standard protocol, would have then removed the evidence from any packaging and taken a weight and after that would

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have done a preliminary and confirmative test.

Q Okay. And would you please tell us what weight did you?

A The weight of the substance minus all packaging was 0.45-grams.

Q And so you take the substance out of the package before weighing it?

A Yes, ma'am. That's the weight of the controlled substance only.

Q And so after you found that, the weight of it, then what did you do?

A At this point we would first perform what we call a preliminary or presumptive test. This test is designed to give us an idea of what we're looking at as a submission, a road map of where to go for our confirmatory analysis. After this, based on the results of the preliminary test we would perform the appropriate extraction and analysis on instrumentation for confirmation of the substance.

Q Okay. And would you please tell us what test did you do to determine what the substance was.

A The preliminary test is a chemical spot test, a color change, color reaction test. It's a two part test known as cobalt bio cyanate and stannous chloride. This is a two part test that will

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actually give us a color change and an idea to actually distinguish between cocaine base and cocaine hydrochloride or commonly known as cocaine powder. The results of this test, the first part was a slight blue reaction followed by a stronger blue reaction on the second part which is indicative of cocaine base.

Q And then what did you do after that?

A Based on these results, in this case two different extractions were performed. There is a basic methylene chloride extraction, and an exine extraction. These -- the combination of these two extractions ran on gas chromatography mass spectroscopy, or GCMS, can distinguish without a doubt between the cocaine powder or hydrochloride form and the basic form known as crack.

Q Okay. And the result of that test?

A The results of the confirmatory test as well as the, based on the preliminaries, the results were cocaine base crack found 0.45 grams, 6.94 grains C-II.

Q And what does C-II stand for?

A C-II is a reference to the controlled substance act. It is based on our drug scheduling in South Carolina. There are three different qualifications

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to meet these standards. A C-II refers to a substance that has a high potential for abuse, a high potential for physical or psychological dependency, and a valid medical use in the United States.

Q Okay.

MS. PARR: Your Honor, the State would move to enter into evidence what has been marked as State's Exhibit Number 1.

THE COURT: Any objection?

MS. WINGARD: Judge, I don't object understanding that by my not objecting does not mean or suggest that I think it's Mr. Wilson's but.

THE COURT: Oh, correct, you know, just to the admissibility of the drugs.

MS. WINGARD: Yes, absolutely.

MS. PARR: State's 1 is in evidence without objection.

(WHEREUPON, State Exhibit No. 1 was admitted into evidence.)

BY MS. PARR:

Q Now after you confirmed that it was in fact crack cocaine, what did you do?

A After that there was actually a bag, a small Ziploc bag added to this case simply because the

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original packaging was not suitable to contain the controlled substance for post-analysis. This small Ziploc bag was added. And there is a note on the bottom of the bag that actually says bag added.

That way I can keep up with anything that was added to the case at the time of analysis packaging wise. At that point all the evidence, packaging, and Best Bag were placed into this larger plastic outer pack and known as a K-Pack, was then heat-sealed, initialed, and dated.

Q Okay. And one question I forgot to ask you. When you open that Best Pack in order to get the controlled substance out or the crack out, was it in that container or was it separated from the container?

A The original state of the evidence was noted on my worksheet as a plastic container containing rock substance which would -- this was labeled. It would be this hard plastic container which containing the rock substance.

Q Okay, all right. And did you make any specific markings when you did the heat seal in order to be returned to the agency?

A Yes. As I referred to earlier, the heat seal is marked with my initial and the date that I made the

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seal.

Q Okay. And now looking at that container, that package, is it in the same condition as it was when you heat-sealed it to return to the agency?

A It is with the exception of this hole and the tear at the top of the bag. That was not done at the time of analysis.

Q Okay. But has — but has it been open even though that tear is in there?

A With the exception of that everything else is in the same condition as it was when I returned it to the evidence control department.

Q All right. Okay, would you please answer any questions the Defense may have for you.

MS. WINGARD: I don't have any questions. Now you can say you've testified four times.

THE COURT: Thank you, Mr. Robinson. I appreciate you being here, sir.

Any objection to Mr. Robinson being excused?

MS. WINGARD: None.

THE COURT: Thank you, sir.

THE WITNESS: Thank you.

MS. PARR: Your Honor, the State would rest at this time.

THE COURT: All right. Ladies and

gentlemen, I have to take up some matters of law with the attorneys so I ask, if you would, to step into your jury room. Please have no conversation about the case. I'll take up these matters of law and then we'll resume shortly okay.

(WHEREUPON, the jury was removed from the courtroom at 3:21 p.m., and the following proceedings commenced in open court.)

THE COURT: Ms. Wingard.

MS. WINGARD: Judge, at this time I'd move for a directed verdict. And I know that most of the time these directed verdict motions are somewhat profoma, but there is absolutely no evidence in the record that Mr. Wilson ever possessed crack cocaine. It is speculative at best, and so I would move for a directed verdict of not guilty.

THE COURT: All right. I'm gonna respectfully deny that. I agree with you, there is no evidence, there is no direct evidence that he was in possession of these drugs but there is circumstantial evidence depending on how the jury views it. And so therefore, obviously at this stage it's not the Court's province to give weight to that testimony, simply just the acknowledgment or the recognition that there is some evidence whereby a

jury could find. And I think that there are circumstances here that would require a jury to make that call so I'm gonna respectfully deny your motion.

MS. WINGARD: Judge, I would also move to have the case dismissed on the jurisdictional ground that there has not been any proof that this defendant was notified that he would be tried in his absence. There is nothing in the record to that effect. And his bond was not introduced to show that he knew he was supposed to come to court and that he would be tried in his absence.

THE COURT: Ms. Parr.

MS. PARR: Your Honor, the State — when the defendant and his attorney, the attorney was advised. We attempted to contact the defendant through his attorney and he did not show. And he

—
THE COURT: Have you got a copy of his bond, his bond paperwork?

MS. WINGARD: Judge, it hadn't been introduced.

THE COURT: Well, I'm — the record on this trial isn't closed. If the State chooses to introduce that I can consider that.

MS. WINGARD: Judge, the State has rested and I would respectfully ask that the matter be dismissed. She's not introduced it.

THE COURT: All right. Ms. Parr.

MS. PARR: Your Honor.

(Document tendered to the Court.)

MS. PARR: Your Honor, it would...

(Document tendered to the Court.)

THE COURT: Is that his bond?

MS. PARR: Yeah, that's his bond.

THE COURT: I'm gonna allow the State to re-open their case for the purpose of submitting the information, the bond form from the defendant, whereby it specifically notes above where the defendant signs that: "I understand and have been informed that I have the right and obligation to be present at trial and should I fail to attend court the trial will proceed in my absence. It has been explained to me that if I fail to appear before the court as required a warrant for my arrest will be issued." Signed by Mr. Wilson and dated February 27th, 2009. I'm gonna make this a Court's exhibit.

(Court's Exhibit Number 1 was marked and made a part of the record.)

MS. WINGARD: Judge, I respectfully object to your allowing this to be introduced at this stage. The State has rested.

THE COURT: All right, certainly your objection and exception to that ruling is noted. Thank you, ma'am. Anything further?

MS. WINGARD: Nothing further.

THE COURT: And it is my understanding that the Defense is not going to put up a case; is that right?

MS. WINGARD: Defense is not going to put up a case.

THE COURT: And just as a matter of time and saving time, if you would I'll go ahead and note these, the motions and the objections at the close of all the evidence so that when we bring the jury back out we'll move into closing arguments. But let the record reflect that Ms. Wingard has renewed those motions and objections at the close of all the evidence.

Is the State ready to proceed with —

MS. PARR: Yes, Your Honor.

THE COURT: —closing? And what I indicated earlier, ladies, is that when the jury comes out, Ms. Wingard, I'll recognize you, let you

rest on the record, and then I'll explain to the jury that we're gonna be moving into the closing arguments.

MS. WINGARD: Thank you.

THE COURT: All right, Ms. Joe, if you will bring the jury out please.

(WHEREUPON, the jury was returned to the courtroom at approximately 3:50 p.m., and the following proceedings commenced in open court.)

THE COURT: All right, ladies and gentlemen, thank you for your patience while I took up those matters. As you recall, the State has rested their case and now we recognize Ms. Wingard for the Defense.

MS. WINGARD: Defense rests.

THE COURT: All right, Ma'am. Thank you. Now ladies and gentlemen, we have reached the portion of the trial where all of the evidence is in, okay. Everything that you're going to get to decide this case is in evidence, the testimony of witnesses and exhibits that have come in. But we've reached the portion of the case where the attorneys now will have an opportunity to address you with their final summation or what we commonly refer to

as closing arguments. Just like I told you on the beginning of the case with their opening statements, what the attorneys tell you during their closing arguments is not evidence. The evidence is closed, but it is important that you listen to them as they present to you. This is their opportunity to argue to you what they believe the evidence has shown. And if you would give them your undivided attention while they do that, when they've concluded their closing remarks I will then come down and I will charge you on the law that applies to this case.

And then after all of that you will then reach the point where you can finally talk about this case, and it will be time for you to deliberate. So if you would, ladies and gentlemen, please give both Ms. Parr and Ms. Wingard your undivided attention as they address you with their closing arguments.

Ms. Parr.

MS. PARR: May it please the Court, Ms. Wingard. At the beginning of this case I told you the defendant is charged with possession of cocaine base, better known as crack. At the close of this case the judge, or when I say at the close of the case, after I finish giving a closing

argument and Ms. Wingard gives closing argument Judge Russo will actually come down and go over the law with you in great detail so I'm not going to bore you with through all of them. But I will tell you when the judge comes before you he will tell you about the presumption of innocence and that the defendant has pled not guilty and he will go in details about that means. He will also tell you that the State carries the burden of proof, and that burden of proof is beyond a reasonable doubt. And beyond a reasonable doubt is basically a proof — beyond a reasonable doubt is a proof that leaves you firmly convinced of defendant's guilt.

You know, in life there are few things that are certain, but you have been chosen to use your common sense and your everyday experience to reach a decision in this case. And the judge will go through that. You all were specifically chosen for this particular case 'cause we thought that you could do that. The judge will also tell you your duties as the jury. You as jurors are the finder of fact, and Judge Russo as the trial judge will determine what the law is in this case. And it's your duty to judge the credibility of the witnesses, the believability of the witnesses, their demeanor

on the witness stand, the manner in which they had the opportunity to see what occurred. And you can determine that. You will also have an opportunity to view the evidence that has been presented in this case and they're not many. You'll have the State's Exhibit Number 1 which is the controlled substance, the crack, that you can take back there. And you can look at it, not open it but you can look at it. You will also have a copy of the map which is State's Exhibit Number 2 so you can look at the route that the defendant took on that particular delay when the officers went behind the defendant. You will also have State's Exhibit Number 3 which is a copy of the certificate, the receipt for the controlled substance that was taken to SLED to be analyzed. So you will have an opportunity to observe that particular piece of evidence.

Now what's also considered evidence is the evidence you'll hear from this witness stand. That's the testimony. And we would ask that you listen to that and review that testimony, play it back in your mind as well. Now the judge will tell you that we have layperson testifying as well as expert testimony. The layperson's testimony are those of the officer. They're considered fact

witnesses. And then you have the expert testimony from expert witnesses, persons who are specifically trained in a particular area, and they're given an opportunity to render an opinion on something. And that's what Mr. Douglas Robinson did in this particular case. He had an opportunity based upon his training to analyze the controlled substance and, in fact, found that it was in fact cocaine base, also known as crack. He also weighed the controlled substance and determined it was 0.45-grams of cocaine base, also known as crack.

The judge will also give you an instruction on the absence of the defendant and how you're not supposed to consider that in any manner whatsoever and also his failure to testify. Now the substantive law in this particular case is possession of crack cocaine and that's what the defendant is charged with. And the possession of crack cocaine means that the defendant knowingly or intentionally possessed crack cocaine. And knowingly means with knowledge or not by accident, and intentionally meaning that he willfully intending to do that. And possession may be either actual or constructive possession. Actual possession is if he actually had it in his hand.

Constructive possession is where he had access to it.

And one thing I think the judge will charge you is regard to circumstantial evidence. As I said before, you have heard direct evidence. Direct evidence is the evidence that you heard from this witness stand. Direct evidence is also evidence, these exhibits. But circumstantial evidence is evidence that you can rely upon as well.

Circumstantial evidence is a proof of a chain of facts and circumstances indicating the existence of a fact. It can be relied on just like direct evidence. It's based on an inference and not personal knowledge or observation. Now the reason I tell you about circumstantial evidence is because I think that's important in this particular case.

Because if you go back to the facts in this particular case on September 16th of 2008, the officers from the Florence Police Department Special Narcotics Unit were doing their job as they normally do. And they were patrolling in the area of northwest Florence, which is also known headed towards the bottom. On that particular afternoon when they were proceeding up or proceeding north on McQueen Street, they spotted a vehicle that was very

distinctive, a vehicle that they had information on because, you know, this is what they do. You know, good or bad or indifferent, this is the job they are assigned to. They had information that that vehicle had been — persons in that vehicle had been dealing drugs out of that vehicle.

MS. WINGARD: Objection, Your Honor, that is not in evidence.

THE COURT: Sustained. You got to confine your argument to testimony and facts that are in evidence.

MS. PARR: Okay, I apologize if I misstated but I think the testimony from the witness stand had been they had information that that vehicle, drugs had been dealt out of that vehicle. And so they were suspicious of that vehicle, when that vehicle turned on to Dixon Street they immediately turned behind that vehicle. When the occupants of that car saw the unmarked vehicle behind them they tried to get away. They stopped at the first light, the first stop sign. And then when they got and they saw the officers were still behind them, when they came to the next stop sign there was a car already stopped at the stop but did they stop? No. They immediately, when they got up to it, they

went around the stopped car that was stopped at the stop sign. Not only did they go around it, they floored it. They put their foot on the gas in an effort to get away from the law enforcement officer.

The officers testified as to how the back of the car, which was box shaped, went down and how smoke came out of the exhaust. The officer then, Sergeant Calhoun, initiated his emergency signal by putting the blue lights on and siren. Now we're at a residential area here, but did that vehicle slow down? No, they continued and in fact, it got up in speed and continued. Now the officers couldn't say they were trying to get away from them, but we ask you to use your common sense. That's why we're here. Common sense shows that they were trying to get away from them, from the officer. Why? Because something was aflutter. They continued down Dixie Street, then turned. And they didn't go like one or two blocks and stop. You know, if nothing was up they're gonna stop, wait for the officer to check. They didn't. It's not like they could say, oh, we didn't know you were behind us because they knew somebody — they were behind them for a reason because not only when they finally stopped at a dead-end they jumped out and they haul buggy. I

mean, they ran and did not stop. The officers ran after them. They ran after -- they concentrated on Mr. Wilson, the defendant, because he was the closest to them. They ran after him. And he, after jumping over some fence and going through some of the peoples' yards, came to rest after falling through the mud when Joe Nida saw him. And during the time he was running they told him you're under arrest. Joe Nida told them to stop, you're under arrest, but did he stop? No, he didn't stop.

And the officers also testified that when he got out of the vehicle he had a box with him when he was running. And a short distance where he was arrested and through the path he took after he went over the fence in that area when Joe -- when Agent Drulis went there he found the plastic container that contained what appeared to be crack cocaine to him. And a short distance from that he found the box that appeared to be what the defendant had and, when he got that box it was a radio. And low and behold, when that radio was taken back in the vehicle he'd jumped out of, it was missing a radio, wires were out, and it fit perfectly in there. All of that found in close proximity, fairly close proximity to each other and on the path where the

defendant was running. The officers saw him at various points. No one ever lost contact completely of the defendant. Although all of them didn't see him until he was arrested there was somebody who, one of the three, that actually saw the defendant at some point during the chase.

Now we talked about the conditions on that particular day. It had been raining and wet. Now if the box that contained the plastic container that contained the controlled substance and the radio had been out for long periods of time due to the conditions, surrounding condition, it had rained, they would have been wet, soaking, but they were not. The box was dry on the top, and it wasn't hidden. It was not beared down in the grass even though there was some grass around and some bushes. It was right on the top out in plain view. I submit to you, if it was a drug dealer trying to hide his stash it wouldn't have been. It would not have been sitting right on top. I submit to you it was somebody trying to get away and was just quickly trying to ditch what they had, and we submit to you that somebody was the defendant Jimmy Wilson. 'Cause anybody else, if it was somebody where it was a hiding place it would have been hidden down in

there. They're not going to let their money, so to speak, be out in the open for anybody else to get, another drug dealer or somebody who on drugs to smoke it up. It would have been hidden, and it wasn't that way. And it would have been wet but it wasn't that way either. Also, the radio, or car stereo system as it's been referred to, it was out in plain view, wasn't wet, wasn't damaged, or anything. I submit to you it's because it had been recently dropped, and the only person who was in that area running trying to get away was the defendant Jimmy Lee Wilson, Jr. The officers were chasing in that area. There was nobody else going that path but the defendant.

Ladies and gentlemen, I submit to you Defense is gonna come and say, well you know, it could have been this drug deal or this one and this is a high drug traffic area; but the officers said behind that fence line of 1023 Ingram Street they didn't have any complaints at that area there. There are other pockets around, but not that area. And they monitor that area of the city for drug activities on a regular basis. This wasn't the first time, you know, they all just started doing the drug monitoring. Ladies and gentlemen, I would ask that

you review all the evidence you received and you've heard in this matter, and we would just ask that you find the defendant guilty of possession of cocaine base, also known as crack. Thank you.

THE COURT: Ms. Wingard.

MS. WINGARD: May it please the Court, Ms. Parr. Mr. Foreman, ladies and gentlemen of the jury, it's been a long day for all of us and so I am not going to take up a lot of your time. But what I do want to talk about with you are reasonable doubts. And the reasonable doubts are throughout this case. First of all, let's talk about this car. The officer said, oh, we had some information that this was a drug dealing car. You would have to be a fool and an idiot to be dealing drugs out of an orange and blue car that had Gator stuff all over it. Now drug dealers are not the smartest people in the world, I agree with that; but I mean, who in the world would set themselves up to be dealing drugs out of a car of that nature. And then the officer said, well, our car, our narc car, even it's unmarked it is very recognizable, people know us. And so the second thing that gives me real pause is, if you got these drug dealers in this car and they're so into the drug culture that they see this

unmarked narc car behind them — now we're talking — we're not talking about at night. We're talking about at 4:00 in the afternoon in the middle of September. So rather than being very judicious in the way this car is driven they do all these crazy speeding up and running stop signs and flipping around cars and such. Doesn't that give you a little bit of reasonable doubt about whether these people were up to no good. I mean, they were just bad drivers. If they were up to no good and they were looking out for the narcs, they wouldn't be driving like that. They would be just the opposite.

And let's look at the lack of investigation in this case. I am so confused about the path and the fences and the woods. I mean, wouldn't you like to have seen some photographs? Wouldn't you have liked to have seen some tangible evidence of the areas that the State is talking about? Wouldn't that have helped you understand where all of this took place? They all had a difference version about where it happened and how it happened and who was chasing who. And so I would like to have a little forensic evidence in this matter. I mean, obviously they have the wherewithal to do it. I mean, look at

the dog and pony show for the identity of the drugs and those — that probably is crack cocaine. We don't have any problem with that. It just wasn't Mr. Wilson's crack cocaine. So they can bring evidence into this courtroom if they want to and if they have it.

If I'm charged with something, I would hope that they would go to the trouble, they claim that I had in my possession a gray or a black item. They couldn't really tell what it was as I left out of the car. And if they thought that that they found the item that I was carrying, that I was toting as I went running and alluding law enforcement for all these boxes, I would hope that it would be analyzed, that you'd try to find some fingerprints or DNA, something off of that. They didn't do a thing to try to bring evidence in here to prove beyond a reasonable doubt that Mr. Wilson is dealing drugs.

Now let's look at this situation that Mr. Wilson found himself in. He is a passenger in this car. This is not his car. He is not driving this car. They stop the car and he decides to get out of there. He's not driving the car. The car's been blue lighted apparently for some traffic violation, and he had to know that this man was not

driving in the safest manner. He wants to get himself out of that situation. Well, bless his heart he gets chased down when the driver, the man who started all of this, they just let him go. Nobody bothers to try to find him. We, know there are other units in the area 'cause another one came up after poor Mr. Wilson had been tazed and arrested. Now what at this point, ask yourself what had Mr. Wilson done at this point. He was running down the street. He wasn't driving the car. He wasn't the one who committed the traffic offenses. And there was no question, all of these officers knew, that he was the passenger.

And then you get back to the car, and there's nothing in the car. Nothing to indicate that people are dealing drugs out of that car. No scales, no cash, you know, no drugs left about. I mean, if these individuals fled in the manner that law enforcement would have us believe, I mean, they're gonna leave some debris and some stuff in that car. There's nothing in the car. Nothing on Mr. Wilson to suggest he's dealing drugs. Bless his heart, only thing he got on him is turn the tazer on him, all these electrical bolts shooting in him. There is absolutely no evidence that Mr. Wilson had drugs

in-his possession. This is as weak a circumstantial case as I have ever seen. Nobody could say that they saw him throw down anything. Even if you think that he might have had this item in his possession and he's the one that threw that down, it wasn't even close to these drugs. Ms. Parr would have you believe they were right up there next to each other. I believe one of the officers testified that the radio and the drugs were 25 feet apart. That's not close. And you know, if Mr. Wilson had these items on him, he had contraband on him, why would he hold on to this stuff all that distance. You know, initially as soon as he got out of the car he is going in woods and there are trees, and then there's low debris as well. I mean, he would have just pitched it right there. Agent Spears said he was on the path and Mr. Wilson is in the woods. He's by himself. He could have gotten rid of it then. This is a high drug area. Anyway you cut it, Ms. Parr would have you believe, well you know, next door maybe a high drug area but, oh, where these drugs were found that is not a drug area. Well, I don't think crack head say, oh well, let's see, I can use drugs here but I can't have them half a block away. I mean, that doesn't make sense, it's incredible.

Anybody could have been in that area and had drugs. It is an extremely high drug area. But Ms. Parr says, oh, but it was raining and these items weren't wet. Well, the officer testified -- I believe it was Drulis -- one of the officers testified that in fact it was wet and muddy because it had been raining the night before or that morning. It hadn't been raining any in the afternoon, and here we are at 4:00 in the afternoon. Can you determine beyond a reasonable doubt that nobody else could have put this little box of crack cocaine in that field. There is -- in that yard. There is no evidence that Mr. Wilson had this in his possession.

And there are little things that point the way to the truth and show reasonable doubt. And one of the things I think is so interesting, I talked about the incident report that the Officer Nida wrote and Sergeant Calhoun signed off on. And in that report there is no mention, no mention, of any item being in Mr. Wilson's hand when he got out of that car. Nothing in there. He said it. He said, yeah, there's nothing in the report. Sergeant Calhoun said, yeah, I signed off on the report. And as I read it there there's nothing in the report. Another reasonable doubt. You know, these officers

have a hard job and they make a lot of cases and it's understandable why where some of the facts might get confusing. But goodness gracious, we are talking about taking a way Mr. Wilson's liberty.

Have you heard enough from the witness stand such that you are satisfied beyond a reasonable doubt that Mr. Wilson is guilty? Are you satisfied that you can be comfortable in returning a verdict to take away his liberty from what you've heard? We live in a remarkable country. Part of what makes this country remarkable is the fact that when people come into a court of law like this they are presumed to be innocent unless and until the State proves them guilty, competent credible evidence beyond a reasonable doubt. So I submit to you today, that you have not heard sufficient evidence to come anywhere close to convicting Mr. Wilson beyond a reasonable doubt. Thank you so much.

THE COURT: Ladies and gentlemen, I come to you down here at the podium to give you the charge on the law. It's appropriate during the course of the trial that I'm on the Bench out of the way and where the attorneys present to you the evidence in this case and all the facts whereby you need to decide the case. And it's appropriate that

I'm out of the way because as I told you, you are the sole judges of the facts in this case. And now though, we've reached the part of this trial where you and I are in this together. You as the judge of the facts and me as the judge of the law, so it's appropriate I think to come down with you to give you the charge. Also, it's just friendlier to talk to people face to face than from up there. And so I'm going to give you the charge on the law.

Mr. Foreman, I will tell you that -- and ladies and gentlemen, I read this verbatim because I don't want to miss anything. I don't want to leave anything out. And I will send this back into the jury room with you so you will have this back there with you. Also, the verdict form is gonna be in the front of the notebook here so it will be there when you need it. But please give me your attention as I instruct you on the law that is applicable in this case.

Mr. Foreman, and members of the jury, you have heard the evidence and arguments of both parties. I will now explain to you the law that applies to this action. The indictment charges the defendant Jimmy Wilson, Jr., with the offense of possession of cocaine base or what is commonly

referred to as crack cocaine. I remind you that the fact that the defendant was arrested, charged, and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor does it create any presumption of innocence or inference of guilt. The indictment is simply the formal written instrument which contains the charges made by the State against the defendant. It is the formal document by which this case is brought into court. Throughout this charge, when you hear me use the term defendant please note and understand that I'm referring to Jimmy Wilson, Jr.

Now the defendant has pled not guilty to this indictment and that plea puts the burden on the State to prove the defendant guilty. A person charged with a criminal offense in South Carolina is never required to prove him or herself innocent. I charge you that it is an important — it is an important rule of law that the defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment is issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt. This presumption of innocence does not end

when you begin your deliberations but it accompanies the defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt. The presumption is not a mere legal theory. It's not just a legal phrase. It is a substantial right to which every defendant is entitled unless you, the jury, are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

So what is a reasonable doubt in the law? Some of you may have served as jurors in civil cases where you were told that it is only necessary to prove that a fact is more likely true than not, such as by the greater weight or the preponderance of the evidence. In criminal cases the State's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty. If on

the other hand, you think that there's a real possibility that the defendant is not guilty then you must give the defendant the benefit of that doubt and find him not guilty.

I remind you that during this trial you and I have certain duties to perform. As the trial judge it is my responsibility to preside over the trial of this case, and I also have the duty to rule on the admissibility of evidence offered during the course of a trial. You are to consider only the competent evidence that is before you. You are to consider only the testimony which has been presented from the witness stand and any exhibits which may have been made a part of the record in this case. You have the additional duty — excuse me, I have the additional duty to charge you the law that is applicable in this case. As the presiding judge I am the sole judge of the law in this case, and it is your duty as jurors to accept and to apply the law as I now state it to you. If you already have an idea as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon your idea because you are sworn to accept the law and apply the law exactly as I state it to you.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts in the case. A trial judge cannot intimate, state, comment on, or make any statement to a trial jury about the facts of a case. Since you, the jury, are the sole judge of the facts in this case you are not to infer from what I have said during the progress of this trial in ruling on the admissibility of evidence or otherwise or anything that I say now during the course of this instruction to you that I have any opinion about the facts in this case. The law does not allow me to have an opinion about the facts in this case. This is a matter solely for you, the jury, to determine. As jurors it is your duty to determine the effect, value, weight, and the truth of evidence that is presented during the trial. Under our constitution and codes of laws only you, the jury, can make the findings of fact in this case. To determine the facts in this case you will have to evaluate the credibility or the believability of witnesses. Credibility simply means that, believability. It becomes your duty as jurors to analyze and to evaluate the evidence and to determine which evidence convinces you of its truth. I've already discussed

with you at the beginning of the trial some of the things that you may consider as you decide whether or not to believe a witness' testimony. You can -- you, the jury, can believe as much or as little of each witness' testimony as you think is proper. You may believe the testimony of a single witness against that of many or just the opposite. You may believe part of a witness' testimony and disbelieve the rest. The mere fact that a witness' testimony, even an expert witness' testimony, is uncontradicted does not render it undisputed. You, the jury, should assess the credibility of each witness. You may consider whether the witness has exhibited to you any interest, bias, or other motive in this case. You may also consider the appearance and manner of a witness while on the witness stand. You do not determine the truth merely by counting the number of witnesses presented by each side. Throughout this process you have but one objective, and that is, to seek the truth regardless of its source.

Now there are two types of evidence that are generally presented during a trial. There's direct evidence and there's circumstantial evidence. Direct evidence is the testimony of a person who

claims to have actual knowledge of a fact such as an eyewitness. It is evidence that immediately establishes the main fact to be proved.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence that immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation.

Now the law makes absolutely no distinction between the weight or the value to be given to either direct or circumstantial evidence, nor is there a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in this case. After weighing all of the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt you must find him not guilty. If on the other hand, you are convinced of the guilt of the defendant beyond a reasonable doubt you must then find him guilty.

Now the rules of evidence ordinarily do not allow witnesses to testify to their opinions or their conclusions. An exception to this rule exists

for witnesses that we call expert witnesses. A witness who by education and experience has become an expert in some art or science or profession may state an opinion as to relevant and material matter in which the witness claims to be an expert and may also state the reasons given for that opinion. You should consider any expert opinion received in evidence in this case and like any other evidence give it the weight that you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education or experience, or if you conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion in its entirety. However, if you decide that the opinion of an expert witness is based on sufficient education and experience, or if you conclude that the reasons given in support of that opinion are sound and that they're supported by other evidence, then you may accept that opinion in its entirety. An expert witness' testimony is to be given no greater weight than that of any other witness simply because he is an expert. Further, you're not required to accept an expert's opinion even though it's not contradicted. As with all

evidence in this case you give it the weight and the consideration that you feel it deserves.

Now as you have observed the defendant Jimmy Wilson, Jr., has not been present during this trial. Under the laws of this state a defendant may be tried even if the defendant does not attend the trial. However, the fact that the defendant is not present may not be considered against the defendant in any manner whatsoever. I further instruct you and I emphasize that the fact that the defendant did not testify is not a factor to be considered by you in any way in your deliberations and in your consideration on the question of guilt or innocence of the defendant. It must not be considered by you in any manner whatsoever. A defendant has a constitutional right to remain silent. In the assertion of this right must not be considered by you in your deliberations. I repeat, under your oath you are to draw no conclusion whatsoever from the fact that the defendant in this case did not testify. The fact that this defendant did not testify should not even be discussed in the jury room. The burden of proof, as I have stated to you, is on the State. The Defendant is not required to prove his innocence and the burden of proof remains

on the State to prove guilt beyond a reasonable doubt.

Now the defendant is charged with possession of cocaine base but what is commonly referred to as crack cocaine. The State must prove beyond a reasonable doubt that the defendant knowingly or intentionally possessed crack cocaine. Knowingly means with knowledge consciously and not accidentally. Intentionally means willfully, intending the result which actually occurs. Not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. To prove possession the State must prove beyond a reasonable doubt that the defendant had both the power and the intent to control the disposition or use of the crack cocaine. Possession may either be actual or constructive. Actual possession means that the crack cocaine was in the actual physical custody of the defendant. Constructive possession means that the defendant had dominion and control or the right to exercise dominion or control over either the crack cocaine itself or the property on which the crack cocaine was found.

It is not necessary that the defendant actually own the property where the crack cocaine was found, but simply that he was in control over the area where the drug was found. Mere presence at the scene where the drugs are found is not enough to prove possession. Actual knowledge of the presence of the crack cocaine is strong evidence of the defendant's intent to control its disposition or use. The defendant's knowledge and possession may be inferred when a substance is found on the property under the defendant's control. However, this inference is simply an evidentiary fact to be taken into consideration by you along with other evidence in this case and to be given what weight you decide that it should have.

Now Mr. Foreman, and ladies and gentlemen, as you retire to begin your deliberations I want to express to you the hope that each of you will be mindful of the importance of your responsibility. You're not called upon to serve as jurors very often, and the proper performance of the duty requires each of you to reach the height of freeing your mind of all improper influences. You and I are acting for the community and that is why we must see to it that this trial is fair and the verdict is

just. This Court is entrusted with the honor of this community, the honor of this State, and the honor of this country in seeking that every case tried here receives fair and impartial justice. Do not get the idea that I'm trying to intimate to you how I think you might should decide this case. Because I've already told you that under the law of the state of South Carolina you, the jury, are the sole judge of all questions of fact. It would be highly improper for me to influence you in the performance of that duty. But as the presiding officer of this court, I am vitally concerned that whatever your verdict that you will — it will be a result of your going into the jury room confining your consideration to the evidence and to the law that you have heard in this courtroom, weighing it fairly and impartially as I have every confidence you will do. Everyone in this case is entitled to justice. Both the State and the Defendant all are entitled to justice, nothing more, nothing less. Your verdict in this case cannot be based on sympathy, compassion, prejudice, or any other emotion or some consideration that is not found in the evidence. The Court is of the confirmed opinion that whatever verdict you reach will represent truth.

and justice to all parties involved in this case.

And as I told you earlier, ladies and gentlemen, when I was talking to you about the role of the foreperson, you must remember that your verdict must be unanimous. All of you must agree on a verdict. Now the verdict form is in the front of the notebook here, Mr. Feagin, and when the jury has reached a verdict you'll fill out this form and it's a simple form. It's just, Mr. Wilson is charged with one count of possession of cocaine base and so it's simply: We, the jury, either find the defendant not guilty or guilty. Those are the two options. And whatever the jury's verdict is you'll reflect that on the verdict form and then sign it as foreperson. Once you have reached a unanimous verdict you would knock on the door and let the bailiff know that you have reached a decision, we'll receive your verdict.

Now I'm gonna ask you to step into your jury room and I hope for the last time I'm gonna instruct you not to begin your deliberations yet. What I'm gonna do is I'm gonna get you to go in there. I'm gonna discuss with the attorneys to make sure is that I didn't leave anything out of the charge. If I have left something out and I need to go over

something with you I'll bring you back out and I'll give you that. But if not, if everything is here, I'll collect the exhibits which were entered into evidence and I'll include this notebook. When you receive the exhibits and the notebook that's the cue to go ahead and begin your deliberations, okay. So if you would retire to your jury room.

(WHEREUPON, the jury was removed from the courtroom at 4:40 p.m., and the following proceedings commenced in open court.)

THE COURT: Are there any exceptions or objections from the State regarding the charge?

MS. PARR: No, Your Honor.

THE COURT: Anything from Defense?

MS. WINGARD: Nothing, Your Honor.

THE COURT: All right. Ladies, normally I'd get you to come up here and go through the exhibits. But it's just these three so they all seem to be here. If you want to look at them real quick before they go back. But if everything is in order.

Ask Ms. Bradley to step out and ask them to begin their deliberations.

(Jury was instructed to begin their deliberations.)

THE COURT: Ms. Bradley, I want to thank

you for your service this week as the alternate it is important that you hear all the evidence because if anyone for example in that last trial we had this past week one of the jurors had to be excused and so I had to place the alternate in her place. If that would have happened here I would have had to place you in there, and so of course it was important that you hear everything. Unfortunately now it's that time to deliberate. They all seem healthy and ready to go so I'm gonna excuse you.

(Alternate was excused.)

THE COURT: The foreman has sent out one, two, three, four, five, six questions, and I'm gonna make this a Court exhibit. But the questions are pursuant: In pursuit could they see passenger getting radio out of the car; one — two, reason for radio being removed; three, did Calhoun call for backup; four, could crack fit into the radio; five, what kind of radio, a CD or a cassette; was it a pull-out radio or a factory installed radio. Those are the questions. And I think they're all fact related and so I'm going to need, I think, instruct them that the facts are what they gleaned from the testimony of the witnesses and any exhibits and that I can not add to or take way from those facts and

that those are the facts that they have with which they need to decide the case.

MS. WINGARD: Beyond a reasonable doubt.

THE COURT: Yeah. I don't think this is a reasonable doubt question; this is a fact question but. And I think that's what I need to tell them. Does the State have any other suggestions?

MS. PARR: No, Your Honor.

THE COURT: Defense?

MS. WINGARD: No, sir, I think that's what you need to say.

THE COURT: Mr. Propps, Ms. Joe, would you have them step out please, the whole panel.

(WHEREUPON, the jury was returned to the courtroom at approximately 5:42 p.m., and the following proceedings commenced in open court.)

THE COURT: Ladies and gentlemen, I got your questions that were posed, and I think I can answer them as a group. All of the questions, one, 2, 3, 4, 5, 6, the six questions that were asked all relate to facts. And all I can tell you about that, and I know this doesn't satisfy your inquiry but, the facts are what was presented during the course of the trial, the testimony of the witnesses, and

the exhibits. Those are the facts in the case. And I'm not allowed to add to those facts or to take away from them. Your duty in this case is to take the facts of the case that you find from the evidence that was presented and to apply the law to those facts as you found the facts to be in arriving at your verdict. So these questions that relate to facts, all I can tell you is that the facts are what the testimony was and what the exhibits are and you have to refer to those. And so I guess what I'm saying is, now the one thing I could do is replay all the testimony but I don't think that would answer your questions. I just think you need to recall the facts from the witness stand, apply the law, and arrive at a verdict. And I realize that you're not satisfied with that answer but the law does not allow me to — you know, as I told you when we started this case, you are the finders of the fact and you decide the facts based on the testimony and I'm not to have any influence over you about that. So I cannot add to or take away from those facts, and so you'll need to just go on your recollection. If you — I can tell you that if you want to re-hear some testimony we can play that for you, but that's only if you think that it will help

you with your questions. But that's available if you need it.

But if you can go on your recollection of the testimony and the exhibits that's — those are the facts that you have to base your verdict on, okay. Thank you very much. And if you have any other questions ask. I mean, don't feel like it's pointless to ask 'cause to the extent I can answer your questions I will. But that's the answer I need to give you on these questions 'cause these are all fact related questions so if you'd please retire and continue your deliberations.

(WHEREUPON, the jury was removed from the courtroom at 5:47 p.m., and court was in recess.)

(Court's Exhibit Number 2 was marked and made a part of the record.)

THE COURT: Will you ask the jury to join us please.

(WHEREUPON, the jury was returned to the courtroom at approximately 6:44 p.m., and the following proceedings commenced in open court.)

THE COURT: All right, ladies and gentlemen of the jury, Mr. Foreman, has the jury reached a unanimous verdict, sir?

THE FOREMAN: We have, Your Honor.

THE COURT: If you would pass that to Ms. O'Hara please.

(Verdict form was tendered to the Court.)

THE COURT: Ms. O'Hara, would you please publish the jury's verdict, ma'am.

THE CLERK OF COURT: State of South Carolina versus Jimmy Wilson, indictment 2009-GS-21-336, possession of cocaine base: We, the jury, find the defendant Jimmy Wilson, Jr., guilty. Signed Steve Feagin, dated March 11th, 2010. Members of the jury, if this is your verdict please raise your hand.

(All jurors complied by raising their hand.)

THE COURT: All right. Thank you, ladies and gentlemen. Anything further for the jury?

MS. PARR: No, Your Honor.

THE COURT: From Defense?

MS. WINGARD: Nothing.

THE COURT: All right. Ladies and gentlemen, I want to thank you for your service. There's so many things that go on in court that you're not aware of because you have to be protected from certain things because your verdict needs to be based on the evidence, and I want to thank you for

your understanding of that. I know sometimes as a juror you probably get to where you start feeling like a yo-yo, in and out, in and out but. And I apologize. I wish there was an easier way to do it, but it's necessary when I talk with the lawyers about the law that sometimes it does require that I listen to facts that are not in evidence and so obviously those aren't appropriate for you to hear and so it's necessary to do that.

I want to thank you again for your service. As you noticed that, you know, Mr. Wilson is not here so there — I often give jurors an opportunity to remain if they choose to remain for sentencing purposes. But the fact that Mr. Wilson is not present at this time, by law I'm required to seal the sentence and it will be enforced when Mr. Wilson does return to court. Part of that — and many times jurors will stay because they're interested, they have a vested interest, because obviously you stayed for the whole case. Other times the jurors will just go ahead and leave. But when I do sentence him the State then has the opportunity to give any aggravating circumstances. Defense obviously presents any mitigating circumstances and then sentence is imposed. Just for your

information, not that it matters, you've rendered your verdict and it is what it is. Mr. Wilson, this is his third drug offense?

MS. PARR: The last one was a distribution 2001.

THE COURT: He has two prior convictions for this type of activity. Let me tell you this though because jurors wonder, I've had jurors come up to me afterwards when they've sat in on sentencing, judge, that was important, why didn't we know that, why didn't we know this was, this guy is a drug dealer, whatever. And its very simple. The law says, and it's important, and I fully support our laws in this respect. The law says that you were supposed to decide this case based on the evidence in this case. The fact that I may have five convictions for selling drugs doesn't mean I sold drugs on this occasion. See, we don't convict people for what they used to do 'cause that's just improper. You convict people if they have committed a wrong on this occasion. So even though that information might have been swayed you in arriving at your verdict it would you have been improper because the fact that — and when I tell you he has two prior convictions for this activity that still

didn't prove he did it this time. What proved he did it this time was the evidence that was presented during the course of this trial, and that's what your verdict was based on. And that's why it's important that even though you might think that's relevant information it's really — it would really be improper information you to have. But I just think you needed to know that because if you had any questions about the sentencing, I can't by law I have to seal the sentence and wait until Mr. Wilson appears in court so I'm not able to give you that information. I can tell you that down the road, if you want to call the solicitor — if you're interested — if you want to call the Solicitor's Office and find out what the sentence was you certainly can do that. If you're like me you'll probably just go on home and enjoy your family and forget about it. Anyway, thank you so much.

(WHEREUPON, the jury was excused from the courtroom at 6:49 p.m., and the following proceedings commenced in open court.)

THE COURT: Ms. Wingard, I believe I am correct in this, what I told the jury I think is correct that the sentence is going to be, it's going to be a sealed sentence. And so I'm gonna hear from

the State and I'll hear from you with regards to any mitigating factors, but as far as motions at the close of the verdict I think that those would be appropriately made at the time.

MS. WINGARD: Judge, I think I have to make —

MS. PARR: She has to do them now?

MS. WINGARD: I think I have to make the motion now for a new trial, renewal of all previous motions.

THE COURT: All right. Let me hear from you regarding that so that — what I want to make sure is that we do everything we need to do now so that when the sentence comes then that will, I think, trigger his appeal rights regarding that.

MS. WINGARD: Yes, sir, but at this time —

THE COURT: So I'll hear from you regarding any motions to be made.

MS. WINGARD: Judge, at this time I would move for a new trial and renewing my motion that there was simply no evidence that he was in possession of cocaine base.

THE COURT: All right. And I'll respectfully deny that motion, Ms. Wingard. I think

it was a difficult case as circumstantial evidence cases usually are, but I believe that it was a -- there was appropriate evidence whereby a jury could find and that it was really a jury question on whether or not they felt circumstantial evidence rose to the appropriate level. And so therefore, I'm gonna respectfully deny that motion. Anything else, Ma'am?

MS. WINGARD: Judge, I would like to say before you sentence and it's certainly always difficult to say anything in mitigation when somebody doesn't show up but. In Mr. Wilson's behalf, he has these two prior convictions and for drugs, but he was actually incarcerated in the Florence Detention Center from August -- let me see if I can get that date exactly. It is August 28th to I believe November 17th or 18th, sometimes toward the end of November, for charges that on which he was wrongly accused. It was a case of mistaken identity, and Ms. Parr did ultimately nol pros the case when the victim said this was not the man who shot me. So you know, I would ask you to please take into consideration that he has a certain amount of bitterness towards the system because of being incarcerated for almost three months for something

he didn't do.

THE COURT: All right.

MS. PARR: If I can be heard on that.

THE COURT: Now let me hear from the State regarding his prior history.

MS. PARR: Your Honor, he had a prior conviction for possession of stolen vehicle in April of 2000. In December of 2000 he had a burglary second. In October 24th, 2010 he had another possession of stolen vehicle and contributing to delinquency of a minor. May of 2005 he had a possession of cocaine base. April of '99 he had a burglary second, another burglary second. In August of 2002 he had indecent exposure two counts. Then in February 6th, 2008, he had a distribution of cocaine base. Your Honor, that was my case that he was charged with ABIK. Your Honor, he was identified as the shooter in this case, and I did subsequently dismiss the charges because the witness recanted, but we believe he was afraid of him and that's why he recanted. He skated on that; but any way, but whatever he wasn't in — he was not in jail on this one right.

THE COURT: I understand.

MS. PARR: Yeah, I mean, he wasn't — he

wasn't just locked up just to be locked up.

THE COURT: Anything?

MS. WINGARD: Judge, but she not proessed it and the victim said this man did not do it. I mean, clearly.

THE COURT: Then she did the right thing obviously. I had a case years ago where a man spent almost ten months in jail and we were gonna try him, and when we got ready to try him and the victim — it was a case involving several Hispanic men, but the victim ended up fleeing back to Mexico. And I tried every way I could to figure out can we prosecute this case, could not, and I dismissed the case because I could not prosecute the case on the failure of the witness to make himself present. Now, you know, this sounds similar except for the fact that in this case the victim does show up but says it's not him. I don't — I understand Mr. Wilson's bitterness toward the system but certainly doesn't appear there was anything prosecutorial to be done that was incorrect. As a matter of fact, on my case they had to release the man and literally two months later he killed the brother of the victim of the assault and was subsequently convicted of that murder.

MS. WINGARD: Judge, I don't mean to say Ms. Parr did anything improper.

THE COURT: I think you — I take it you were just letting me know Mr. Wilson's feeling about the system which may explain maybe why he wasn't here today and —

MS. WINGARD: And the fact he has served almost three months for something that was dismissed.

THE COURT: Sure, okay.

MS. WINGARD: Just for you to take that into consideration.

THE COURT: Yes, ma'am, all right. Well, as you know — have you got a sentencing sheet? As you're aware I'll consider what has been said and enter a sentence and we'll have that sealed. And there has been a bench warrant issued from Mr. Wilson, and I don't know if or when they'll pick him up. If they pick him up, we'll then — if I'm not mistaken that sentence can be imposed by any judge that is in court at the time they pick him up so that he's not gonna be held in jail till I come back. I think any judge can unseal that and impose that so we'll do that.

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

STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE)	2009-GS-21-0336
)	
)	
)	
State Of South Carolina))
)	
vs.)	TRANSCRIPT OF RECORD
)	
Jimmy Lee Wilson, Jr.))
<u>DEFENDANT</u>)	August 25, 2011
		Florence, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, JUDGE.

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

PATRICIA S. PARR, ASSISTANT SOLICITOR
Attorney for the State

JAY JORDAN, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, there were no witnesses called.)

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1 THE COURT: All right. Let me open this so that
2 I can tell you what we are on. We are here with regards
3 to indictment 2009-GS-21-336. The State of South Carolina
4 vs. Jimmy Lee Wilson, Jr. Mr. Wilson was before the
5 Court -- actually, I apologize was not before the Court.
6 This case was placed on the trial roster back in March of
7 2011; is that correct or 2010? Is that right March 11th
8 2010?

9 MS. PARR: Yes.

10 THE COURT: And during that time the case was on
11 the trial roster and I don't have a recollection of all
12 the details, but Mr. Wilson was not present. The State
13 proceeded and he was tried in his absence. A jury of 12
14 citizens heard the case. And after deliberations,
15 Mr. Wilson was convicted of -- I do need the indictment,
16 Nicole. The sentencing sheet isn't clear on the charge.

17 MS. PARR: It should say possession of cocaine
18 base third offense.

19 THE COURT: It is possession of cocaine base
20 that being a third offense and he was found guilty of that
21 charge. As I indicated, he was not present and was tried
22 in his absence. Pursuant to that, the Court heard from
23 both sides, sentence was imposed and then it was placed in
24 sealed envelope to be held. And a bench warrant was then
25 issued for Mr. Wilson. It is my understanding he has

1 since been either picked up on that bench warrant or
2 whatever method he's now before the Court. And we are
3 here to unseal the sentencing sheet and impose sentence.
4 Before we do that, I think I heard from the State after
5 the close of the trial.

6 Is there anything you wish to add at this time,
7 Ms. Parr, on behalf of the State?

8 MS. PARR: No, your Honor, I think I gave the
9 Court his record then. I mean, I'm assuming I would have.
10 And the only thing he has new charges for drugs, that's
11 actually how they got him.

12 THE COURT: He's picked up additional charges?

13 MS. PARR: Yes, weapon charges as well as
14 distribution of crack cocaine.

15 THE COURT: Those are pending charges?

16 MS. PARR: Those are pending.

17 THE COURT: All right. And, of course, those
18 occurred sometime after this and had no affect on this.

19 But, Mr. Jordan, you're here on behalf
20 Mr. Wilson today?

21 MR. JORDAN: Yes, Your Honor.

22 THE COURT: I mean, sentence has been imposed,
23 but I'll be happy to hear from you or Mr. Wilson if
24 there's anything you wish to share with the Court.

25 MR. JORDAN: Your Honor, I, of course, did not

1 represent Mr. Wilson at the time of this trial back in
2 March of last year. I have since receiving this file had
3 a chance to sit down with Mr. Wilson discuss his case with
4 him. Of course, as Your Honor points out, we are simply
5 here to open a sealed sentence, so there's nothing I can
6 really add to affect that I don't believe. Mr. Wilson may
7 wish to briefly address the Court.

8 THE COURT: I'll be happy to hear from you, Mr.
9 Wilson, if there's anything you want to tell the Court?

10 THE DEFENDANT: Yes, Your Honor, if I knew, I
11 was going to trial on my charge, I would have came up
12 here. I ain't knew nothing, I ain't even knew I had this
13 other charge right here. When I came from the department
14 of corrections, I ain't even knew I had that charge right
15 there.

16 THE COURT: You talking about this one you were
17 tried on?

18 THE DEFENDANT: Yeah, I ain't knew nothing about
19 that charge right there, that the first time I hear about
20 that. And then he show me a paper say something about I
21 signed a waiver or something. I don't even know nothing
22 about none of that.

23 THE COURT: I don't know about a waiver.

24 MR. JORDAN: Your Honor, Mrs. Wingard had
25 Mr. Wilson execute a document advising him that -- what

1 the plea offer was -- what his intentions regarding that
2 offer back. And I showed him that document concerning the
3 case and it would not be technically a waiver or anything
4 like that.

5 THE COURT: That was essentially the State made
6 an offer in exchange for a plea. Mrs. Wingard who
7 represented Mr. Wilson ---

8 MS. PARR: She simply wanted to document a file
9 and I went through a file with him and reviewed with Mr.
10 Wilson what I had on file.

11 THE COURT: But that document if I'm
12 understanding what you're telling me, is simply informing
13 him of what the State's offer is and he has a certain
14 amount time if he wants to accept it or not?

15 MR. JORDAN: Exactly, Your Honor.

16 MS. PARR: Your Honor, I remember personally
17 because we kept going back and forth.

18 THE COURT: I do recall the case being called
19 for trial and Mrs. Wingard, I think, at that time
20 indicated that she did not know the whereabouts of
21 Mr. Wilson.

22 MS. PARR: Right, because she said that they
23 couldn't find him at that time.

24 THE COURT: All right. And, of course, this
25 proceeding is to simply unseal the sentence and impose the

1 sentence that the Court imposed at the time the jury
2 reached that guilty verdict. And so on indictment
3 2009-GS-21-336, the sentence of the Court is that you be
4 committed to the state department of corrections for a
5 period of ten years and pay a fine of \$12,500. And the
6 defendant according to this sentencing sheet is to be
7 given credit for any time that he has served as calculated
8 by the department of corrections. Good luck to you, sir.

9 END OF REQUESTED TRANSCRIPT

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WITNESSES
LT. JAMES RODGERS FPD

Drulis

PROS: PSP

D/O: 09-16-2008

ARREST WARRANT NO.
K366481 (1)

ACTION OF GRAND JURY

TRUE BILL

Don Schaeffer
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date:

DOCKET NO. 2009-GS-21-00336
The State of South Carolina,

County of FLORENCE
PSP

COURT OF GENERAL SESSIONS

MARCH TERM 2009

THE STATE
vs.

JIMMY WILSON, JR.

Indictment for

POSSESSION OF COCAINE BASE
(THIRD OFFENSE)

James W. J. ...
CERTIFIED-ATRIE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED

2009 MAR -5 PM 4:56
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, S.C.

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

POSSESSION OF COCAINE BASE (THIRD OFFENSE)

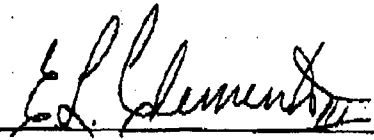
At a Court of General Sessions, convened on MARCH 05, 2009, the Grand Jurors of FLORENCE

County present upon their oath:

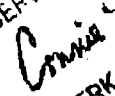
COUNT ONE - POSSESSION OF COCAINE BASE (THIRD OFFENSE)

That JIMMY WILSON, JR. did in FLORENCE County on or about September 16, 2008, violate Section 44-53-375(A) of the Code of Laws of South Carolina (1976), as amended, in that he did knowingly and intentionally possess 0.45 grams of Cocaine Base, a controlled substance; such possession not having been authorized by law and being a third offense.

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



SOLICITOR

CERTIFIED TRUE

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Florence
STATE

INDICTMENT/CASE#: 09 -GS- 21. 336

vs. Jimmy Lee Wilson Jr

AW#: K 366481

AKA: _____
Race: B Sex: M Age: 28

Date of Offense: 9/16/08

DOB: _____ SS#: _____

S.C. Code §: 44-53-375 (A)

Address: _____

CDR Code #: 3016

City, State, Zip: _____

SENTENCE SHEET

DL# _____ SID# _____
*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 TH 8/25/11
TO: POSS CB 3rc 0-10 LA

In violation of § 44-53-375 (A) of the S.C. Code of Laws, bearing CDR Code # 3016

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC 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: [Signature] 4342
Solicitor 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 10 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ 12,500.00; 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.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment _____

Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____
Substance Abuse Counseling

*Fine:	\$12,500.00
§14-1-208 (Assessments 107.5%)	\$12,500.00
§14-1-211 (A)(1)(Conv. Surcharge)	\$100.00
§14-1-211 (A)(2)(DUI Surcharge) <u>Flo to Gp Fund</u>	\$625.00
§56-5-2995 (DUI Assessment)	\$12
§56-1-286 (DUI Breath Test)	\$25
§47.12 (Public Def/Prob)	\$500
§14-1-212 (Law Enforce. Funding)	\$25
§14-1-213 (Drug Court Surcharge)	\$100
§50-21-114 (BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
§90.7(BCCJA Surcharge)	\$5
3% to County (if paid in installments)	
TOTAL	\$13,807.00

Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: Sentenced sentence - Published by Judge Russo on 8/25/11

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

Clerk of Court/Deputy Clerk [Signature] Residing Judge _____
Court Reporter: [Signature] Judge Code: 2141
Sentence Date: 3-11-2010

CLERK OF COURT C.P. FLORENCE COUNTY, S.C.

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CERTIFICATE OF COUNSEL FOR APPELLANT

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

May 13th, 2013



Breen Richard Stevens
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

MAY 13 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

RECEIVED
MAY 13 2013
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JIMMY WILSON, JR.,

APPELLANT

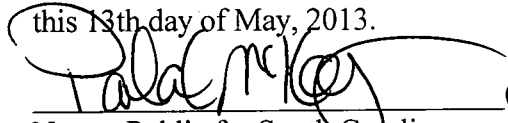
APPELLATE CASE NO. 2011-198488

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 13th day of May, 2013.


Sean Flynn
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 13th day of May, 2013.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.