

No.

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IN THE

**SUPREME COURT OF THE UNITED STATES**

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PAUL BYRD,  
*Petitioner,*

v.

STATE OF FLORIDA,  
*Respondent.*

---

**On Petition for Writ of Certiorari  
to the Florida First District Court of Appeal**

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**APPENDIX TO PETITION FOR WRIT OF CERTIORARI**

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COUNSEL FOR THE PETITIONER

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# Supreme Court of Florida

MONDAY, FEBRUARY 10, 2020

**CASE NO.: SC19-1146**

Lower Tribunal No(s).:

1D17-1529;

192014CF000063CFAXMX

PAUL BYRD

vs. STATE OF FLORIDA

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Petitioner(s)

Respondent(s)

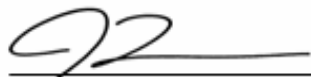
This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

CANADY, C.J., and POLSTON, LABARGA, LAWSON, and MUÑIZ, JJ.,  
concur.

A True Copy

Test:



John A. Tomasino

Clerk, Supreme Court



db

Served:

STEVEN E. WOODS  
MICHAEL R. UFFERMAN  
AMANDA D. STOKES

HON. KRISTINA SAMUELS, CLERK  
HON. TERRY POWELL LEWIS, JUDGE  
HON. MARCIA M. JOHNSON, CLERK

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D17-1529

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PAUL BYRD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

---

On appeal from the Circuit Court for Franklin County.  
Terry P. Lewis, Judge.

June 7, 2019

PER CURIAM.

We affirm the judgment and sentence and write to address (a) Appellant's claim that his motion for transfer to a pre-trial treatment-based program should have been granted, and (b) errors on the judgment and in the sentencing scoresheet.

Appellant, who was diagnosed with a substance abuse problem and had no prior criminal convictions, was charged with three counts: trafficking in a controlled substance; possession of a controlled substance; and possession of paraphernalia. He moved to transfer his case to a pre-trial treatment-based program, but the trial judge denied relief. A trial court's decision to grant entry into a pretrial treatment-based program is discretionary. *See* § 397.334(2), Fla. Stat. (2019) (A "court *may* order an individual to

enter into a pretrial treatment-based drug court program . . . .”) (emphasis added).

Appellant makes two arguments, first that he was eligible for the pre-trial treatment-based program notwithstanding a local administrative order to the contrary, and second that the trial judge erred in denying his motion.

As to the former, Appellant correctly points out that he is eligible under the applicable statute, which states that “a person who is charged with a *nonviolent felony* and is identified as having a substance abuse problem” is “eligible for voluntary admission into a pretrial substance abuse education and treatment intervention program” upon motion of a party or the court. § 948.08(6)(a), Fla. Stat. (2019) (specifying two exceptions not applicable here). For purposes of subsection (6)(a), the “*term ‘nonviolent felony’ means a third degree felony violation of chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08.*” *Id.* (emphasis added). Because the felony trafficking charge against him is not a “forcible felony as defined in s. 776.08,” the charge against him is considered a “nonviolent felony” for purposes of the transfer statute.

Despite his eligibility for a pre-trial treatment-based program, the trial judge expressed hesitation in considering Appellant’s request because an administrative order of the Second Judicial Circuit provides that:

2. Defendants whose offenses occurred on or after October 1, 1997, *shall be eligible* to participate in such program *if they are charged with a second or third degree drug purchase/possession offense* under Chapter 893 in accordance with the criteria of Section 948.08(6), Florida Statutes. Participants must not have any pending felony cases or be on active Department of Corrections supervision.

Admin. Order No. 1997-12 (Fla. 2d Cir. Ct. Oct. 7, 1997) (emphasis added). Appellant was charged with a first degree felony (the trafficking charge), which disqualified him under the administrative order that allows participation for only those

charged with a second or third degree offense. The administrative order, however, conflicts with section 948.08(6)(a), Florida Statutes, which extends eligibility to a “nonviolent felony,” whose applicable statutory definition includes the charge against Appellant. For that reason, Appellant is correct that his case was eligible for possible transfer to the pre-trial treatment-based program notwithstanding the administrative order. *Cf. Gincley v. State*, No. 4D18-3067, 2019 WL 1371941 (Fla. 4th DCA Mar. 27, 2019) (quashing a circuit court administrative order that conflicted with section 948.08(6)).

Though Appellant was eligible under section 948.8(6), the trial court’s denial of his motion was not an abuse of discretion. Transfers to pre-trial treatment-based programs are discretionary, not mandatory, placing the decision in the hands of trial judges who are in the best position to assess whether defendants are suited for available programs (which do not have unlimited capacity). Here, Appellant did not file his motion seeking transfer until shortly before trial, almost three years after the filing of charges against him. The trial judge expressed that if he had the ability to grant relief, he was disinclined to do so at such a late stage of the case. Though there is no time restriction placed on when a motion seeking transfer may be made, the lateness of Appellant’s motion, on the eve of trial, provides a reasonable basis for denying relief upon which the trial judge relied.

Next, the trial court imposed a \$65 cost pursuant to section 939.185, Florida Statutes, without including the local ordinance authorizing the cost. Pursuant to *Carter v. State*, 173 So. 3d 1048, 1051 (Fla. 1st DCA 2015), we remand for the court to cite the applicable ordinance. We also remand for the court to correct the criminal punishment scoresheet, which incorrectly indicates that Appellant entered a guilty plea. He was actually found guilty following a jury trial.

We AFFIRM the judgment and sentence but REMAND for the court to make corrections to the judgment and to the sentencing scoresheet.

MAKAR, OSTERHAUS, and BILBREY, JJ., concur.

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*Not final until disposition of any timely and  
authorized motion under Fla. R. App. P. 9.330 or  
9.331.*

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Michael Ufferman, Michael Ufferman Law Firm, P.A.,  
Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Amanda D. Stokes,  
Assistant Attorney General, Tallahassee, for Appellee.

In the Circuit Court, Second Judicial Circuit  
In and for Franklin County, Florida

Inst: 201719001981 Date: 04/24/2017 Time: 3:14PM  
Page 1 of 5 B: 1190 P: 662, Marcia Johnson, Clerk of Court  
Franklin, County, By: SM Deputy Clerk

Division: **Felony**

State of Florida

vs.

**PAUL W BYRD JR.**

Probation Violator

Retrial

Defendant

Case Number: **14000063CFMA**

Community Control Violator

Resentence

**JUDGMENT**

The Defendant, **PAUL W BYRD JR.**, being personally before this court  
represented by, **DON PUMPHREY, PRIVATE**, attorney of  
record and the state represented by, **JARRED H PATTERSON, A.S.A.**,  
and having

- ☒ been tried and found guilty by jury / by court of the following crime(s) **2-23-17**  
☐ entered a plea of guilty to the following crime(s)  
☐ entered a plea of nolo contendere to the following crime(s)  
☐ been found in violation by the Court or entered an admission to a violation of probation  
or community control for the following crime(s)

Count	Crime	Offense Statute Number(s)	Degree of Crime	Case Number	OBTS Number
1	TRAFFICKING IN COCAINE	893.135 1b1	1ST FELONY	14000063CFMA	1902002565
2	POSSESSION OF A CONTROLLED SUBSTANCE	893.13 6a	3RD FELONY	14000063CFMA	1902002565

☒ and no cause being shown why the defendant should not be adjudicated guilty,  
**IT IS ORDERED** that the defendant is hereby **ADJUDICATED GUILTY** as to all counts  
or as to count(s) **1,2**.

☒ and being a qualified offender pursuant to § 943.325, F.S. the defendant shall be  
required to submit DNA samples as required by law.











☐ and good cause being shown; **IT IS ORDERED** that **ADJUDICATION OF GUILT BE  
WITHHELD** as to all counts or as to count(s) \_\_\_\_\_.



[X] IN THE CIRCUIT COURT OF THE 2ND JUDICIAL CIRCUIT FRANKLIN COUNTY, FL

<b>DIVISION</b> [ ] CIVIL [X] CRIMINAL [ ] JUVENILE [ ] TRAFFIC		<b>FINGERPRINT FORM</b>	<b>CASE NUMBER</b> 14000063CFAXMX
<b>PLAINTIFF</b>  STATE OF FLORIDA vs			<b>FILED IN</b> OPEN COURT This <u>12th</u> day of <u>April</u> , <u>14</u> MARCIA M JOHNSON  BY <u>YGM</u> DC
<b>DEFENDANT</b>  PAUL WALLACE BYRD JR.			

FINGERPRINTS OF DEFENDANT

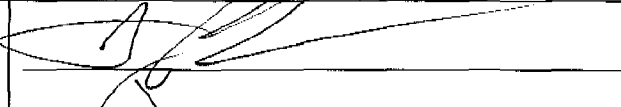
1. R. Thumb 	2. R. Index 	3. R. Middle 	4. R. Ring 	5. R. Little 
1. L. Thumb 	2. L. Index 	3. L. Middle 	4. L. Ring 	5. L. Little 

Fingerprints taken by LT. D. VARNES  
Name Title

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the Defendant,  
PAUL WALLACE BYRD.

White Male  
RACE SEX

and that they were placed thereon by said Defendant in my presence in Open Court this date

DONE AND ORDERED FRANKLIN COUNTY, FL		JUDGE	DATE
	JUDGE: TERRY P. LEWIS		4-12-14

Page 4 of 10

Defendant PAUL W BYRD JR. Case Number 14000063CFMA

OBTS Number 1902002565

## SENTENCE

(As to Count 1,2)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, DON PUMPHREY, PRIVATE, and having been given an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law; and no cause being shown

*(Check one if applicable)*

- ☐ the Court having previously on \_\_\_\_\_, deferred imposition of sentence until this date.
- ☐ the Court having previously entered a judgment in this case on \_\_\_\_\_ now resents the defendant.
- ☐ the Court having placed the defendant on probation / community control and having subsequently revoked the defendant's probation / community control.

### It Is The Sentence Of The Court that:

- ☐ the Court places the defendant on probation / community control for a period of \_\_\_\_\_ months / years under the supervision of the Dept. of Corrections, the conditions of which are set forth in a separate order.
- ☒ The defendant is committed to the custody of the Department of Corrections.
- ☐ The defendant is directed to the custody of the Sheriff of Franklin County, Florida.
- ☐ The defendant is sentenced as a youthful offender in accordance with § 958.04, F.S.

### To Be Imprisoned (Check one; unmarked sections are inapplicable):

- ☐ For a term of natural life.
- ☒ For a term of 36 months \_\_\_\_\_ years. MINIMUM - MANDATORY
- ☐ Said SENTENCE SUSPENDED for a period of \_\_\_\_\_ subject to the conditions set forth in this order.

### If "split" sentence, complete the appropriate paragraph.

- ☐ Followed by a period of \_\_\_\_\_ on probation / community control under the supervision of the Department of Corrections according to the terms and conditions set forth in a separate order entered herein.
- ☐ However, after serving a period of \_\_\_\_\_ imprisonment in \_\_\_\_\_, the balance of the sentence shall be suspended and the defendant be placed on probation / community control for a period of \_\_\_\_\_ under supervision of the Department of Corrections according to the terms and conditions of probation / community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

Defendant

PAUL W BYRD JR.

Case Number

14000063CFMA

## SPECIAL PROVISIONS

(As to Count 1,2)

By appropriate notation, the following provisions apply to the sentence imposed in this count:

<b>Firearm</b>	_____	It is further ordered that the _____ minimum imprisonment provision of § 775.087, F.S., is hereby imposed for the sentence specified in this count.
<b>Drug Trafficking</b>	_____	It is further ordered that the _____ years mandatory minimum imprisonment provision of § 893.135(1), F.S., and fine in the amount of \$ _____ is hereby imposed in this count.
<b>Controlled Substance</b> within 1,000' of School, Public Park, Comm Center or Rec. Facility	_____	It is further ordered that the 3-year minimum imprisonment provision pursuant to 893.13(1)(c), F.S., is hereby imposed for the sentence specified in this count.
<b>Controlled Substance,</b> Manufacture of Metham- phetamine/Phencyclidine	_____	It is further ordered that the _____ minimum mandatory provision of § 893.13(1)(g), F.S. is hereby imposed for the sentence specified in this count.
<b>Habitual Felony</b> Offender	_____	The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of § 775.084(4)(a), F.S. The requisite findings of the court are set forth in a separate order or stated on the record in open court.
<b>Habitual Violent Felony</b> Offender	_____	The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of § 775.084(4)(b), F.S. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.
<b>Prison Releasee</b> Reoffender	_____	The defendant is adjudicated a prison releasee reoffender and has been sentenced to serve 100 percent of the court-imposed sentence in accordance with § 775.082(9)(b), F.S.
<b>Law Enforcement</b> Protection Act	_____	It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with § 775.0823, F.S.
<b>Capital Offense</b>	_____	It is further ordered that the defendant shall be ineligible for Parole in accordance with the provisions of § 775.082(1), F.S.
<b>Dangerous Sexual</b> Felony Offender	_____	It is further ordered that the minimum imprisonment provision of § 794.0115(2)(e), F.S. is hereby imposed for the sentence specified in this count. The defendant shall be imprisoned for a minimum of _____; or, _____ for a term of life.
<b>Personal ID Information</b>	_____	It is further order that the _____ minimum mandatory provision of § 817.568 F.S., is hereby imposed for the sentence specified in this count.
<b>Other Provisions</b> (e.g., see Ch. 775, F.S.)	_____	_____ _____ _____



Defendant PAUL W BYRD JR. Case Number 1400063CFMA

**Other Provisions Continued:**

Consecutive / Concurrent X It is further ordered that the sentence imposed as to count(s)  
as to Other Counts 2 shall run (check one)  
       consecutive to X concurrent with the  
sentence set forth in count 1 of this case.

**TO RUN CONCURRENT**

Consecutive / Concurrent        is further ordered that the composite term of all sentences  
as to Other Convictions        imposed for the counts specified in this order shall run (check  
one)        consecutive to        concurrent with the  
following (check one)  
       any active sentence being served  
       specific sentences       

In the event the above sentence is to the Department of Corrections, the Sheriff of Franklin County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the Department together with a copy of this judgment and sentence and any other documents specified by Florida Statutes.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the court further recommends         
**HE IS TO SIGNUP FOR THE PARTIAL PAYMENT PLAN W/IN 90 DAYS OF**  
**RELEASE FROM D.O.C., IF NOT DONE SUSPEND D/L.**  
**CNT: 3 POSSESSION OF PARAPHERNALIA, PLED N.C., ADJ. GUILTY, 51**  
**DAYS JAIL WCTS 51 DAYS.**  
**THE DEF. IS RELEASED WHILE HIS CASE IS ON APPEAL. CONDITIONS ARE:**  
**RANDOM UA'S 1 X PER WEEK, CONTINUE DRUG TREATMENT, SURRENDER IS**  
**PASSPORT.**

Defendant

**PAUL W BYRD SR.**

Case Number

**1400063CFMA**

# **JUDGMENT FOR FINES, COSTS, FEES AND SURCHARGES**

**IT IS THE JUDGMENT AND ORDER OF THE COURT THAT DEFENDANT IS LIABLE FOR AND SHALL PAY THE FOLLOWING:**

1. \$ 47623.81 as a fine pursuant to § 775.083, F.S.
  2. \$ 2381.19 as the 5% surcharge required by § 938.04, F.S.
  3. X \$20.00 as a court cost pursuant to § 938.06, F.S. (Crime Stopper Trust Fund).
  4. X \$3.00 as a court cost pursuant to § 938.01(1) F.S. (Criminal Justice Trust Fund).
  5. X \$50.00 pursuant to § 938.03, F.S. (Crimes Compensation Trust Fund).
  6. X \$225.00 (felony)/\$60.00(misd.) pursuant to § 938.05, F.S. (Local Government Criminal Justice Trust Fund).
  7. X \$2.00 as a court cost pursuant to § 938.15, F.S. (County Criminal Justice Education).
  8. \$2.00 as a court cost pursuant to § 938.15, F.S. (City Criminal Justice Education).
  9. X \$50.00 (felony)/\$20.00 (misd.) as a court cost pursuant to § 775.083(2) F.S. (County Crime Prevention).
  10. X \$65.00 as a court cost pursuant to § 939.185, F.S. (County Additional Court Cost).
  11. \$3.00 as a court costs pursuant to § 939.19 F.S. (Teen Court Assessment).
  12. \$50.00 as an application fee pursuant to § 27.52(1)(b), F.S. (Indigent Criminal Defense Fund) if the Defendant applied for a Public Defender and the fee has not been paid in full. The first \$50.00 collected by the clerk shall be applied toward satisfaction of this fee.
  13. ☐ If checked, the Defendant shall pay \$135.00 as costs pursuant to § 938.07, F.S. (Driving or Boating Under The Influence).
  14. ☐ If checked, the Defendant shall pay \$15.00 as costs pursuant to § 938.13, F.S. (Misd. Drug Alcohol Assessment).
  15. ☐ If checked, the defendant shall pay the following as additional statutorily mandated surcharges:
    - ☐ \$201.00 as a surcharge and condition of supervision pursuant to § 938.08, F.S. (Domestic Violence Trust Fund).
    - ☐ \$151.00 as a surcharge and condition of supervision pursuant to § 938.085, F.S. (Rape Crisis Program Trust Fund).
    - ☐ \$101.00 as costs pursuant to § 938.10, F.S. (Children & Family Services Child Advocacy Trust Fund).
  - ☐ IF CHECKED, THE DEFENDANT IS ORDERED TO PAY THE FOLLOWING DISCRETIONARY ITEMS:
    16. \$ \_\_\_\_\_ as additional fine pursuant to § 775.0835(1), F.S. (Optional Fine for the Crimes Compensation Trust Fund).
      - ☐ If checked, discretionary fine is reduced to judgment, for which let execution issue.
    17. \$ \_\_\_\_\_ Statutory Incarceration and Other Correctional Costs as Liquidated Damages pursuant to § 960.293(2)(a) and (b), F.S. (Victim Assistance – Determination of Damages and Losses).
    18. ☐ \$100.00 FDLE Lab Fee
    19. \$100.00, or the higher of documented costs of \$ 100 for prosecution pursuant to § 938.27(8), F.S., payable to THE STATE ATTORNEY.
    20. ☐ If checked, \$100.00 or the higer of documented costs of \$ \_\_\_\_\_ for indigent legal assistance pursuant to § 938.29(1), F.S.
    21. ☐ A sum of \$ \_\_\_\_\_ for the cost of collecting the DNA sample required by § 943.325, F.S.
- \$ 50520 **TOTAL Fine, if any, and Statutorily Mandated Costs, Fees and Surcharges**  
 \$ \_\_\_\_\_ **Court Costs Reduced to Civil Judgment**  
 \$ \_\_\_\_\_ **Court Costs/Fines a Condition of Supervision**  
 \$ \_\_\_\_\_ **Fine reduced to Civil Judgment**  
 \$ \_\_\_\_\_ **Application Fee Reduced to Civil Judgment**  
 \$ 50520 **Court Costs/Fines Deferred FOR 60 DAYS AFTER REL. FROM DOC**

Defendant

PAUL W BYRD JR.

Case Number

14000063CFMA

**IT IS FURTHER ORDERED AS FOLLOWS:**


If the court costs, fines, fees and surcharges have not been made a special condition of probation or community control, the defendant is ordered to pay the court ordered fine, court costs, fees and surcharges imposed in this case in full within 60 days of the date of this order. If not timely paid, the defendant must report to the office of the Clerk of Court to enter a payment agreement and schedule to pay the balance.

If the balance is not paid within 60 days and the defendant does not thereafter report to the Clerk of Court to schedule to pay the balance as required, the defendant's driver's license may be suspended and the defendant may be required to appear in court to answer for the failure to appear or failure to pay.

The defendant must immediately notify the Clerk of Court, in writing, of any change in the defendant's mailing address.

All fines, costs, fees and surcharges must be paid in cash or by money order, travelers check, personal check or credit card payable to: Clerk of Court, Franklin County Courthouse, 33 Market Street Ste. 203, Apalachicola, FL 32320.

DONE AND ORDERED on 12-Apr-17.

  
\_\_\_\_\_  
CIRCUIT JUDGE  
TERRY P LEWIS

**IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT IN AND  
FOR FRANKLIN COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**CASE NO: 2014 CF 63**

**v.**

**PAUL BYRD,**

**Defendant.**

**MOTION TO SUPPRESS**

COMES NOW, the Defendant, **Paul Byrd**, by and through his undersigned counsel, and pursuant to the Fourth Amendment of the United States Constitution and Florida Rule of Criminal Procedure 3.190(g)(1)(A), moves this Honorable Court to suppress the State's evidence, gathered subsequent to an unconstitutional seizure, and in support thereof states as follows:

**Facts**

1. On February 28, 2014, members of the Franklin County Sheriff's Office set up an illegal narcotics checkpoint on Highway 98 near Lanark Village in Franklin County, Florida. The probable cause affidavit in this case was minimal and devoid of any mention of the checkpoint, but subsequent depositions revealed police misconduct which violate Mr. Byrd's due process rights.

2. The annual Chili Cook-Off took place on St. George Island from February 28 to March 2, 2014. In deposition, law enforcement admitted that it desired to target attendees of the Cook-Off.

3. Two large flashing message boards were placed facing westbound traffic on Highway 98, visible to traffic traveling from the Tallahassee area to St. George Island. One board indicated that there was a "narcotics checkpoint" ahead and the other board indicated that K-9



officers were working ahead. These boards were placed about a quarter to a half a mile east of the old Putnal Lanark Station located at the corner of Putnal Street and Highway 98.

4. Two Patrol vehicles were placed on opposite sides of Highway 98 just west of the intersection of Putnal Street and Highway 98; both of which had their emergency lights activated. There were at least three large traffic cones in the middle of Highway 98 between the patrol vehicles. The Franklin County Sheriff's Office did not stop any vehicles at this checkpoint.

5. Between the flashing message boards and the marked patrol vehicles is the intersection of Putnal Street and Highway 98. Multiple patrol vehicles and K9 units were on Putnal Street focusing on drivers who made a right hand turn to avoid the illegal checkpoint. Additionally, deputies in unmarked units parked near the flashing message boards waited for drivers to make U-turns to avoid the illegal "narcotics checkpoint."

6. Deputy Coulter observed Mr. Byrd make a right turn onto Putnal Street from US Highway 98. After he made that right turn, allegedly avoiding the illegal "narcotics checkpoint," Deputy Coulter claims he observed Mr. Byrd without a seatbelt. At that point, a stop and a K9 sniff occurred, resulting in a positive alert by the K9 unit on Mr. Byrd's vehicle. Upon search of Mr. Byrd's vehicle, various controlled substances were located.

7. As a result of the evidence found pursuant to a search of his vehicle, Mr. Byrd was placed under arrest. Following his arrest, Mr. Byrd made statements to law enforcement that he purchased cocaine. This statement is expected to be used by the State as an admission of guilt by Mr. Byrd.

8. In deposition, law enforcement officers referred to this operation as a "ruse" narcotics checkpoint. In this case, there were no guidelines with regard to traffic congestion, no specified start or end time, and no briefing prior to the checkpoint to review and establish the

operational plan. Additionally, there was no method in place, as required by the Florida Supreme Court, to ensure little discretion was left to the deputies conducting the checkpoint. Therefore, this “ruse” narcotics checkpoint was an illegal narcotics checkpoint.

#### **Discussion:**

9. The Fourth Amendment of the United States Constitution guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” The seizure by Franklin County Sherriff’s Deputies of Byrd on February 28, 2014 was an unconstitutional seizure and a violation of Mr. Byrd’s Fourth Amendment rights. The appropriate remedy is to suppress any and all physical evidence and any and all of Mr. Byrd’s admissions gathered by law enforcement as a result of the unconstitutional stop.

10. The Supreme Court of the United States has addressed use of narcotics checkpoints, ruling that they are a violation of an individual’s Fourth Amendment rights. See City of Indianapolis v. Edmond, 531 U.S. 32 (2000). The Court mandated that “[w]hen law enforcement authorities pursue primarily general crime control purposes at checkpoints . . . stops can only be justified by some quantum of individualized suspicion. Id. at 47. The Court held that a stop cannot secondarily include a registration or sobriety check, if the primary purpose is a narcotics check; allowing police departments to argue this would legitimize any checkpoint. Id. at 46.

11. The Franklin County Sherriff’s Office has attempted to legitimize the checkpoint in the manner the Court explicitly forbade in Edmond. Id. The operational plan stated the department intended to “remove the criminal element from the highways, streets and roadways in the Franklin County Area” and “[t]o serve felony and/or misdemeanor warrants.” Franklin County Sherriff’s Office Operational Plan: Ruse Narcotic’s Checkpoint, Highway 80 Putnal Station (Feb. 28, 2014). This is an attempt to attach a legal basis for the stop, when all actions clearly show the

true purpose of “remov[ing] illegal and/or controlled substances from highways, streets and roadways in the Franklin County area” was the reason for creating a roadblock. Id. This explicitly stated purpose is a direct violation of travelers’ Fourth Amendment rights, and the attempt to legitimize such actions has been rejected by the Court. Edmond, 532 U.S. at 47.

12. The Court has ruled that roadblocks are sometimes permissible, but it has flatly rejected any “program whose primary purpose was to detect evidence of ordinary criminal wrongdoing.” Id. at 37-38, see United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (holding that checkpoints aimed at preventing the transport of illegal aliens); Mich. Dep’t of State Police v. Sitz, 496 U.S. 444 (1990) (ruling that DUI checkpoints are acceptable because there is a public policy concern in stopping drunk drivers); Delaware v. Prouse, 440 U.S. 648 (1979) (explaining why a general stop is inappropriate, but a checkpoint may be acceptable as long as there is zero room for officer discretion or ulterior motive).

13. Other states have addressed the issue of ruse checkpoints since the Edmond decision. Mississippi has authorized ruse checkpoints, as long as they are labeled as a non-narcotic checkpoint by police, and provided only those who have committed traffic infractions have been stopped. Jackson v. Epps, 2015 U.S. Dist. LEXIS 23378, at \*36 (S.D. Miss. Feb. 6, 2015). The second half of these tests may have been satisfied here, but the Franklin County Sheriff’s Office has made it clear, through sworn deposition testimony and their own operation plan, that the purpose was to uncover narcotics activity. Franklin County Sherriff’s Office Operational Plan: Ruse Narcotic’s Checkpoint, Highway 80 Putnal Station (Feb. 28, 2014).

14. In Kentucky, the State’s Supreme Court reviewed a road block which intended to appear serving a general crime deterrence purpose, but included the county’s only drug canine and canine handler on scene. Commonwealth v. Buchanon, 122 S.W.3d 565, 570 (Ky. 2003). The

Buchanon decision analyzed Edmond and ruled that under the totality of the circumstances, this constituted a narcotics checkpoint in violation of the Fourth Amendment. Id. The Franklin County Sherriff's Office's unconstitutional road block on February 28, 2014 is factually and operationally similar to the illegal checkpoint set up in Kentucky.

15. The Florida Supreme Court established standards for setting up checkpoints in State v. Jones, 483 So.2d 433 (Fla. 1986). One legal requirement pertinent to the instant case is that the checkpoint must be established and operated according to detailed guidelines regarding the selection of vehicles, detention techniques, assignments, and the disposition of vehicles so that little discretion is left to the officers conducting the roadblock. Id., at 437. The Jones Court mandates that the guidelines must both be written and comprehensive, addressing these areas. Id. The appropriate test is to view each of the guidelines as a whole, as they are not a mere formality. Campbell v. State, 679 So. 2d 1168, 1170-72. The Franklin County Sheriff's Office does not dispute that it did not follow the requirements mandated in Jones when it set up its "ruse" checkpoint.

16. The Franklin County Sherriff's Office did not set up the checkpoint pursuant to the applicable case law because Jones was not followed. The lighted traffic boards placed on Highway 98 constituted a threat of an illegal search to all westbound motorists. While the intentions may have been legal, police agencies cannot threaten illegal acts. See Kelly v. State, 593 So.2d 1060, 1061 (Fla. 4th DCA 1992) ("[P]olice agencies cannot themselves do an illegal act, albeit their intended goal may be legal and desirable"). Threatening all the westbound motorists with an illegal search flies in the face of fairness and decency expected by the citizens of the State of Florida.

17. The Franklin County Sherriff's Office did not stop with a mere threat of illegal seizure. Traffic was hindered during the "ruse" narcotics checkpoint. Florida Statutes require

motorists to slow down for police vehicles with lights flashing, and the record reflects that motorists slowed down or stopped at the actual checkpoint in order to comply with the multitude of traffic control devices employed by the Franklin County Sheriff's Office. The Supreme Court has ruled that a checkpoint seizure occurs when there is "a governmental termination of freedom of movement through means intentionally applied." Mich. Dep't of State Police v. Sitz, 496 U.S. 444, 450 (1990) (citing Brower v. County of Inyo, 489 U.S. 593, 597 (1989)). The hindering of motorists by the Franklin County Sheriff's Office intentionally terminated their freedom of movement. This constitutes a Fourth Amendment violation of Mr. Byrd's rights prior to the alleged traffic infraction observed by Deputy Coulter, forming the basis for Mr. Byrd's ultimate arrest.

18. Even if the checkpoint set up by the Franklin County Sheriff's Office had been permissible under Federal and State law, the stop during the checkpoint was not. An officer has the right to seize a motorist upon observation of a traffic infraction, not the right to seize a motorist and then search for a traffic infraction, as was done here. Whren v. United States, 517 U.S. 806, 810 (1996). Mr. Byrd was seized when he and his fellow motorists began to slow down in preparation for the illegal checkpoint. The record reflects the deputies did not discuss a seat belt infraction during the stop, but rather focused on a canine search, ultimately resulting in a written warning being issued. There was no legal basis for a Fourth Amendment seizure, followed by visual search for the probable cause to back it up.

19. The Court has ruled that all evidence obtained in violation of the Fourth Amendment is inadmissible in State Court. Mapp v. Ohio, 367 U.S. 643 (1961). The evidence in the instant case is inadmissible under state and federal law. The actions by police constituted

outrageous government conduct and a violation of Mr. Byrd's Fourth Amendment rights. Therefore, all evidence gathered in the course of that conduct should be suppressed by this Court.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter an order suppressing any and all physical evidence, and any and all of Mr. Byrd's admissions gathered as a result of unlawful police conduct.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing has been furnished via electronic filing to The Clerk of Court; and a true and correct copy of the foregoing has been furnished via electronic filing to the State Attorney's Office at SAO2\_Franklin@leoncountyfl.gov, on this 24<sup>th</sup> day of January, 2017.

**/s/ Don Pumphrey, Jr.**

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IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT IN AND  
FOR FRANKLIN COUNTY, FLORIDA

*Amended*  
*[Signature]*

STATE OF FLORIDA,

CASE NO: 2014-CF-63

v.

PAUL BYRD,

Defendant.

\_\_\_\_\_ /

**MOTION TO DISMISS**

COMES NOW, the Defendant, Paul Byrd, by and through his undersigned counsel, and pursuant to Art. I § 9 of the Florida Constitution and Florida Rule of Criminal Procedure 3.190(c)(4), moves this Honorable Court to dismiss the State's Information, and in support thereof states as follows:

**Facts**

1. On February 28, 2014, members of the Franklin County Sheriff's Office set up an illegal narcotics check point on Highway 98 near Lanark Village in Franklin County, Florida. The probable cause affidavit in this case was minimal and devoid of any mention of the checkpoint, but subsequent depositions revealed police misconduct which violate Mr. Byrd's due process rights.

2. The annual Chili Cook-Off took place on St. George Island from February 28 to March 2, 2014. In deposition, law enforcement admitted that it desired to target attendees of the Cook-Off.

3. Two large flashing message boards were placed facing westbound traffic on Highway 98, visible to traffic traveling from the Tallahassee area to St. George Island. One board indicated that there was a "narcotics checkpoint" ahead and the other board indicated that K-9

officers were working ahead. These boards were placed about a quarter to a half a mile east of the old Putnal Lanark Station located at the corner of Putnal Street and Highway 98.

4. Two Patrol vehicles were placed on opposite sides of Highway 98 just west of the intersection of Putnal Street and Highway 98; both of which had their emergency lights activated. There were at least three large traffic cones in the middle of Highway 98 between the patrol vehicles. The Franklin County Sheriff's Office did not stop any vehicles at this checkpoint.

5. Between the flashing message boards and the marked patrol vehicles is the intersection of Putnal Street and Highway 98. Multiple patrol vehicles and K9 units were on Putnal Street focusing on drivers who made a right hand turn to avoid the illegal checkpoint. Additionally, deputies in unmarked units parked near the flashing message boards waited for drivers to make U-turns to avoid the illegal "narcotics checkpoint."

6. Deputy Coulter observed Mr. Byrd make a right turn onto Putnal Street from US Highway 98. After he made that right turn, allegedly avoiding the illegal "narcotics checkpoint," Deputy Coulter claims he observed Mr. Byrd without a seatbelt. At that point, a stop and a K9 sniff occurred, resulting in a positive alert by the K9 unit on Mr. Byrd's vehicle. Upon search of Mr. Byrd's vehicle, various controlled substances were located.

7. As a result of the evidence found pursuant to a search of his vehicle, Mr. Byrd was placed under arrest. Following his arrest, Mr. Byrd made statements to law enforcement that he purchased cocaine. This statement is expected to be used by the State as an admission of guilt by Mr. Byrd.

8. In deposition, law enforcement officers referred to this operation as a "ruse" narcotics checkpoint. In this case, there were no guidelines with regard to traffic congestion, no specified start or end time, and no briefing prior to the checkpoint to review and establish the



operational plan. Additionally, there was no method in place, as required by the Florida Supreme Court, to ensure little discretion was left to the deputies conducting the checkpoint. Therefore, this “ruse” narcotics checkpoint was an illegal narcotics checkpoint.

### **Discussion**

9. The defense of outrageous government conduct is evaluated under the due process provision of the Florida Constitution. Munoz v. State, 629 So.2d 90, 98 (Fla. 1993). Art. 1 § 9 of the Florida Constitution guarantees that “no person shall be deprived of life, liberty or property without due process of law.” The United States Supreme Court evaluates this defense by looking at the totality of the circumstances “in order to ascertain whether they offered those canons of decency and fairness which express the notions of justices.” Malinsky v. New York, 324 U.S. 401, 417-17 (1945). Due process is violated when “the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction.” State v. Glosson, 462 So.2d 1082, 1084 (Fla. 1985).

10. The Supreme Court of the United States has addressed use of narcotics checkpoints, ruling that they are a violation of Fourth Amendment rights. See City of Indianapolis v. Edmond, 531 U.S. 32 (2000). The Court mandated that “[w]hen law enforcement authorities pursue primarily general crime control purposes at checkpoints . . . stops can only be justified by some quantum of individualized suspicion. Id. at 47. The Court held that a stop cannot secondarily include a registration or sobriety check, if the primary purpose is a narcotics check; allowing police departments to argue this would legitimize any checkpoint. Id. at 46.

11. The Franklin County Sheriff’s office has attempted to legitimize the checkpoint in the manner the Court explicitly forbade in Edmond. Id. The purpose of the stops outlined in the operational plan states first that the department intends to “remove the criminal element from the

highways, streets and roadways in the Franklin County Area” and “[t]o serve felony and/or misdemeanor warrants.” Franklin County Sheriff’s Office Operational Plan: Ruse Narcotic’s Checkpoint, Highway 80 Putnal Station (Feb. 28, 2014). This is an attempt to attach a legal basis for the stop, when all actions clearly show the true purpose of “remov[ing] illegal and/or controlled substances from highways, streets and roadways in the Franklin County area” was the reason for creating a roadblock. Id. This purpose is a violation of travelers Fourth Amendment rights, and the attempt to legitimize it has been rejected by the Court. Edmond, 532 U.S. at 47.

12. The Court has ruled that roadblocks are sometimes permissible, but it has flatly rejected any “program whose primary purpose was to detect evidence of ordinary criminal wrongdoing.” Id. at 37-38, see United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (holding that checkpoints aimed at preventing the transport of illegal aliens); Mich. Dep’t of State Police v. Sitz, 496 U.S. 444 (1990) (ruling that DUI checkpoints are acceptable because there is a public policy concern in stopping drunk drivers); Delaware v. Prouse, 440 U.S. 648 (1979) (explaining why a general stop is inappropriate, but a checkpoint may be acceptable as long as there is zero room for officer discretion or ulterior motive).

13. The undersigned cannot find a factually identical case that is binding on this Court relating to ruse checkpoints and their application to the due process clause of the Florida Constitution. Florida courts have analyzed actions by law enforcement agencies and deemed them illegal though. “[P]olice agencies cannot themselves do an illegal act, albeit their intended goal may be legal and desirable.” Kelly v. State, 593 So.2d 1060, 1061 (Fla. 4th DCA 1992). According to the Florida Supreme Court has ruled that “the only appropriate remedy to deter . . . outrageous law enforcement conduct is to bar the defendant’s prosecution.” State v. Williams, 623 So.2d 462, 467 (Fla. 1993), see State v. Taylor, 784 So.2d 1164 (Fla. 2d DCA 2001) (mandating that the

dismissal of charges in instances of outrageous police conduct applies, regardless of the defendant's predisposition).

14. In Williams and Kelly, law enforcement reconstituted powder cocaine that it had confiscated into crack cocaine. Kelly, 593 So.2d at 1061; Williams, 623 So.2d at 463-64. The crack cocaine was then dispersed to deputies to conduct reverse sting operations. Williams, 623 So.2d at 463-64. The Fourth DCA held that because law enforcement committed an illegal act, in this case making crack cocaine, it violated the defendant's constitutional guarantee of due process. Kelly, 593 So.2d at 1061. The Florida Supreme court has held that evidence gathered from outrageous conduct cannot produce a conviction. See Williams, 623 So.2d at 467; see also Metcalf v. State, 635 So.2d 11 (Fla. 1994) (holding that committal of an illegal act by law enforcement rises to the level of outrageous conduct and warrants dismissal of charges).

15. The Florida Supreme court also came to the same conclusion in Metcalf v. State, 635 So.2d 11 (Fla. 1994) (holding that committal of an illegal act by law enforcement rises to the level of outrageous conduct and warrants dismissal of charges).

16. Impeding traffic is normally a violation under Fla. Stat. § 316.2045(1). Clearly the application of this statute to legal and allowable law enforcement purposes would be both erroneous and counterintuitive. This was not a legal checkpoint under Edmond however; the stopping of all passengers, and the termination of their freedom of movement was a Fourth Amendment seizure without warrant or probable cause. This is analogous to the creation of crack cocaine in Williams and Kelly, in all three circumstances the police engaged in illegal activity in order to seek arrests for activities no individualized reasonable suspicion existed for. Fla. Stat. § 316.2045(1) is designed to create safe roadways in order to prevent injury and death. The

punishment for this statute is far less than creation of crack cocaine, but the potential for this illegal checkpoint to have caused bodily injury was far greater.

17. The law mandates the dismissal of charges in instances of outrageous police conduct applies, regardless of the defendant's predisposition. State v. Taylor, 784 So.2d 1164 (Fla. 2d DCA 2001). In this case, the outrageous government conduct that led to the arrest of the Defendant mandates a dismissal of all charges.

WHEREFORE, Defendant respectfully requests that this Court enter an order dismissing all charges.

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing has been furnished via electronic filing to The Clerk of Court; and a true and correct copy of the foregoing has been furnished via electronic filing to Jarrod Patterson, Assistant State Attorney, at SAO2\_Franklin@leoncountyfl.gov, on this 21<sup>st</sup> day of February, 2017.

**/s/ Don Pumphrey, Jr.**  
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IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT, IN  
AND FOR FRANKLIN COUNTY, FLORIDA

CASE NO.: 2014-CF-63

STATE OF FLORIDA

VS.

PAUL BYRD,

Defendant.

\_\_\_\_\_/

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PROCEEDINGS:	MOTION HEARING
BEFORE:	THE HONORABLE TERRY P. LEWIS
DATE:	February 21, 2017
TIME:	Commencing at: 3:00 P.M. Concluding at: 7:40 P.M.
LOCATION:	Leon County Courthouse Tallahassee, Florida
REPORTED BY:	SUSAN BRYANT, RMR, CRR Notary Public in and for the State of Florida at Large

SUSAN BRYANT, RMR, CRR  
Official Court Reporter  
Leon County Courthouse, Room 341  
Tallahassee, FL 32301

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1

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## I N D E X

17

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PROCEEDINGS

THE BAILIFF: All rise. This court is now in session. The Honorable Terry Lewis is presiding.

THE COURT: Thank you. Have a seat, folks. Trying to decide who was going to come in first, and I got -- I got selected.

Okay. So the court reporter says, "would you please make sure all the lawyers are talking into the microphones." If you would like to have a record, that would be nice.

Okay. So, Mr. Pumphrey, I had a Motion to Suppress, but you told me outside you also now have a Motion to Dismiss, which is based on the Motion to Suppress, except you add a few things, and also a Motion for Drug Court.

MR. PUMPHREY: That's correct, Judge. May it please the Court, Don Pumphrey, Jr., on behalf of Paul Byrd. Let the record reflect Mr. Byrd is to my left.

We are here on a Franklin County case. And the Court, based on the Court's schedule and the State's schedule and the Defense schedule, was kind enough to agree to let this be heard. And I believe the State has their witnesses. The State is present. This is on Case No. 2014-63CFMA.

Judge, I'd also advise the Court the State filed an amended charging document. We are going to waive

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1 arraignment on that charging document, it will be  
2 accepted, but that could change as well.

3 We advised the Court of several things we've gone  
4 through. The -- the evidence we intend on introducing  
5 here today, other than testimony, there is a number of  
6 things that we have stipulated to that I think will move  
7 this right along. Agree, Mr. Patterson?

8 MR. PATTERSON: Yes, sir.

9 MR. PUMPHREY: That being said, Judge, at this time,  
10 I would ask to invoke the rule.

11 THE COURT: All right. What that means is if you're  
12 a potential witness in the case, you'll have to wait  
13 outside until it's your turn to testify, and you're  
14 prohibited from discussing your testimony with any other  
15 witness or anyone other than the lawyers. So if we've  
16 got any witnesses, if you'll step outside, we'll call you  
17 when it's your turn.

18 MR. PUMPHREY: Judge, there is one witness that's an  
19 expert, it's Justin Morgan. He is an expert. He was  
20 actually qualified yesterday as an expert in this circuit  
21 in human factors and also in reconstruction.

22 I would ask that he be allowed to stay in the  
23 courtroom to hear the testimony in case that changes any  
24 of the diagrams or any of the information he's going to  
25 provide testimony on here today.

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1 THE COURT: Any objection?

2 MR. PATTERSON: No, Your Honor.

3 THE COURT: All right.

4 MR. PUMPHREY: May I have just a moment, Judge?

5 THE COURT: Uh-huh.

6 (Pause.)

7 MR. PUMPHREY: Your Honor, at this time I would call  
8 Mr. Paul Byrd to the stand.

9 THE COURT: Okay. Did you want to -- did you want  
10 to see if you could agree on certain facts it won't be  
11 necessary to testify to?

12 MR. PUMPHREY: Actually, we can, Judge. There are  
13 actually -- there are actually a lot of facts.  
14 Mr. Morgan has -- has reviewed some of the information,  
15 the transcripts and things like that, that we could  
16 introduce. I don't anticipate the testimony is going to  
17 be any different from the witnesses here today.  
18 Mr. Byrd's testimony, it will be the first time he's  
19 being heard on his testimony. So I think --

20 THE COURT: If you were doing an opening statement  
21 in prelude to making your argument, say, here's the facts  
22 on which we are going to base our motion, let's see if  
23 Mr. Patterson agrees to any of them.

24 MR. PUMPHREY: Well, Judge, I'd like it if Mr.  
25 Patterson agreed that this was a narcotics checkpoint.

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1 His position is going to be it's a ruse checkpoint, so  
2 that's one of the issues in dispute.

3 I think -- other than that, I think we agree as to  
4 the positioning of the vehicles. I think we agree as to  
5 the officers that were present. I think there's going to  
6 be a dispute as to what was observed in the basis of the  
7 stop.

8 Jarred, have you got anything you want to --

9 THE COURT: well, let's just go through your -- your  
10 facts in your motion. You got that there was an annual  
11 Chili Cook-Off. I don't know that it matters whether law  
12 enforcement admitted a desire to target attendees of the  
13 Cook-Off. I don't know whether that matters or not. Do  
14 you have any problem with that fact?

15 MR. PATTERSON: Judge, only in the fact that the  
16 officers didn't target people who were coming to the  
17 Cook-Off. They would have no way of knowing who was  
18 coming to the Cook-Off.

19 THE COURT: Right. So that would be not stipulated  
20 to. How about two large flashing message boards were  
21 placed facing westbound traffic on Highway 98, visible to  
22 traffic traveling from Tallahassee to St. George?

23 MR. PUMPHREY: Stipulate.

24 MR. PATTERSON: I don't -- I know there were  
25 flashing signs. I don't recall if there was one or two

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1 off the top of my head, but there were flashing signs  
2 indicating a narcotics checkpoint ahead.

3 THE COURT: Yeah, that's the next sentence, says  
4 that one -- one board indicated that it was a narcotics  
5 checkpoint ahead, and the other board indicated that K-9  
6 officers were working ahead.

7 MR. PATTERSON: Yes, sir. I think that was the  
8 testimony at the deposition, but I don't remember the  
9 exact wording of the sign. And if my officers dispute  
10 it, I'll have them testify to the difference.

11 THE COURT: Well, I'll tell you what, it might be --  
12 might be not saving any time to go through it this way.  
13 Go ahead and just put on your case, and maybe if it's not  
14 contested, he won't cross examine too hard. So Mr. Byrd,  
15 come on up.

16 MR. PUMPHREY: If I could have just a second with  
17 Mr. Patterson, I think -- I think the majority of these  
18 we can stipulate to, and then we can get right to the  
19 matter, if I can have just a second.

20 THE COURT: Okay.

21 MR. PUMPHREY: I appreciate the Court's patience.

22 (Discussion off the record.)

23 MR. PUMPHREY: So, Judge, I think Mr. Patterson's  
24 only issue was -- was an issue on No. 3. We'll start  
25 with that one. There were two flashing message boards.

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1 The testimony previously in deposition was that it was a  
2 narcotics checkpoint; and the second board -- and we  
3 don't know in which order -- said -- indicated a K-9 dog  
4 is working. That's No. 3.

5 No. 4: There were two patrol vehicles placed on  
6 opposite sides of Highway 98 --

7 THE COURT: Let me -- let me back you up because you  
8 also said the boards were placed about a quarter to a  
9 half mile east of the old Putnam Lanark Station, located  
10 on the corner of Putnam Street and Highway 98.

11 MR. PUMPHREY: Right, and I don't think there's any  
12 dispute in that.

13 THE COURT: Mr. Patterson?

14 MR. PATTERSON: That -- that was the testimony on  
15 the previous depo, Your Honor.

16 THE COURT: Okay. All right.

17 MR. PUMPHREY: So, Judge, on No. 4, I don't think  
18 there's any dispute. Let's read through it. Two patrol  
19 vehicles were placed on opposite sides of Highway 98 just  
20 west of the intersection of Putnam Street and Highway 98.  
21 Both had their emergency lights activated. There were at  
22 least three large traffic cones in the middle of Highway  
23 98 between the patrol vehicles. And the Franklin County  
24 Sheriff's Office did not stop any vehicles at this  
25 checkpoint.

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1           Now, the location of the checkpoint, Mr. Morgan has  
2           located that based on, at that time, Captain Segree's  
3           testimony. So I don't think there's any dispute about  
4           that unless you -- okay.

5           MR. PATTERSON: And, Judge, the -- the only -- I'm  
6           not saying it's a dispute. The only issue I have is that  
7           I just received these items before we walked in here, so  
8           I haven't had a chance to sit down with the officers and  
9           say, "Is this in the right spot? Is that in the right  
10          spot?" So it may just be better to go through his --

11          THE COURT: Yeah.

12          MR. PATTERSON: -- presentation and let me figure  
13          out where he's saying everything was and see if we think  
14          that's where it was, too, or if there was some dispute.  
15          I was just handed these photos and things right before we  
16          walked in here, so I haven't had a chance to talk with  
17          the officers about whether they dispute any of that.

18          THE COURT: Okay.

19          MR. PUMPHREY: So it looks like we got to 3 and 4.  
20          And any dispute as to 5, Mr. Patterson? Here. I'm  
21          sorry. Here.

22          (Discussion off the record.)

23          THE COURT: Yeah, I think we're kind of spinning our  
24          wheels.

25          MR. PATTERSON: Yeah, that's what I'm saying. I

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1 think we just need to --

2 THE COURT: I would like it if -- if they weren't  
3 disputed, but it seems to be easier just to put on what  
4 you want to put on, and I'll see what disputed issues  
5 there might be.

6 MR. PUMPHREY: Yes, sir, Judge. I call Mr. Byrd.

7 THE COURT: Okay. Come on up, Mr. Byrd.

8 MR. PUMPHREY: You're going to go up to the stand.

9 THE COURT: Good afternoon. Would you raise your  
10 right hand?

11 whereupon,

12 PAUL WALLACE BYRD, JR.

13 was called as a witness, having been first duly sworn, was  
14 examined and testified as follows:

15 THE COURT: Have a seat.

16 DIRECT EXAMINATION

17 BY MR. PUMPHREY:

18 Q Can you please state your full name for the record?

19 A Paul Wallace Byrd, Jr.

20 Q All right. Mr. Byrd, do you recall several years  
21 ago traveling down to the Chili Cook-Off from Tallahassee,  
22 Florida, down to St. George Island?

23 A Yes, sir.

24 Q That was on February the 28th of -- around that  
25 time?

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1           A     Yes, sir.

2           Q     Okay. And what vehicle were you driving at that  
3 time? Can you tell us the make, model, and year of that  
4 vehicle?

5           A     A 2007 Chevrolet Silverado crew cab, four-door.

6           Q     Okay. Was it a 2007 or a 2009?

7           A     I believe it was a 2007.

8           Q     Okay. And, Mr. Byrd, have you testified before  
9 under oath?

10          A     Not that I can recall.

11          Q     All right. Are you nervous here today?

12          A     A little bit.

13          Q     Okay. I would ask you just to take a deep breath.

14                Now, back on February 28th of 2014, this particular  
15 vehicle you were driving, did it have a system that would  
16 alert you if you did not have your seat belt on?

17          A     Yes, sir.

18          Q     Can you explain to us what that system was?

19          A     A dinging noise --

20          Q     Okay.

21          A     -- that would continuously verbalize itself until  
22 you satisfied it by snapping your seat belt.

23          Q     And -- and did that noise continue the entire time  
24 until you fastened your seat belt?

25          A     Yes, sir, it -- it would continue.

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1 Q Was it annoying?

2 A Very.

3 Q All right. And so was it operational on  
4 February 28th, 2014?

5 A Yes, sir.

6 Q Okay. How do you know that?

7 A Because -- because I, sometimes in my haste, would  
8 not fasten it, and it would make a noise until I did, and I  
9 would fuss at it a little bit.

10 Q All right. Now, Mr. Byrd -- and I'm not being  
11 disrespectful here -- but you're a large man. Would you agree  
12 with that?

13 A Yes, sir.

14 Q All right. And at the time, back on February 28th,  
15 2014, did you -- did you also have a large stomach, chest  
16 area?

17 A Unfortunately, yes, sir.

18 Q Okay. And on this particular date and time, were  
19 you traveling down Highway 98 near Lanark Village in Franklin  
20 County?

21 A Yes, sir.

22 Q And as you're traveling down that road, are you  
23 headed towards St. George Island or towards Tallahassee?

24 A I was heading towards St. George Island.

25 Q Okay. And the speed limit on that particular area

1 of roadway, is it 55?

2 A Yes, sir.

3 Q Okay. Were you traveling the speed limit?

4 A Yes, sir.

5 Q Okay.

6 A I was -- actually, the traffic wasn't moving at 55.

7 It was slowed down for some reason.

8 Q Okay.

9 A There was a lot of cars that day.

10 Q All right. So there was a lot of heavy traffic  
11 headed in one direction?

12 A Yes, sir.

13 Q All right. Now, the entire time we're talking here,  
14 if at any time your seat belt alarm or device starts to start  
15 dinging, would you stop us and let the Court know?

16 A Yes, sir.

17 Q Okay. And so at any time while you're traveling in  
18 this heavy traffic, did there come a time where the traffic  
19 started to really slow down a lot?

20 A When I rounded the curve going into Lanark, it  
21 looked like Grand Central Station with all the flashing blue  
22 lights. The traffic slowed down tremendously.

23 Q Okay. Now, when you say it slowed down, was it --  
24 was it traveling where everyone was moving at slower than 55,  
25 or were the cars bumper-to-bumper?

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1           A     Ten to 15 miles an hour.

2           Q     Okay.

3           A     There was a lot of cars.

4           Q     All right. And -- and as you made that turn, did  
5 you see any signs or signage alerting you to anything?

6           A     Two signs.

7           Q     Okay. Can you tell us what -- describe those signs  
8 for the Court.

9           A     They were large informational signs, six-by-eight  
10 feet, two of them. One said narcotics checkpoint ahead, and  
11 the other said K-9 officers working ahead or something like --  
12 to that effect.

13          Q     Okay. And what did you believe -- did you believe  
14 that that meant that there were law enforcement up ahead?

15          A     Absolutely.

16          Q     Okay. Did you hear your seat belt device dinging at  
17 any time?

18          A     No, sir.

19          Q     Okay. And did you -- did you believe that there  
20 were law enforcement officers there?

21          A     Yes, sir.

22          Q     Okay. And possibly K-9 dogs that were out in the  
23 roadway or working in that area?

24          A     Yes, sir.

25          Q     Okay. These signs that were six-foot by eight-foot,

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1 were they lighted?

2 A Yes, sir.

3 Q Okay. So these are the big signs we see that are --  
4 look like they are put on a trailer and pulled onto the side  
5 of the road to alert traffic?

6 A Yes, sir.

7 Q Okay. And you've seen these type of signs before,  
8 just based on your personal experience in driving for how many  
9 years?

10 A Forty-five years.

11 Q Now, as you approached the first sign, what was the  
12 traffic like? Was it moving at a fast pace? Was it -- how  
13 was the traffic moving?

14 A It was about 30 miles an hour at the first sign.

15 Q Okay. And approximately how many cars would you say  
16 were ahead of you or behind you?

17 A It was a steady stream of traffic coming from  
18 Tallahassee. Where the 319 and 98 merged at St. Teresa, it  
19 became a steady stream. Not necessarily bumper-to-bumper, but  
20 from me to you.

21 Q Okay.

22 A Forty, 50 feet of separation.

23 Q So once you got to that first sign that was on the  
24 side of the roadway, how far apart was the traffic?

25 A About 40 -- about 30, 40 feet.

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1           Q     Okay. And you believe the speed limit to have  
2 slowed down to approximately 20 miles an hour?

3           A     Yes, sir. I would say 30 miles an hour at the first  
4 sign. By the second sign, it was down to 20. Everything was  
5 at a crawl then.

6           Q     Okay.

7           A     We didn't know -- I mean, it was -- there were a lot  
8 of blue lights.

9           Q     Okay.

10          A     It seemed to me there were more than two police  
11 cars.

12          Q     So when you -- when you were -- how far away or when  
13 did you first see blue lights flashing when you were driving  
14 on the roadway?

15          A     For sure when I came around the curve, but you could  
16 tell something was ahead because of the reflections in the  
17 trees before you come around the curve.

18          Q     All right.

19          A     A pretty good ways.

20          Q     And so could you tell from the distance, when you  
21 saw the flashing blue lights, whether or not they were in the  
22 roadway or on the side of the roadway, or where they were  
23 located specifically?

24          A     No, not from the first sign, you could not tell.

25          Q     All right. Did you see brake lights up ahead of

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1     you?

2           A     Yes, sir.

3           Q     And what did that indicate to you?

4           A     That I was going to be stopped, I was fixing to  
5     stop.

6           Q     Okay. And so as a driver, a responsible driver, are  
7     you also familiar with a law that we had back then and still  
8     have today called Florida's Move Over Law?

9           A     I was aware of the Move Over Law. But, yeah, I --  
10    anytime you saw that many flashing blue lights, you -- you  
11    were prepared -- you prepared yourself to stop.

12          Q     Okay. And so at any time up until this point, until  
13    your -- your vehicle came to a stop, did you ever hear the  
14    dinging of your seat belt?

15          A     No, sir, I did not.

16          Q     Okay. So once you passed the second sign,  
17    approximately how far was it before the flashing blue lights  
18    that were on --

19          A     If my memory serves me correctly, it was about maybe  
20    50 yards, no less than -- I mean, no greater than 50 yards.

21          Q     Okay. And are you familiar with this particular  
22    area?

23          A     Yes, sir.

24          Q     Okay. Did it appear to you that traffic was backed  
25    up?

1           A     Yes, sir.

2           Q     Okay. And did you -- did you decide to try to avoid  
3 the traffic backup?

4           A     Yes, sir.

5           Q     Okay. Now, were you avoiding a checkpoint?

6           A     Yes, sir.

7           Q     Okay. And the -- when it -- when it said checkpoint  
8 and you approached Putnal Road, describe for the Court what  
9 you observed.

10          A     When I made the right turn onto Putnal, on my  
11 right-hand side there was a vehicle parked up in a driveway  
12 right beyond the Putnal Station, and I think there were a  
13 couple of cars across the street. I don't know if they were  
14 SUVs or -- they were marked cars.

15          Q     All right. Approximately -- well, first of all,  
16 when you -- when you turned off onto Putnal, was it your  
17 choice to turn off?

18          A     Yes, sir.

19          Q     Okay. And as you turned off onto Putnal Street, did  
20 you have your seat belt on?

21          A     Yes, sir.

22          Q     Okay. At some point, were you stopped there on  
23 Putnal Street?

24          A     I was.

25          Q     Describe that for the Court.

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1           A     As I passed the driveway right past the Putnal  
2     Station, a gentleman dressed all in black started trotting  
3     along in the ditch next to my truck.

4                     The truck's passenger window, the front passenger  
5     window was inoperable, so I had to roll down my back window  
6     and turn and ask him if he wanted me to stop, and he said he  
7     did.

8           Q     Okay.

9           A     And then he came around to my -- to the driver's  
10    side, and I rolled down the window, and I said, "Do you need  
11    to see identification?" He said, "Yes, sir." And that's when  
12    I unsnapped my seat belt.

13          Q     Okay. And at this point, is the car in park?

14          A     Yes, sir.

15          Q     Okay. When the car is in park, does the -- does the  
16    signal go off to annoy you?

17          A     No, sir.

18          Q     All right. Well, why would you have to unsnap your  
19    seat belt just because the officer is standing there?

20          A     I keep my -- I kept all my driver's license and  
21    credit cards and debit cards and all that in my front right  
22    pocket. And in order to gain access, I had to unsnap my seat  
23    belt to get my driver's license. I had the registration over  
24    the visor, but the driver's license was in the -- my right  
25    front pocket.

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1           Q     Now, how long have you -- were you carrying a  
2     wallet?

3           A     No, sir.

4           Q     Okay. How did you keep your driver's license? Did  
5     you have any other paperwork with that in your pocket?

6           A     I had my health -- Capital Health Plan cards. I had  
7     all kinds of business cards and that sort of thing that were  
8     wrapped up in a rubber band.

9           Q     Okay. When the officer was jogging along beside  
10    you, had he ordered you to stop your vehicle?

11          A     If my memory serves me correctly, I asked him if he  
12    wanted me to stop, because there was no one in the roadway.  
13    He was trotting alongside the truck. And as I rolled the  
14    window down, and I asked him if he wanted me to stop, and he  
15    said, "Yes."

16          Q     And this is the same officer that came around to the  
17    driver's side when you couldn't -- when you advised him you  
18    couldn't roll down the front window on the passenger side?

19          A     Yes.

20          Q     Now, this is a four-door vehicle?

21          A     Yes, sir.

22          Q     Okay. And so the -- the door behind the passenger  
23    door, that window was operable, but the passenger window was  
24    not?

25          A     No, sir.

1 Q All right. And how do you know this?

2 A Because it was an aggravation. For a lot of  
3 different reasons, it had been -- been not repaired for a long  
4 time. And, I mean, I just knew it, and I knew in order to  
5 have a conversation with this gentleman trotting alongside my  
6 truck, that I needed to roll down that window in the rear.

7 Q And this gentleman that you described and you  
8 described what he was wearing, what color was the clothing he  
9 was wearing?

10 A He was -- black shoes, black pants, and a black  
11 shirt.

12 Q Okay. Was he clearly identifiable as a law  
13 enforcement officer?

14 A I assumed he was. But not clearly identified, no.

15 Q Okay. And so when he stopped and he came around to  
16 the driver's side, at that point did you realize he was a law  
17 enforcement officer?

18 A Yes, sir.

19 Q And placing your car in park, you had to get your  
20 driver's license, registration, and proof of insurance?

21 A Yes, sir.

22 Q Now, were you asked for that, or did you just know  
23 that I'm going to need to get this out?

24 A I asked him if he needed to see my driver's license  
25 when he was behind me in the -- on the -- on the right side of

1 the truck. I asked him if he wanted me to stop. And I'm not  
2 sure if I asked him there or when he got to the window on the  
3 front side.

4 Q Okay. Now, when you unbuckled your seat belt, was  
5 the car in drive or park?

6 A No, sir, it was in park.

7 Q Okay. And what side of Putnal Street were you on?

8 A I was on the right side of the Putnal Street.

9 Q Okay. And at any time did the officer tell you why  
10 you were being stopped?

11 A No, sir.

12 Q At any time did any officer mention to you why they  
13 were even jogging along the side of the truck or wanting to  
14 see your driver's license, registration?

15 A No, sir, they did not.

16 Q Okay. Were there other officers that came up after  
17 the first officer; do you remember?

18 A If my memory serves, within three to five minutes, a  
19 gentleman came up with a dog.

20 Q Okay. And where were you at when the gentleman came  
21 up with the dog?

22 A I was in the truck. They told me to remain seated  
23 in the truck.

24 Q Okay. Did you listen to what they told you?

25 A Absolutely.

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1           Q     All right. At this point, was your seat belt on or  
2 off?

3           A     It was off then.

4           Q     All right. And the truck is still in park?

5           A     Yes, sir.

6           Q     Had you turned -- been instructed to turn the truck  
7 off, or was it still running?

8           A     I think it was off.

9           Q     Okay. And at some point, did the officers order you  
10 out of the vehicle or ask you out of the vehicle?

11          A     At the point that they had run the dog around the  
12 truck twice --

13          Q     Yes, sir.

14          A     -- they asked me to step out.

15          Q     All right. And did you listen to what they told  
16 you?

17          A     Absolutely.

18          Q     At that point, did you feel you were free to leave?

19          A     No, sir.

20          Q     At the point the officer was -- you had the  
21 discussion with the officer who's jogging and you're talking  
22 to through the back window, when he tells you, "Do you want me  
23 to stop," did you feel like you were being told to stop?

24          A     I was absolutely terrified. You better believe I  
25 stopped.

1 Q Okay. Did you notice that this fellow had a gun?

2 A Yes, sir, he did have a gun.

3 Q Okay. Do you tend to listen to people who have  
4 guns?

5 A I do.

6 Q Okay. And so, now, this is in the late afternoon,  
7 the sun is at a low point on the horizon; is that right? It  
8 was late afternoon?

9 A It was around 5, 5:15, yes, sir.

10 Q Okay. In fact, that same date is coming up in about  
11 a week or two, isn't it?

12 A Yes, sir.

13 Q And the angle of the sun, when you were driving in  
14 your vehicle, was it -- was it low or high in the sky?

15 A It was nigh onto sunset. It was about 30 minutes  
16 until sunset. It was low.

17 Q At any time when you were driving, from the point of  
18 your last departure until you stopped there on Putna1, did you  
19 have your seat belt off?

20 A I don't think so.

21 Q Do you like that sound that it makes when you have  
22 it off?

23 A No, sir.

24 Q Okay. Did any of the officers mention anything  
25 about the sound that it makes when it was off?

1           A     No, sir.

2           Q     Okay. Did they ever tell you anything about the  
3 reason you were stopped is it had something to do with a seat  
4 belt?

5           A     After I was cuffed and about 30 minutes after the  
6 proceedings began, some officer came over and stuffed  
7 something -- a piece of paper in my front pocket. My hands  
8 were cuffed behind my back. I couldn't tell what it was.

9           Q     Okay. Could you see -- I'm sorry?

10          A     I could not tell at that time what it was.

11          Q     Okay. Did anybody tell you what it was?

12          A     I don't recall --

13          Q     Okay.

14          A     -- anybody saying anything.

15          Q     All right. Now, Mr. Byrd, let's back up just a  
16 minute. Who had you worked for, for the last -- well, first  
17 of all, at that time, preceding that date when you were going  
18 down to Lanark Village, who had you worked for?

19          A     The Leon County School System.

20          Q     And how many school superintendents had you worked  
21 for?

22          A     Five or six.

23          Q     Okay. And were you required to be on call?

24          A     Yes, sir.

25          Q     And so how many years did that span prior to you

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1 traveling in Lanark Village on February 28th, 2014?

2 A Since 1985 when I started as the director of  
3 maintenance. We had Hurricane Kate hit three days after I  
4 started my employment with the school system. And it was  
5 seven days a week, 12 hours a day for two years after that.  
6 And I just -- I just -- any fires, we had fires, any kind of  
7 catastrophe, I was -- it was assumed that I would be there.

8 Q I'm going to jump back in time -- forward in time a  
9 minute. When you finally were able to read what was that  
10 piece of paper stuck in your pocket, were you -- how did you  
11 feel? Describe it for the Court.

12 A Well, the gentleman was chuckling when he stuck it  
13 in my pocket, so I knew it was something, but I didn't know  
14 what it was until I regained my possessions at the time I was  
15 released from jail.

16 Q Okay. And when you looked at it, what did you  
17 think?

18 A I said, "I sure got myself in a lot of trouble."

19 Q Well, okay. But, I mean, about what the nature of  
20 the piece of paper was.

21 A That was negligible in my mind. I mean, I didn't  
22 even consider the consideration of what had happened to me and  
23 why I had cause of my own.

24 Q But the ticket itself, did you feel like they had  
25 confused you with someone else?



1           THE COURT: You started to say the "ticket." Has he  
2 described it as a ticket? He said he stuffed something  
3 in his pocket. I think you keep asking him what it was  
4 or trying to get around there.

5           MR. PUMPHREY: I'll get to it Judge, I'm sorry.

6           THE COURT: What is it that -- what was it in your  
7 pocket, that he stuffed in your pocket?

8           THE WITNESS: It was a warning, sir, a warning  
9 citation.

10          THE COURT: For?

11          THE WITNESS: Seat belt.

12          THE COURT: Seat belt, okay.

13 BY MR. PUMPHREY:

14          Q     When you read the fact that you had received a  
15 warning for a seat belt, did you think that they had confused  
16 you with somebody else?

17          A     I didn't know. I knew they had some reason for  
18 sticking it in my pocket, but it was 30 minutes after the  
19 initiation of the operation of my stop.

20          Q     Had you been driving at any time without your seat  
21 belt?

22          A     No.

23          Q     Okay. If you take your seat belt off while you're  
24 operating the vehicle, does it give an audible sound that's  
25 annoying?

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1 A Yes.

2 Q Okay. And knowing that you had passed two signs and  
3 seen the blue lights up ahead and police cars or people all  
4 over the place, was that -- did that make you aware that  
5 there's a possibility you may be stopped?

6 A Absolutely.

7 Q Okay. Was your -- was your freedom of movement, as  
8 you approached Putnam Road, was that affected in any degree?

9 A Everyone on Highway 98 heading west was impeded.  
10 Everyone.

11 Q Okay. At one point, did you testify the cars were  
12 bumper-to-bumper?

13 A The cars were bumper-to-bumper.

14 Q Okay.

15 A And they were moving slow enough that the officer  
16 that was standing in the middle of the road could talk to  
17 people in their vehicle as they were passing by.

18 Q All right.

19 MR. PUMPHREY: A moment, Your Honor?

20 THE COURT: Uh-huh.

21 BY MR. PUMPHREY:

22 Q Mr. Byrd, that was back February 28th of 2014. Do  
23 you remember what color shirt you were wearing?

24 A It was a -- it was a sports shirt, dark, checkered.

25 Q All right. And what was the color of the interior

1 of your vehicle?

2 A It was dark charcoal gray.

3 Q And what was the color of the seat belt you were  
4 wearing?

5 A Dark charcoal gray.

6 MR. PUMPHREY: A moment, Your Honor?

7 THE COURT: Uh-huh.

8 MR. PUMPHREY: Nothing further. Tender the witness.

9 THE COURT: Cross exam?

10 CROSS EXAMINATION

11 BY MR. PATTERSON:

12 Q Mr. Byrd, you said you were driving this Chevy  
13 pickup truck. And I happen to have the same exact truck, a  
14 Chevy crew cab truck.

15 A Yes, sir.

16 Q And that chime doesn't go off continuously, does it?  
17 It dings and then there's a break, and then it dings and then  
18 there's a break. That chime doesn't go off continuously, does  
19 it?

20 A In my memory it did, sir. I've got a Chevrolet  
21 truck now.

22 Q Now, also, on these older model trucks, there's ways  
23 to defeat that chime; is there not?

24 A The only way I would know would be to buckle the  
25 seat belt behind your back and sit on it.

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1 Q But there are ways to do it?

2 A That's the only way I --

3 Q And you mentioned about -- you said you saw a lot of  
4 blue lights down the road down there. You were asked about  
5 the Move Over Law, if you knew about the Move Over Law. You  
6 said you did know about the Move Over Law, right?

7 A I knew that if a highway patrolman was on the  
8 interstate, that you were required to move over to the next  
9 lane.

10 Q And why do you think that is?

11 A Safety.

12 Q Safety, right. If there's officers there on the  
13 side of the roadway, there's a chance cars going down the  
14 roadway could hit them, correct?

15 A It had been reported in the news as such, yes.

16 Q And that's why they have lights that run on both  
17 sides, front and back of their vehicle, to alert motorists  
18 that they are there?

19 A Correct.

20 Q For safety purposes?

21 A I would assume so, yes, sir.

22 Q You stated that you pulled onto Putnam Street. You  
23 did that, you said, by your own choice, correct?

24 A Well, at the time --

25 Q That's what you testified to earlier.

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1           A     That's correct.

2           Q     Okay. And you say you are familiar with that area?

3           A     Yeah, somewhat. I've owned a house on St. George  
4     Island since 1983.

5           Q     St. George Island is a long way from Lanark, though,  
6     isn't it?

7           A     Not in the grand scheme of things. Once you get to  
8     Lanark, you're 75 percent to St. George from Tallahassee.

9           Q     But you would agree with me that down Putnal Street  
10    there's not -- there's not a store down there or a gas  
11    station, or there's nothing down Putnal Street but -- but  
12    residences, correct?

13          A     That's correct.

14          Q     So there's no reason for somebody going Tallahassee  
15    to St. George Island to necessarily go into Lanark?

16          A     No, sir, not that I'm aware of.

17          Q     You don't have any friends down there? You don't  
18    know anybody that lives down there?

19          A     I know several people that live down there, but I  
20    was --

21          Q     You weren't going down there to visit them?

22          A     No, sir, I was not.

23          Q     You were pulling off to avoid contact with the law  
24    enforcement you saw on the road?

25          A     Probably.

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1 Q Probably or yes?

2 A Yes.

3 Q Now, you said you were terrified. Do you have any  
4 reason to fear the law enforcement officers? They didn't  
5 threaten you or anything, did they?

6 A Well, there was about --

7 Q I mean, when you pulled off on Putnal Street, you  
8 hadn't even talked to any law enforcement officers, had you?

9 A Well, I haven't had any contact with any law  
10 enforcement officers dressed all in black.

11 Q I mean, when you pulled off of 98 onto Putnal  
12 Street, you hadn't had any contact with any law enforcement  
13 officers, had you?

14 A Not until I got to that first driveway.

15 Q Down Putnal Street?

16 A Yeah. About 100 feet, maybe.

17 Q And you talked about these officers in the middle of  
18 the road. Was that on -- was that on Putnal Street?

19 A No, that was at 98. I could see that.

20 Q You were able to see that way down the road?

21 A It wasn't that far.

22 Q It wasn't that far?

23 A No.

24 Q Do you know how many blocks there are between Putnal  
25 Street and Florida -- and Franklin Street?

1           A     No.

2           Q     There's two full blocks between those?

3           A     I don't know that. I could see -- I could see the  
4 officers working.

5           Q     Well, you could see officers down there. You don't  
6 know what they were doing, though, because you never made it  
7 down there to see.

8           A     No. No.

9           Q     And it's your testimony that there was so much  
10 traffic on this roadway that it was bumper-to-bumper, and  
11 y'all weren't moving very fast?

12          A     Yes, sir.

13          Q     And that was all the way down to where you saw the  
14 officers at?

15          A     Yes, sir.

16          Q     But you couldn't see what the officers were doing  
17 down there? You don't know what they were doing?

18          A     It looked like a -- it looked like a roadblock to  
19 me.

20          Q     But you don't know because you didn't go down there?

21          A     No. I was moving almost at less than 10 miles an  
22 hour when I got to Putnam.

23          Q     And you said -- I couldn't really hear you because  
24 you were talking to the Judge, you had your head turned. You  
25 said that the thing they stuck in your pocket was a warning

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1 ticket for a seat belt violation?

2 A It was in my front pants pocket on my right side.

3 Q Okay.

4 A It wasn't in my shirt pocket.

5 Q Okay. So they put it -- they put it in your pants  
6 pocket, not your shirt pocket?

7 A Yeah. My hands were cuffed behind my back.

8 MR. PATTERSON: Just a moment, Your Honor.

9 (Pause.)

10 MR. PATTERSON: I don't have anything further at  
11 this time.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. PUMPHREY:

15 Q The traffic that was traveling, you testified  
16 earlier, bumper-to-bumper, and I think you said, when  
17 Mr. Patterson was up here, less than -- 10 miles an hour or  
18 less?

19 A At Putnam, yes, sir.

20 Q Okay. And did you believe that to be because of the  
21 checkpoint, or because of just the nature of traveling to St.  
22 George Island for the Chili Cook-Off?

23 A The volume of the traffic. You couldn't put  
24 anything out there and not slow people down. I mean, it was  
25 the Chili Cook-Off. It was -- used to be a big event, 10 to

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1 15,000 people.

2 Q Okay. But the -- when you're sitting there before  
3 you turned on Putnal, why did you believe the traffic had  
4 slowed down so much after the last two signs, before you get  
5 to Putnal?

6 A My feeling was there may have been a stop, and they  
7 had somebody stopped.

8 Q Okay. And was it slowed down so much that -- you're  
9 familiar with the area where Putnal travels to and how it can  
10 angle back around?

11 A Yes, sir.

12 Q Okay. And so when you turned on Putnal, were you  
13 able to -- did you believe you could get around what was going  
14 on faster?

15 A Oh, absolutely.

16 Q Okay. You said you were scared, too, weren't you --  
17 didn't you?

18 A Absolutely.

19 Q Okay. Had those blue lights and cones and what you  
20 observed not been there, do you believe the traffic would have  
21 been traveling that slow?

22 A No. Most of the -- most of the people zip through  
23 Lanark, and that's well known as a speed trap. I always slow  
24 down in Lanark because it's a 45-mile-an-hour speed limit.  
25 But I think most of the people were intent on getting to St.

1 George, and it had been 50 miles an hour through Lanark.

2 Q Okay. And based on what you observed, you believed  
3 that the vehicles were being stopped?

4 A I felt they were, yes.

5 Q Okay. And you believed it to be a checkpoint?

6 A Absolutely.

7 Q Could you see cones in the roadway?

8 A Yes.

9 Q Could you see blue lights or police -- marked police  
10 vehicles with blue lights flashing on both sides of the  
11 roadway?

12 A Yes.

13 Q Were they way off the roadway, or were they right up  
14 against the fog line on the roadway?

15 A They weren't more than three foot off the edge of  
16 the roadway.

17 Q All right. And did you see officers walking on the  
18 roadway or waving traffic through?

19 A Yes.

20 Q Okay. And did you see traffic stopped, brake lights  
21 up ahead?

22 A Yes.

23 Q And this was before you turned on Putnal?

24 A Yes, sir.

25 MR. PUMPHREY: A moment, Your Honor? No further

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1 questions.

2 THE COURT: All right. You can step down, then.  
3 Thank you, sir.

4 THE WITNESS: Thank you.

5 THE COURT: Do you want to call your next witness?

6 MR. PUMPHREY: Judge, at this time the next witness  
7 would not be appropriate until after the State puts on  
8 their witnesses, because he's an expert. He's taking all  
9 the information in, so at this time, we would rest as to  
10 the motion. Not rest. I reserve to put on the expert  
11 testimony. I think we have shown that Mr. Byrd's freedom  
12 of movement was challenged and that he turned off the  
13 roadway. So at this time I would expect the State to put  
14 on their witnesses. But, if not, I'll put him on.

15 THE COURT: What do you say, Mr. Patterson?

16 MR. PATTERSON: I don't think that's -- the expert  
17 is basing whatever he is going to say off of testimony  
18 that the officer gave at depo, and I don't know what is  
19 going to be different that's going to come up now. But  
20 my whole issue was just receiving this stuff, that --  
21 that aside from that, I don't know how -- I don't know  
22 how Mr. Byrd has shown that his freedom of movement was  
23 restricted in any way at this point. I mean, he made a  
24 decision to pull off the roadway.

25 THE COURT: Yeah, but he was stopped; wasn't he?

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1           MR. PATTERSON: After -- after he got off the  
2 roadway but not by whatever the expert is going to  
3 testify have to about the sign.

4           THE COURT: Well, I -- I have no idea, but I think  
5 the idea is that if it -- this is a warrantless search,  
6 right?

7           MR. PUMPHREY: Yes, sir.

8           MR. PATTERSON: Yes, sir.

9           THE COURT: And so he has established standing, he  
10 was --

11          MR. PATTERSON: I agree to that, yes, sir. He was  
12 stopped, and he was subsequently searched.

13          THE COURT: I think that shifts the burden to you to  
14 show it was a reasonable stop.

15          MR. PATTERSON: Well, then, I would call -- the  
16 first officer I would call would be Brad Segree with the  
17 Sheriff's Office.

18          THE COURT: Okay.

19          MR. PATTERSON: Who is now a lieutenant. He was  
20 captain at the time.

21          MR. PUMPHREY: Judge, I don't mind calling the  
22 expert, because he's going to give you an orientation  
23 that may help the Court; and if the testimony changes  
24 anything -- okay. Go ahead.

25          MR. PATTERSON: Yeah.

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1 THE COURT: It doesn't matter to me. I'm going to  
2 hear everything anyway.

3 MR. PUMPHREY: I know you are, Judge.

4 THE COURT: But I thought you wanted him to go  
5 forward, and that's fine.

6 Right up here by me. Raise your right hand.

7 THE WITNESS: Yes, sir.

8 whereupon,

9 ERIC BRADLEY SEGREE

10 was called as a witness, having been first duly sworn, was  
11 examined and testified as follows:

12 THE COURT: Thank you. Have a seat.

13 DIRECT EXAMINATION

14 BY MR. PATTERSON:

15 Q Can you state your name for the record, please, sir?

16 A Eric Bradley Segree.

17 Q And, Mr. Segree, how are you employed?

18 A I work for the Franklin County Sheriff's Office.

19 Q And what's your -- what's your capacity at the  
20 sheriff's office currently?

21 A I'm a lieutenant on road patrol.

22 Q You're a shift supervisor?

23 A Yes, sir.

24 Q Now, back in February of 2014, what was your  
25 position at the Sheriff's Office?

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1           A     I was a captain in administrative office.

2           Q     So, essentially, you were second or third ranked in  
3 the Sheriff's Department at that point in time?

4           A     Yes, sir.

5           Q     Right underneath the Sheriff?

6           A     Yes, sir.

7           Q     He would have been your only superior at that point?

8           A     Yes, sir.

9           Q     Back in -- on February 28th of 2014, that's what  
10 everybody in Franklin County knows as the Chili Cook-Off  
11 weekend?

12          A     Yes, sir.

13          Q     Was that going on in Franklin County?

14          A     It was, yes, sir.

15          Q     Out at -- out at St. George Island?

16          A     Right.

17          Q     That attracts a lot of visitors?

18          A     It does.

19          Q     And that weekend y'all decided to run an operation  
20 in the Lanark Village area; is that correct?

21          A     Yes, sir.

22          Q     And you drew up an Operational Plan for that --

23          A     Yes, I did.

24          Q     -- operation?

25          A     Yes, sir.

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1           Q     And you were in charge of administrating that  
2     operation as the number-two man?

3           A     Yes, sir.

4           Q     And you were out there, present and --

5           A     I was, yes, sir.

6           Q     -- working that day, correct?

7           A     Yes, sir.

8           Q     Now, just to get this out of the way early, you  
9     didn't have any contact with Mr. Byrd that day; is that  
10    correct?

11          A     I did not.

12          Q     But you were in charge of the setup of the  
13    operation?

14          A     Yes, sir.

15          Q     And for that operation, were there signs placed out  
16    on Highway 98?

17          A     There was, yes, sir.

18          Q     And that would have been somewhere to the east of  
19    Putnal Street, those signs were set up?

20          A     It was, yes, sir.

21          Q     Do you recall how far to the east of Putnal Street?

22          A     Maybe less than a quarter of a mile, quarter mile to  
23    less than a quarter.

24          Q     How many signs were out there?

25          A     There were two signs.

1 Q Both -- both to the east of Putnam Street?

2 A Yes, sir.

3 Q How far apart were the signs?

4 A Probably a couple hundred yards.

5 Q And do you recall what the signs said?

6 A The first sign that would be encountered as you was  
7 traveling westbound would say narcotics checkpoint ahead. The  
8 second sign would say K-9 working or caution, K-9 working.

9 Q Okay. Now, as part of your instructions in this  
10 plan, were -- what -- what -- well, let me ask you this: Were  
11 any vehicles stopped that were just traveling down Highway 98?

12 A No, sir.

13 Q So there was nobody down at Highway 98 stopping  
14 every car?

15 A No, sir.

16 Q There was nobody at down Highway 98 stopping every  
17 third car or every fifth car?

18 A No, sir.

19 Q So traffic moving down Highway 98 was free to move  
20 down Highway 98?

21 A Yes, sir.

22 Q Provided that they did not commit some sort of  
23 traffic offense?

24 A Exactly.

25 Q Such as speeding or --



1           A     Yes, sir, speeding or any number of other traffic  
2 offenses.

3           Q     Some violation of the Florida traffic laws?

4           A     Yes, sir.

5           Q     Was that part of the Operational Plan?

6           A     That was, yes, sir.

7           Q     Was that your explicit instructions to your  
8 officers?

9           A     It was, yes, sir.

10          Q     To not stop any vehicles that had not committed a  
11 traffic infraction?

12          A     Exactly.

13          Q     And that was written into the Operational Plan,  
14 correct?

15          A     It was, yes, sir.

16          Q     Now, the officer -- or the -- this vehicle was  
17 stopped on Putnam Street, correct?

18          A     Yes, sir.

19          Q     But you didn't have anything to do with -- with that  
20 particular stop involving the Defendant in this case?

21          A     I did not, no, sir.

22          Q     You didn't go to the scene or weren't around?

23          A     No, sir.

24          Q     There were other deputies who handled that?

25          A     It was, yes, sir.

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1           Q     And to your knowledge and as the officer in charge  
2     of the operation, there was no vehicle stopped simply for  
3     traveling down Highway 98?

4           A     No, sir.

5           Q     And there was no vehicle stopped in the entirety of  
6     this operation that had not committed an observable traffic  
7     offense?

8           A     Right.

9                     MR. PATTERSON:   Just a moment, Your Honor.

10                    (Pause.)

11     BY MR. PATTERSON:

12           Q     And, Lieutenant Segree, what were you -- what were  
13     you guys trying to accomplish?  What was the purpose of this  
14     operation?

15           A     Just like the ops plan said, we were attempting to  
16     remove the criminal element from our streets and highways in  
17     Franklin County.  We had a big -- a big event taking place  
18     that weekend, again, the Chili Cook-Off.  A lot of times  
19     people coming down to St. George Island, whether it be  
20     juveniles or adults, they will come down with -- with --  
21     juveniles, for instance, with alcohol, and adults with illegal  
22     substances.  And we were out in this location in force to do  
23     just that, whether it be somebody that had an active warrant,  
24     controlled substances, or whether they were just simply  
25     violating the traffic laws.

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1           Q     Now, there's -- there's a couple of weekends  
2 throughout the year in Franklin County that attract a lot of  
3 visitors; is that correct?

4           A     Yes, sir. Chili Cook-Off and our Florida Seafood  
5 Festival.

6           Q     During those particular weekends, does the Sheriff's  
7 office sort of go into an all-hands-on-deck mode?

8           A     We do, yes, sir.

9           Q     And that's to just deal with the influx of people?

10          A     Yes, sir. With us being, of course, a small agency  
11 like we are, we -- when we have these big events take place,  
12 we have to be out in full force.

13          Q     And this Operational Plan was part of that --

14          A     Leading into the Chili Cook-Off weekend, yes, sir.

15          Q     Part of that heightened enforcement?

16          A     Yes, sir.

17          Q     And it's typically Chili Cook-Off weekend and  
18 Seafood Festival weekend, arrests go up significantly in  
19 Franklin County?

20          A     Yes, sir, they do.

21          Q     Historically?

22          A     Yes, sir.

23          Q     And I've been there quite a while to see the results  
24 of that, but you've been there a lot longer than I have. Has  
25 that always been the case?

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1           A     Always been the case, yes, sir.

2                     MR. PATTERSON:   Just a moment.

3                     (Pause.)

4                     MR. PATTERSON:   Judge --

5                     MR. PUMPHREY:   Judge, I have no objection.

6                     MR. PATTERSON:   It's the Operational Plan.  Mr.  
7                     Pumphrey intended to admit it as well.  I haven't had it  
8                     marked.

9                     THE COURT:   No objection, Mr. Pumphrey?

10                    MR. PUMPHREY:   No objection at all, Judge.

11                    THE COURT:   All right.

12                    THE COURT REPORTER:  Does it have a number?

13                    MR. PATTERSON:   State's 1.  Judge, this has been  
14                    marked as State's Exhibit No. 1, and I would ask that it  
15                    be admitted.

16                    MR. PUMPHREY:   No objection, Judge.

17                    THE COURT:   Admitted.

18                    (State's Exhibit No. 1 received in evidence.)

19                    MR. PUMPHREY:   Judge, he's -- no problem with the  
20                    witness referring to it.  I notice he's approaching the  
21                    witness.

22           BY MR. PATTERSON:

23           Q     Can you take a look at that and tell me if you  
24           recognize that?

25           A     (Witness reviewing document.)  Yes, sir, this is a  
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1 copy of the Operations Plan that we called it for  
2 February 28th, 2014.

3 Q And is that -- is that the Operational Plan that you  
4 created?

5 A Yes, sir.

6 Q It doesn't appear to have been changed or modified  
7 in any way; does it?

8 A No, sir, it doesn't appear to be.

9 Q Can you just -- I know it's written on there, but  
10 can you just explain to the Court what the -- what that plan  
11 is and what it says?

12 A Well, again, it's -- it's called A Ruse Narcotics  
13 Checkpoint, and it gives some instruction of what the officers  
14 are to do on this date. Do you want me to read the purpose  
15 and objective and the officer assignments? Or --

16 Q You can read -- just for these purposes, read the  
17 purpose and the objective.

18 A The purpose for this ruse checkpoint is to remove  
19 the criminal element from the highways, streets, and roadways  
20 in the Franklin County area.

21 To serve felony and/or misdemeanor warrants.

22 To remove illegal and/or controlled substances from  
23 the highways, streets, and roads of Franklin County.

24 The objective will be to conduct traffic stops on  
25 all vehicles who commit traffic violations. While conducting

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1 a lawful stop, a narcotics detecting K-9 will be available to  
2 conduct a free-air sniff when necessary.

3 Q Okay. And, again, it indicates right there in the  
4 plan that it was only to stop vehicles that committed traffic  
5 infractions, correct?

6 A Yes, sir.

7 Q And that's all the vehicles that were stopped?

8 A Yes, sir.

9 Q So if you traveled on down Highway 98, there was  
10 nobody there that stopped any vehicles unless they committed a  
11 traffic offense?

12 A Only if they committed a traffic offense, yes, sir.

13 Q So cars traveling down Highway 98 would have been  
14 free to continue traveling absent some traffic offense?

15 A Yes, sir.

16 Q And would have not had any contact with law  
17 enforcement whatsoever?

18 A No, sir.

19 Q Other than to maybe wave out the window on the way  
20 by?

21 A Sure.

22 Q Now, do you recall that day, how heavy the traffic  
23 was?

24 A It was a heavy flow of traffic. Again, folks coming  
25 down for the Chili Cook-Off generally get there a day early to

1 get to their residence, their rental homes, or motel rooms, so  
2 it was a heavy flow.

3 Q Was it ever -- did it ever come to a stop?

4 A You know, it slowed, it definitely slowed when  
5 the -- when the vehicles got to the area of where we had two  
6 officers staged on 98. I don't know that it ever come to a  
7 complete stop. I was not in that area where the officers were  
8 staged, but I don't know that, again, it ever come to a  
9 complete stop.

10 Q So there were two vehicles that were staged down  
11 Highway 98?

12 A Yes, sir.

13 Q On either side of the road?

14 A Yes, sir. Once you passed Hinton Street, they were  
15 staged there on the west side of Hinton Street.

16 Q And how many blocks is it from Putnal to Hinton?

17 A Well, you got Putnal Street, then Hinton Street, and  
18 then it would be the -- where the officers were staged.

19 Q So two --

20 A Two blocks, yes, sir.

21 Q -- blocks? And those officers changed throughout  
22 the day?

23 A They did. They rotated assignments, yes, sir.

24 Q Now, but the officers that were there on Highway 98,  
25 they weren't stopping any of the vehicles traveling along

1 Highway 98?

2 A Unless they, themselves, noted a traffic offense,  
3 they did not stop anybody. They simply waved each vehicle  
4 through.

5 MR. PATTERSON: No more questions at this time, Your  
6 Honor.

7 THE COURT: Cross exam?

8 CROSS EXAMINATION

9 BY MR. PUMPHREY:

10 Q Lieutenant Segree.

11 A Mr. Pumphrey.

12 Q Why would a law enforcement officer in uniform have  
13 to wave somebody through if they didn't believe they had to  
14 stop?

15 A I think that because of the signs, maybe. And when  
16 they come up to the blue flashing lights of the patrol car, as  
17 any motoring public individual would do, they would slow down  
18 and start looking, looking to see if they were being stopped,  
19 and the officers simply had to wave them on by.

20 Q Yes, sir. So based on what the general public, the  
21 citizens that were driving through believed they had to stop,  
22 so they were having to be waved through the checkpoint;  
23 weren't they?

24 A Just like if I go home this afternoon, if I have to  
25 do a traffic stop, state law says that the motoring public

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1 should slow, slow down and start paying attention, move over  
2 if possible. I think this same scenario took place. The  
3 general motoring public come up on these two cars with their  
4 lights flashing. Each one of them would slow down and wait to  
5 see what happened next.

6 Q wait until they were allowed to pass the checkpoint?

7 A They were never stopped at the checkpoint, no, sir.

8 Q why would you have to -- if the people didn't  
9 believe they had to stop -- you've been trained in Criminal  
10 Justice Standards, correct?

11 A Yes, sir.

12 Q And in Criminal Justice Standards did you have a  
13 section concerning traffic direction and control?

14 A Yes, sir.

15 Q Okay. Like in the old days before we had traffic  
16 lights, we had patrol officers that would stand out and direct  
17 traffic.

18 A Yes, sir.

19 Q But now with technology, we have things called blue  
20 lights, right?

21 A Yes, sir.

22 Q Blue lights are used to stop motor vehicles?

23 A They are.

24 Q And so as a traffic officer, the only reason you  
25 would have to wave someone through is if they were going to

1 stop or if they had stopped or believed they had to stop?

2 A Mr. Pumphrey, I have been on numerous traffic stops  
3 where someone has committed a traffic infraction, when I would  
4 be out dealing with that individual, that I've had the general  
5 motoring public come up behind me and me have to wave them on  
6 through at this point.

7 Q Because they thought they had to stop?

8 A Because they were paying attention to what was going  
9 on in front of them and didn't want to cause an accident, I  
10 believe.

11 Q And how long have you been in law enforcement?

12 A Twenty-four years.

13 Q In those 24 years, have you ever had two marked  
14 units with their lights flashing right next to each side of  
15 the road like you had in this case on February 28th?

16 A Now, I've been involved with some other checkpoints  
17 throughout my career. But if you're asking if I've  
18 encountered that myself, no, sir, I never have.

19 Q And you would agree that one vehicle and having to  
20 wave people around, two would increase the perception of the  
21 drivers or the motoring public that they had to stop?

22 A It would increase the awareness, and it would  
23 increase their thought process, I'm sure. But, again, it was  
24 never noted that vehicles come to a complete stop. Simply  
25 when they come to where these two officers were at, in an --

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1 in an effort to keep a good flow of traffic and vehicles not  
2 stopping, they would wave them through.

3 Q So if the officers weren't there, traffic would have  
4 stopped, wouldn't it?

5 A I don't think so, no, sir.

6 Q Well, if --

7 A The road -- the road was not blocked. There was no  
8 reason for the vehicles to stop. Now, had the roadway been  
9 blocked, sure, the vehicles would have stopped.

10 Q So now you're having to have two officers stationed  
11 at these posts; is that correct?

12 A We did that as part of the ruse checkpoint, yes,  
13 sir.

14 Q Okay. And the reason you use the term "ruse" is  
15 because if it's a checkpoint, it's illegal, right?

16 A If it's a checkpoint, yes, sir. I would go along  
17 with that, yes, sir.

18 Q Okay. You would agree -- are you familiar with the  
19 Manual on Uniform Traffic Control Devices?

20 A I don't guess I've seen that, no, sir.

21 Q Okay. Well, as part of your training and experience  
22 as a law enforcement officer, not only did you have two  
23 vehicles with -- on each side of a two-lane roadway with  
24 flashing lights?

25 A Yes, sir.

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1 Q Right?

2 A Yes, sir.

3 Q But you also had cones in the middle of the roadway?

4 A We did. We did, yes, sir.

5 Q Now, that would be an additional reason for a  
6 motorist to think they had to stop; wouldn't it?

7 A No, sir. That would be an additional reason for  
8 that individual motorist to start paying attention.

9 Q Now, you -- I asked you about the Manual on Uniform  
10 Traffic Control Devices.

11 A Yes, sir.

12 Q Traffic control means you are controlling the  
13 traffic.

14 A Okay. Yes, sir. I'll agree with that.

15 Q Okay. So the signs that were placed out there,  
16 those are also part of traffic control devices; are they not?

17 A They could be considered that, yes, sir.

18 Q Well, do you know?

19 A I'm simply just saying it could be considered that,  
20 yes, sir, because they are advising the motoring public,  
21 again, of what could be ahead.

22 Q And when you utilize a traffic control device,  
23 that's usually for safety; isn't it?

24 A Yes, sir.

25 Q But it affects the freedom of movement?

1           A     I wouldn't say that, no, sir.

2           Q     Does it slow the vehicles down?

3           A     In some cases, yes, sir.

4           Q     Well, if it's a traffic control device, what control  
5     or effect did these particular signs have on the individuals  
6     traveling through Lanark Village?

7           A     Again, I think it raised the awareness of each  
8     individual motorist as they was coming up on the ruse  
9     checkpoint. Now, the general motoring public continued  
10    westbound on 98. But because of the signs and the ruse  
11    checkpoint, I think that -- that the criminal element started  
12    looking for a way out so there wouldn't be contact with law  
13    enforcement. And in their minds -- again, I can't testify --  
14    well, I can't even testify to what may be in that criminal  
15    mind, but -- so I will stop there maybe.

16          Q     So everybody traveling to the Chili Cook-Off had a  
17    criminal mind?

18          A     Now, see, that's why -- that's why I said I'll stop  
19    there because you want to read into what I'm saying. No, sir.

20          Q     Okay. So there were citizens -- let's just call  
21    them citizens.

22          A     Absolutely.

23          Q     Okay. And the citizens, not the criminal element,  
24    just average Joe citizen, was affected by those traffic  
25    control devices?

1           A     I would say they were affected by it, yes, sir.

2           Q     Okay.

3           A     Because, again, once they seen it, it would raise  
4     their sense of awareness, and they would start looking ahead  
5     to see if they were being directed to do anything.

6           Q     Okay.  And -- and so that -- you would agree that  
7     that affects how they would want to move if that device was  
8     not there?

9           A     Possibly, yes, sir.

10          Q     I mean, if the device isn't there, they would be  
11     driving as fast as they could to get to the Chili Cook-Off;  
12     wouldn't they?

13          A     Absolutely.  Yes, sir.

14          Q     Okay.  So, now, once we get past the signs, how  
15     far -- how many feet up the roadway can you see those flashing  
16     blue lights?

17          A     Again, I think in my depo, that it was within a  
18     quarter to a half a mile, between where the signs were and  
19     where the patrol cars were parked.

20          Q     And we use flashing blue lights to alert motor  
21     vehicles in some cases to stop?

22          A     In some cases to stop.  In some cases for caution.  
23     In some cases, directing traffic.  In some -- I mean, there's  
24     all kind of reasons we would use flashing lights.

25          Q     In this particular case, I believe you testified

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1     there were two officers that were directing traffic.

2           A     There were two officers staged at that location,  
3     yes, sir. And if a vehicle approached that location and  
4     started to slow down, they would wave the vehicle on through,  
5     yes, sir.

6           Q     Did you actually observe vehicles begin to slow down  
7     and stop until they were waved through?

8           A     Where I was at, no, sir, I couldn't -- I couldn't  
9     testify to that.

10          Q     Now, you created this Franklin County Sheriff's  
11     Office Operational Plan?

12          A     Yes, sir.

13          Q     Okay. And you created this plan and planned it out  
14     over a period of several weeks?

15          A     Probably. I mean, when we spoke before at our depo,  
16     I told you we had learned of this type of operation from a  
17     class I took out in Tulsa, Oklahoma. So ever since we took  
18     that class, it's been something myself and Shelley and  
19     different ones, Lieutenant RJ Shelley had talked about, you  
20     know, wanting to put on this type of operation. So --

21          Q     So you would -- the -- the one you have, you still  
22     have it up there?

23          A     Yes, sir.

24          Q     Okay. And we had requested metadata on this  
25     particular document to see when it was created.

1           A     Yes, sir.

2           Q     You remember that, don't you?

3           A     I do, yes, sir.

4           Q     And when -- when, actually, was this document  
5     created?

6           A     Mr. Pumphrey, I can't -- just like I told you in  
7     depo, I believe, there was a time where we tried to put this  
8     on before. For whatever reasons it was, we were unable to do  
9     it. We did try one. Manpower was short. We ended up calling  
10    it short. The one we have here that we're looking at, I want  
11    to say it was -- it was typed out on the 27th, 26th or 27th  
12    there. But to say 100 percent positive, I can't answer that  
13    way, Mr. Pumphrey.

14          Q     I understand. I understand. So the day before is  
15    when it was created?

16          A     I -- I think so, yes, sir.

17          Q     All right. And in order for this to be an  
18    Operational Plan, if this -- if this isn't a checkpoint, why  
19    do you need an Operational Plan?

20          A     Just simply to advise the officers what the plan is,  
21    what we -- what we are prepared to do that day.

22          Q     You're familiar with the requirements in the state  
23    of Florida of doing a checkpoint?

24          A     Somewhat, yes, sir. I've never actually led a  
25    checkpoint; but I have been involved in some, yes, sir.

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1 Q And in checkpoints, they use cones?

2 A They do.

3 Q In checkpoints, they use traffic control devices  
4 like those board signs?

5 A Yes, sir.

6 Q In checkpoints, they put two marked patrol units  
7 next to each other with flashing blue lights going?

8 A Yes, sir.

9 Q Now, this Operational Plan, you put this together  
10 yourself?

11 A Yes, sir.

12 Q All right. And this particular Operational Plan,  
13 there are how many K-9 units in the entire Franklin County  
14 Sheriff's Office?

15 A We had two.

16 Q At this time.

17 A At this time we have one. But during this -- this  
18 ruse checkpoint we had two.

19 Q I apologize. When I say "at this time," I'm talking  
20 about for the --

21 A Yes, sir, I understand.

22 Q -- for the checkpoint. And so do those dogs  
23 normally work together in the same place?

24 A No, sir.

25 Q And so -- but on this day, two narcotics dogs were

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1 brought to be utilized in this particular location?

2 A They were, yes, sir. Just -- just like we explained  
3 earlier, when we have these big events or something of this  
4 nature taking place, we would use all manpower available,  
5 whether it is the Chili Cook-Off, a ruse checkpoint, Seafood  
6 Festival, we would have -- we would have those officers 10/8  
7 or on duty.

8 Q When Mr. Byrd was arrested, was he placed in a  
9 police van?

10 A No, sir. I believe he was in a transport -- a  
11 patrol vehicle.

12 Q Transport vehicle?

13 A But, again, I wasn't there, I never seen where he  
14 was placed; but I would assume, I guess, that he was in a  
15 patrol vehicle.

16 Q Do you recall whether or not that transport vehicle  
17 had to go through the checkpoint?

18 A I don't, no, sir.

19 Q Okay. Do you know whether or not it actually had to  
20 stop before it got through the checkpoint?

21 A No, sir, I don't know. Again, I just answered, I  
22 don't know if the vehicle went through the checkpoint.

23 Q So in your -- in your Operational Plan you point out  
24 certain equipment that's needed?

25 A Yes, sir.

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1           Q     All right. If you turn to that page, I want to ask  
2     you a couple of questions about some of the equipment that was  
3     needed.

4           A     Yes, sir.

5           Q     All right. It says on here video camera.

6           A     Yes, sir.

7           Q     Okay. To this date, is there any video of any part  
8     of this operation?

9           A     No, sir, none that I'm aware of.

10          Q     Was there a video camera there?

11          A     If we had an in-car camera, that would have been the  
12     only camera that was there, yes, sir.

13          Q     Why is the reason you want a video camera in an  
14     operation?

15          A     For evidentiary purposes.

16          Q     Right. And so part of the reason you put these  
17     requirements in this Operational Plan is so the officers  
18     aren't just going off and doing whatever they want, right?

19          A     I agree, yes, sir.

20          Q     It's called unfettered discretion? They can do  
21     whatever they want?

22          A     Sure.

23          Q     Okay. And so who was assigned the camera?

24          A     Again, we -- as far as I know, we didn't have one  
25     there, so no one was assigned a camera.

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1           Q     Okay. And I was talking about a video camera, but  
2     there are regular cameras as well?

3           A     Yes, sir. Yes, sir.

4           Q     Who was assigned the camera?

5           A     Each officer, I believe, has an actual photographic  
6     camera that they would have in their patrol vehicle, so each  
7     officer there should have had a camera.

8           Q     And how many photographs or videos were taken of  
9     Mr. Byrd in this location in his vehicle? Anything?

10          A     None that I'm aware of, Mr. Pumphrey.

11          Q     But you had them there to collect evidence, right?

12          A     Yes, sir.

13          Q     I noticed one of the things you have here is a *Drug*  
14     *Bible*.

15          A     Yes, sir.

16          Q     Now, there's something else here that you have  
17     that's called an After Action Report, right?

18          A     Yes, sir.

19          Q     Now, reports are important in criminal justice  
20     standards and training?

21          A     They are very important, yes, sir.

22          Q     In fact, you're taught in the academy that if it's  
23     not written down, it didn't happen?

24          A     Yes, sir.

25          Q     Okay. And so -- and you want to make sure that

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1 every aspect for this Operational Plan is followed to a T,  
2 right?

3 A Yes, sir.

4 Q And that includes the -- the -- I believe it was the  
5 objective to only stop for traffic stops, right?

6 A For traffic infractions, yes, sir.

7 Q Okay. But your purpose was to remove the criminal  
8 element, controlled substances, warrants, misdemeanor or  
9 felony?

10 A Yes, sir.

11 Q Do you know that your officers followed every aspect  
12 of this particular Operational Plan?

13 A I would hope they did, yes, sir.

14 Q Okay. And so the After Action Report, is that a  
15 report where you gather information, like a police report, or  
16 a report to your supervisor or something like that?

17 A It would be, yes, sir.

18 Q In fact, it has specific things you request or you  
19 require in the After Action Report.

20 A Yes, sir.

21 Q So the time and date and location of the ruse  
22 narcotics checkpoint?

23 A Yes, sir.

24 Q Checkpoint evaluation?

25 A Yes, sir.

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1 Q what does that mean?

2 A Basically to determine if the -- if the checkpoint  
3 or ruse checkpoint went as planned, I believe, if everything  
4 met up to standard.

5 Q This was yours, though, you wrote this?

6 A I did, yes, sir.

7 Q Are you unclear on what it meant?

8 A No, that's what I'm telling you, that's -- that's  
9 what it was for.

10 Q Okay. And the next one, Checkpoint Recommendations  
11 For Future Operations.

12 A Yes, sir.

13 Q What were your recommendations for future  
14 operations?

15 A Mr. Pumphrey, all I can tell you as far as that goes  
16 and the After Action Report, that -- that I failed to follow  
17 through with that. Now, we did a --

18 Q Hold on a second.

19 A Go ahead.

20 Q I need to make sure I'm clear.

21 A Okay.

22 Q You said you failed to follow through with what,  
23 specifically?

24 A If you will, I guess you could say the After Action  
25 Report. But, now, what we did do is through the weekend

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1 because in conjunction with our ruse checkpoint, like we  
2 talked about earlier, we had the Chili Cook-Off.

3 Now, along with the Chili Cook-Off there's a lot of  
4 activity that takes place. We did submit and put out a press  
5 release of what the findings -- or what took place between our  
6 ruse checkpoint all the way through the weekend of Chili  
7 Cook-Off. I don't have that with me. It was -- it was put  
8 out, I believe, in the local paper or possibly even on the  
9 Sheriff's Office Facebook page. But to actually document the  
10 After Action Report, that is something that I failed to do.

11 Q So there is no After Action Report?

12 A No, sir.

13 Q And so the After Action Report would -- was there  
14 any documentation at all concerning Mr. Byrd's arrest that the  
15 Sheriff used in this case?

16 A Any document --

17 Q Or disseminated?

18 A I mean, there was an Arrest Report. There was the  
19 Evidentiary Report. There was Probable Cause Reports, things  
20 of that nature. Vehicle, I guess, Seizure or Money Seizure  
21 Reports that would have been done. But is -- is there  
22 something else you're looking for that you're asking me,  
23 Mr. Pumphrey?

24 Q Well, I mean, was there something -- I remember  
25 Sheriff Mock went on TV and gave a statement about why

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1 Mr. Byrd was stopped. Do you recall that?

2 A I can't testify to what Sheriff Mock done, no, sir.

3 Q Well, this was your operation; wasn't it?

4 A It was.

5 Q And you would be the one that would provide the  
6 information to the Sheriff, or whoever was giving the  
7 information to the Sheriff, about what actually happened with  
8 Mr. Byrd's case?

9 A I could have provided him the Probable Cause Report  
10 that was written by Coulter or any other officer that  
11 documented anything in this case.

12 Q And is there anything concerning Mr. Byrd that  
13 Sheriff Mock or anybody else brought up about a seat belt?

14 A Other than the two officers that's here to testify  
15 on that, you know, what they saw, no, sir.

16 Q And you didn't -- you weren't familiar with or you  
17 didn't hear what Sheriff Mock actually told the public about  
18 it?

19 A Mr. Pumphrey, I don't recall a statement at all that  
20 Sheriff Mock gave the public.

21 Q We put in a request for the metadata, and we talked  
22 about that. Y'all tried to figure out when this document was  
23 actually physically created, right?

24 A Yes, sir.

25 Q All right. And we did that through a 119 request?

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1           A     Yes, sir.

2           Q     Okay. And I don't think, in all honesty, that you  
3 or your current IT guy at that time even knew what metadata  
4 was.

5           A     I think he was almost as lost about it as I was,  
6 yes, sir.

7           Q     Okay. And to this date, has that 119 request ever  
8 been answered?

9           A     I can't tell you that, Mr. Pumphrey. I don't -- I  
10 don't have knowledge of that.

11          Q     Now, the officers that were waving traffic through  
12 the checkpoint, were these officers required to stay at that  
13 station on the roadway at all times?

14          A     They were -- they were rotated some during the  
15 operation.

16          Q     But those were -- those were positions by two  
17 officers that were required to be there at all times whether  
18 they were rotating or switching out?

19          A     Yes, sir. We had somebody there at all times.

20          Q     And is that so the traffic wouldn't come to a  
21 complete stop?

22          A     I think just to facilitate the ruse checkpoint, to  
23 make it look as real as possible.

24          Q     Now, how many officers were wearing black uniforms?

25          A     I don't know of any at this point, Mr. Pumphrey,

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1     that was wearing black uniforms.  We wear green.

2             We have some officers that were in plain clothes.

3     On this occasion they may have been wearing blue jeans or  
4     maybe a "Sheriff" T-shirt, but I don't know of any that were  
5     in black uniforms.

6             Q     Were there any law enforcement officers  
7     participating in this interaction that have black tac gear or  
8     any kind of black vest?  or --

9             A     Well, they may have been wearing a bulletproof vest  
10    or a tactical vest that would have been black, black in color,  
11    with "Sheriff" displayed on the front and back.

12            Q     Okay.  And were all these deputies able to jog, or  
13    were they physically able to move about however they chose?

14            A     Were they -- to jog or move about.  I guess I'll  
15    answer that yes.

16            Q     Okay.  And so they weren't restricted in -- in their  
17    operations?

18            A     They -- we had people that were assigned to be on  
19    Putnal Street and Hinton Street, along with the officers that  
20    were on 98, along with our K-9 officers, that were free to  
21    move about if -- if need be, depending on a traffic stop.

22            Q     Now, Putnal Street would allow you to go up to the  
23    next street.  What's the name of that street; do you know?

24            A     You know, you had a great map.  I know Oak Street  
25    runs the length of Lanark.  It's the very back street in

1     Lanark, so I would say Oak Street.

2             There is one more street before you get there, but I  
3     don't recall the name of it. It could have been Apalachee.  
4     It could be Palmetto. But Oak Street does run the full length  
5     of Lanark Village.

6             Q     So a citizen who was familiar with that area, who  
7     was tired of driving bumper-to-bumper, could take one of those  
8     streets and not have to go through the checkpoint?

9             A     Yes, sir.

10            Q     Okay.

11            MR. PUMPHREY: A moment, Your Honor?

12            THE COURT: Yes, sir.

13            (Pause.)

14     BY MR. PUMPHREY:

15            Q     Lieutenant Segree, why do you need a ruse checkpoint  
16     to remove the criminal element from the highways?

17            A     Well, again, I stated earlier, with this ruse  
18     checkpoint, it would cause that criminal element to try to, I  
19     believe, avoid law enforcement contact; therefore, by turning  
20     on Putnal or Hinton Street in an effort to avoid that law  
21     enforcement contact, they assumed that they would be checked  
22     up ahead. I think that's just what Mr. Byrd was doing.

23            Q     Couldn't you simply observe traffic on the highway  
24     and make stops based on traffic infractions without setting up  
25     a checkpoint?

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1           A     You can. But it's just another tool -- another tool  
2     that we can use.

3           Q     And how many people did you -- and if you remember  
4     and I'm not going to hold you to numbers. How many people's  
5     freedom of movement did you affect with this checkpoint, this  
6     ruse narcotics checkpoint?

7           A     I can't give you a number for that, Mr. Pumphrey.

8           Q     All right. Is there anything illegal about a  
9     citizen turning down Putnal Street?

10          A     Absolutely not.

11          Q     No further questions. Thank you.

12                 THE COURT: Redirect?

13                         REDIRECT EXAMINATION

14     BY MR. PATTERSON:

15          Q     Lieutenant Segree, you were asked a lot about -- or  
16     earlier about traffic control devices?

17          A     Yes, sir.

18          Q     Such as cones, blue lights?

19          A     Yes, sir.

20          Q     And those same things are used in construction  
21     areas?

22          A     They are, yes, sir.

23          Q     Cones are put out in the road to indicate to  
24     motorists that there's something up ahead they need to look  
25     out for?

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1           A     They are. Just, you know, here in Tallahassee,  
2     especially, you may come to an area where road construction is  
3     taking place; and -- and at almost every construction site  
4     here in Leon County, they'll have a patrol vehicle, whether  
5     Highway Patrol or the Sheriff's Office, somebody is there with  
6     blue lights going.

7           Q     And that vehicle will have its lights going; won't  
8     it?

9           A     Yes, sir.

10          Q     A speed limit sign is a traffic control device, too,  
11     correct?

12          A     Yes, sir.

13          Q     To control the speed that cars can travel up and  
14     down the highway?

15          A     Yes, sir.

16          Q     In particular areas?

17          A     Yes, sir.

18          Q     People pass those all day long?

19          A     Yes, sir.

20          Q     And they are not seized by law enforcement at that  
21     point, are they?

22          A     No, sir.

23          Q     Haven't had any contact with any law enforcement,  
24     have they?

25          A     No, sir.

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1           Q     In fact, I believe, it was said that those signs  
2 weren't there -- or if those -- if y'all hadn't have been  
3 there, they would be driving as far as they could to get to  
4 St. George Island, if it hadn't been for those cones and those  
5 blue lights on the side of the road?

6           A     That was said, yes, sir.

7           Q     But if that was occurring, that would be a traffic  
8 violation; would it not?

9           A     If they were driving as fast as they could, yes,  
10 sir.

11          Q     In violation of the speed limit in that area?

12          A     Yes, sir.

13          Q     You were also asked about how many people's freedom  
14 of movement was restricted.

15          A     Yes, sir.

16          Q     You said you didn't know. But you would agree with  
17 me that the only people whose freedom of movement was  
18 restricted was those committing traffic violations?

19          A     Yes, sir.

20          Q     Cars traveling up and down Highway 98, they weren't  
21 restricted by law enforcement?

22          A     We did not -- law enforcement did not restrict their  
23 movement, no, sir. The only -- the only ones we restricted  
24 were the ones that violated state statute.

25          Q     Now, they might have slowed down in natural response

1 to cones, just as at a construction zone, correct?

2 A Yes, sir.

3 Q And slowed down in response to blue lights, just as  
4 if it was a construction zone or a traffic stop on the side of  
5 the road?

6 A Yes, sir.

7 Q That's the natural response to those things.

8 A That's the, I think, the natural human response, to  
9 slow down, be more alert.

10 Q But y'all didn't come in contact with any of those  
11 vehicles traveling down 98?

12 A No, sir.

13 Q So their freedom of movement wasn't restricted by a  
14 traffic stop?

15 A No, sir.

16 Q Or anybody stopping them, making them stop, asking  
17 them questions, asking for their license or registration or  
18 anything else?

19 A Again, unless there was a criminal act, if there was  
20 a violation of state statute, we did not have contact with  
21 that motoring public.

22 Q And not wearing a seat belt would be a violation of  
23 the state statute?

24 A That is a violation, yes, sir.

25 MR. PATTERSON: Just a moment.

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1 (Pause.)

2 BY MR. PATTERSON:

3 Q These signs that you had up, did -- did those signs  
4 in any way indicate for anybody to stop?

5 A No, sir.

6 Q They simply read that there was a narcotics --

7 A Simply read "Narcotics Checkpoint Ahead."

8 Q And the other one --

9 A The second sign said, "Caution, K-9 working."

10 Q K-9 working. Didn't say anything about stop, or --

11 A No, sir.

12 Q -- prepare to hand over your driver's license?

13 A No, sir.

14 Q Or --

15 A No, sir. In no shape or form did they advise or  
16 tell the motoring public to stop.

17 MR. PATTERSON: No further questions.

18 THE COURT: Any redirect?

19 MR. PUMPHREY: Just briefly.

20 RECROSS EXAMINATION

21 BY MR. PUMPHREY:

22 Q You are -- do you actually know for certain,  
23 Lieutenant Segree, the purpose of traffic control devices?

24 A To control the flow of traffic.

25 Q It's not to raise awareness; is it?

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1           A     Something as simple a speed limit sign does not  
2     raise awareness, no, sir.

3           Q     No, sir. I'm talking about the devices that you  
4     used to control the freedom of movement or control the  
5     traffic.

6           A     The devices we used that day, especially the signs  
7     that were placed beside the road, was to raise awareness and  
8     to raise alertness for the general motoring public to be alert  
9     and to be paying attention ahead.

10          Q     Do you believe that was what the cones were used  
11     for?

12          A     I believe the cones were simply used, again, to --  
13     to go along with the ruse checkpoint itself, to simulate that  
14     checkpoint, is -- is all they were used for.

15          Q     If a citizen were to come driving through that area,  
16     there was no real purpose -- in other words, this was a ruse;  
17     there was no real purpose to these traffic control devices or  
18     that -- if they had been traveling the regular speed limit, I  
19     thought I just heard you say that they would have been  
20     committing a traffic violation.

21          A     If they were traveling at the normal safe speed, no,  
22     sir. Now, the question you asked earlier or the statement you  
23     made earlier was that had these signs not been there, the  
24     motoring public would have been driving as fast as they could  
25     to get to St. George Island. And had they been driving as

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1 fast as they can, they could possibly be breaking the law,  
2 breaking the speed limit.

3 Q Would you agree that you created a circumstance  
4 where they couldn't drive the legal speed limit at this  
5 particular area in Lanark village?

6 A I think I would have to agree with that statement,  
7 yes, sir, because when they did view those signs, they became  
8 more alert; and as most of us react when we see blue lights,  
9 we do decelerate, we do take our foot off the gas. Some  
10 people may even apply the brake, but --

11 Q You're familiar with the use of force continuum?

12 A Yes, sir.

13 Q Or force matrix?

14 A Sure.

15 Q What's the first level of police use of force,  
16 government use of force?

17 A The first -- I don't know that I could quote them  
18 for you, Mr. Pumphrey.

19 Q That's okay, I'm not going to hold you to that. So  
20 it's officer's presence?

21 A Yes, sir.

22 Q You agree with that?

23 A I do, yes, sir.

24 Q And officer's presence means that it's a -- it's a  
25 government action, and then you -- you escalate up that use of

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1 force?

2 A Yes, sir.

3 Q And so that's why we have things like blue lights?

4 A Yes, sir.

5 Q Those tell vehicles to stop, right?

6 A Depending on what action. Again, if you pass by  
7 blue lights here in Leon County that's at a construction site,  
8 do you stop?

9 Q I will ask the questions, Lieutenant.

10 A I thought so.

11 Q There are three purposes of a cone or of traffic  
12 control devices. Do you know what those three are?

13 A No, sir.

14 Q So you mentioned one, construction sites?

15 A Yes, sir.

16 Q Traffic crashes?

17 A Yes, sir.

18 Q And the third one you said you had been involved in  
19 before?

20 A word, checkpoints. And like I stated a couple of  
21 times, they were used for that purpose --

22 Q No further questions.

23 A -- to simulate a checkpoint.

24 MR. PUMPHREY: well, one moment, Your Honor.

25 (Pause.)

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1 BY MR. PUMPHREY:

2 Q You were giving particular scrutiny to any motorist  
3 who attempted to avoid the checkpoint; is that correct?

4 A Repeat that question again, please.

5 Q I will. You were giving particular scrutiny, you  
6 and the other officers, to any motorist who attempted to avoid  
7 the checkpoint, correct?

8 A If a vehicle was noted attempting to avoid the  
9 patrol cars that were parked on Highway 98, the officers were  
10 advised to pay closer attention to those vehicles to see if  
11 there were any traffic violations, yes, sir.

12 Q That's why you had the two cars set up with the  
13 flashing blue lights and officers waving people through, on  
14 the side of the road?

15 A Yes, sir.

16 MR. PUMPHREY: No further questions.

17 THE COURT: Redirect?

18 MR. PATTERSON: A couple of questions.

19 THE COURT: And if you would, Lieutenant, the court  
20 reporter has asked that you spell your name for her, last  
21 name.

22 THE WITNESS: S-e-g-r-e-e.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. PATTERSON:

25 Q Lieutenant Segree, any -- any vehicles that pulled

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1 off of Highway 98 in what appeared to be an effort to avoid  
2 contact with the -- the lights down the road, if they didn't  
3 commit a traffic violation, were they stopped?

4 A No, sir.

5 Q They were free to go on about their business?

6 A Again, you know, we talked about it. Unless there  
7 was a violation of a traffic law, the vehicles were not  
8 stopped.

9 Q Even if they appeared --

10 A Even --

11 Q Even if they appeared to be avoiding the --

12 A Even if they appeared to be avoiding our ruse  
13 checkpoint. Just avoidance is not a criminal act. There has  
14 to be a violation, and there has to be probable cause set.

15 MR. PATTERSON: I don't have any other questions.

16 THE COURT: Anything else? You can step down then.  
17 Thank you.

18 THE WITNESS: Yes, sir.

19 THE COURT: Can we release him, or do you want him  
20 still under the rule?

21 MR. PATTERSON: I'd ask him to stay, Your Honor.

22 THE COURT: Stay under the rule?

23 MR. PATTERSON: Yes, sir.

24 THE COURT: Okay.

25 MR. PUMPHREY: Is that State 1?

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1           MR. PATTERSON: Yeah. Can I have it for now just in  
2 case I --

3           THE COURT: Do you want to call your next witness  
4 then?

5           MR. PATTERSON: State calls Sergeant Dwayne Coulter.

6           THE COURT: Right up here by me.

7           THE WITNESS: Okay.

8           THE COURT: Good afternoon.

9           THE WITNESS: Judge, how are you?

10          THE COURT: Would you raise your right hand, please,  
11 sir?

12 whereupon,

13                                 DWAYNE COULTER

14 was called as a witness, having been first duly sworn, was  
15 examined and testified as follows:

16          THE COURT: Have a seat.

17                                 DIRECT EXAMINATION

18 BY MR. PATTERSON:

19          Q     Can you state your name for the record, please?

20          A     Dwayne Coulter.

21          Q     Can you spell your last name for the court reporter?

22          A     C-o-u-l-t-e-r.

23          Q     And I guess since there's so many variations, can  
24 you spell your first name too?

25          A     D-w-a-y-n-e.

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1 Q How are you employed?

2 A Franklin County Sheriff's Office.

3 Q How long have you been with the Sheriff's office?

4 A Nineteen years.

5 Q And what do you -- what do your current duties  
6 include with the Sheriff's office?

7 A I'm a sergeant on the road.

8 Q So just general patrol duties at this point?

9 A Yes, sir.

10 Q Answering calls, that sort of thing?

11 A Yes, sir.

12 Q Now, you were working for the Sheriff's Office back  
13 in February of -- February 28th of 2014, correct?

14 A Yes, sir.

15 Q And what was your capacity at the Sheriff's Office  
16 at that time?

17 A I was assigned to the Narcotics Unit.

18 Q So you were working as a plain-clothes officer in  
19 the Narcotics Unit at that time?

20 A Yes, sir.

21 Q Okay. And did you also have an unmarked vehicle at  
22 that time?

23 A Yes, sir.

24 Q Now, going back to February 28th of 2014, was there  
25 an operation going on that day at the Sheriff's Office?

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1 A Yes, sir, there was.

2 Q And were you a part of that operation?

3 A Yes, sir, I was.

4 Q And was your -- now, in Narcotics, typically,  
5 there's two of y'all that work at a time, correct?

6 A Yes, sir.

7 Q So you have a partner in Narcotics?

8 A Uh-huh.

9 Q And who was your partner at that time?

10 A Casey Harrell.

11 Q Okay. And he's no longer with the Sheriff's  
12 Department?

13 A No, sir.

14 Q He's with the Florida Highway Patrol?

15 A Yes, sir.

16 Q Now, were you two together on this day?

17 A Yes, sir.

18 Q In the same vehicle?

19 A Yes, sir.

20 Q And was that your unmarked vehicle?

21 A Yes, sir, it was.

22 Q And what was that vehicle?

23 A It was a black Tahoe.

24 Q Black Chevy Tahoe?

25 A Uh-huh.



1 Q Now, on that day, did you happen to come in contact  
2 with an individual who you later determined to be Paul Byrd?

3 A Yes, sir, I did.

4 Q And the Mr. Byrd that you came in contact, do you  
5 see him here today?

6 A Yes, sir.

7 Q Is that the same Mr. Byrd there, with the red tie on  
8 and blue shirt, that you saw in February of 2014?

9 A Yes, sir.

10 Q Now, how did you first come in contact with  
11 Mr. Byrd?

12 A I was sitting at the corner of Putnal and Highway  
13 98, and I observed Mr. Byrd making a right-hand turn. He  
14 didn't have a seat belt on.

15 Q Okay. And he was traveling -- which direction was  
16 he traveling on Highway 98?

17 A He was traveling west.

18 Q So east to west?

19 A Uh-huh.

20 Q And you and Deputy Harrell were at the corner of  
21 Putnal and 98?

22 A Yes, sir.

23 Q And he turned off, made a right-hand turn onto  
24 Putnal Street, correct?

25 A Yes, sir.

1 Q And you were able to observe him at that time?

2 A Yes, sir.

3 Q Okay. And what did you observe at that time?

4 A I observed Mr. Byrd with no seat belt on.

5 Q Okay. Now, when you observed that, what did you do?

6 A Well, I rolled down my window, and Deputy Martina  
7 was standing outside of his vehicle, just a little ways away,  
8 and I told him to stop that vehicle.

9 Q You told him -- you mean you just --

10 A I just hollered out the window.

11 Q You just hollered out the window and said, "Hey,  
12 stop that vehicle"?

13 A Yeah.

14 Q That was when the vehicle immediately was making a  
15 right-hand turn off of Putnal -- of off Highway 98 onto Putnal  
16 Street?

17 A Yes, sir.

18 Q Now, after that did the vehicle subsequently come to  
19 a stop?

20 A Yes, sir, it did.

21 Q And what did -- what did you do then?

22 A Well, I turned my vehicle around, activated my blue  
23 lights, and I got out and approached the driver.

24 Q Okay. So when you say you turned your vehicle  
25 around, you were facing towards Highway 98 on Putnal Street?

1 A Yes, sir.

2 Q When he turned off?

3 A Yes, sir.

4 Q So you had a clear line of sight to his vehicle?

5 A Yes, sir.

6 Q He passed right by you?

7 A Yes, sir.

8 Q On a two-lane road?

9 A Right.

10 Q There's not, like, a median or a divider or anything  
11 of that nature?

12 A No, sir.

13 Q He turned and went right by you on the driver's side  
14 of the vehicle?

15 A Yes, sir.

16 Q Okay. So the driver's side of his vehicle and the  
17 driver's side of your vehicle passed right within feet of each  
18 other?

19 A Yes, sir.

20 Q Now, you indicated that you hollered at Deputy  
21 Martina to stop the car?

22 A Yes, sir, I did.

23 Q And did he stop the car?

24 A Yes, sir, he did.

25 Q And then you turned around and went back to where

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1       they were?

2           A     Yes.

3           Q     And then what happened?

4           A     I got out, approached the vehicle, and made contact  
5       with Mr. Byrd.

6           Q     And what -- what happened when you made contact with  
7       Mr. Byrd?

8           A     Okay. I asked him for his driver's license. He  
9       complied. I actually returned to my vehicle with his driver's  
10      license to begin writing him a warning.

11          Q     For?

12          A     For no seat belt.

13          Q     And then subsequent to that, did Deputy Martina --  
14      Deputy Martina is a K-9 officer, correct?

15          A     Yes, sir.

16          Q     Was he -- he was a K-9 officer back in February of  
17      2014?

18          A     Yes, sir, he was.

19          Q     And his vehicle was right there in the area where  
20      you were?

21          A     Yes, sir.

22          Q     And you said it was close. Do you remember about  
23      how far apart it was?

24          A     I would say less than 40 yards, probably.

25          Q     Okay. Then he was back up Putnal Street, so to

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1 the -- to the north of Highway 98, correct?

2 A Yes, sir.

3 Q Okay. Now, when you hollered at him, was he inside  
4 his vehicle or outside his vehicle?

5 A He was outside his vehicle.

6 Q Okay. But his vehicle was right there?

7 A Yes, sir, it was.

8 Q And his vehicle is where the K-9 is contained?

9 A Yes, sir.

10 Q Now, while you were writing this warning, do you  
11 know what was going on?

12 A When I went back to the vehicle -- I need some  
13 water. I'm sorry. But when I went back to the vehicle, my  
14 partner, Casey Harrell, he was on the passenger side, he had  
15 ran the tag. He told me -- he advised me that the truck came  
16 back to Leon County School Board. And that's when Deputy  
17 Martina, he went and made contact with Mr. Byrd.

18 Q Okay. And --

19 A Well, actually, what they said, I don't know. But  
20 after that he went and got the dog, and then he walked the dog  
21 around the vehicle.

22 Q Okay. This was while you were --

23 A While I was --

24 Q -- filling out the warning citation?

25 A Yes, sir.

1 Q And then subsequent to that, the dog alerted?

2 A Yes, sir.

3 Q And the search was conducted?

4 A Yes, sir.

5 Q where -- where illegal substances were found?

6 A Yes, sir.

7 Q Okay.

8 MR. PATTERSON: No further questions at this time,  
9 Your Honor.

10 THE COURT: Cross exam?

11 CROSS EXAMINATION

12 BY MR. PUMPHREY:

13 Q I apologize, I can't see your brass. What rank are  
14 you?

15 A Sergeant.

16 Q Sergeant?

17 A Yes, sir.

18 Q Sergeant -- and how do you spell your last name?

19 A C-o-u-l-t-e-r.

20 Q Okay. Our court reporter will appreciate that.

21 A Okay.

22 Q So the -- in this particular case, at that  
23 particular time on February 28th, did you have to wear  
24 glasses?

25 A No, sir.

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1 Q And what is your vision?

2 A I think one side -- well, the last eye check I had  
3 was 20/20 and 20/40.

4 Q Okay. And was the last eye check before  
5 February 28th of 2014?

6 A No, sir. It was after.

7 Q It was after?

8 A Yes, sir.

9 Q And do you have any eye problems or depth perception  
10 or been tested for that?

11 A Yes, I have been tested, and I do not have any depth  
12 perception problems.

13 Q And that's been since February of 2014?

14 A Yes, sir.

15 Q And what is the color of the seat -- or of the shirt  
16 that Mr. Byrd was wearing?

17 A That particular day?

18 Q Yes, sir.

19 A I don't recall.

20 Q It was daylight; wasn't it?

21 A Yes, sir.

22 Q Each of you officers have cameras in your vehicle?

23 A No, sir. My vehicle doesn't have a camera.

24 Q Okay. And so what was the color of the interior of  
25 Mr. Byrd's vehicle?

1           A     I don't recall.

2           Q     Okay. Now, you're a sergeant and you're a law  
3 enforcement officer that's trained; is that right?

4           A     Yes, sir.

5           Q     Okay. And you're human.

6           A     Yes, sir.

7           Q     Okay. So the -- in this particular case, you  
8 advised that you -- you were positioned where you were for  
9 what purpose?

10          A     Actually, I believe we had just finished making a  
11 stop, and we were just pulling back towards Highway 98.

12          Q     How many stops did you make on Putnam that day?

13          A     I don't recall.

14          Q     A hundred?

15          A     No, sir.

16          Q     Less than 50?

17          A     Yes, sir.

18          Q     Okay. Do you recall all the stops?

19          A     No, sir.

20          Q     You ever had one of those days -- and I don't know  
21 how it is in Franklin County, but have you ever had one of  
22 those days where you have so many repetitive stops, they  
23 start -- did you document each one of your stops?

24          A     No, sir, I did not.

25          Q     Did you write a report on each one of your stops?

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1           A     No, sir, I did not.

2           Q     And was anyone wearing any black vest that said  
3     "Sheriff" on it, or any tac gear?

4           A     I don't even recall what I had on that day. I was  
5     assigned a green outer vest that said "Sheriff" in yellow, but  
6     I don't recall whether I had it on or not.

7           Q     Do you recall whether or not any of the other  
8     officers had on black?

9           A     No, sir, I don't recall.

10          Q     When you hollered out the window, "Stop that  
11     vehicle," did you give a basis for that stop?

12          A     I don't recall exactly what I said to Deputy  
13     Martina.

14          Q     Okay. And the -- were you guys there specifically  
15     to pay particular attention to people that were turning off of  
16     Highway 98?

17          A     No, sir.

18          Q     Okay. Now, where you were -- where you were  
19     positioned when you said you observed Mr. Byrd, how far were  
20     you from his lane of travel to where you made your first  
21     observation of his vehicle?

22          A     He was within feet of -- oh, when I first seen his  
23     vehicle?

24          Q     Yes, sir.

25          A     I really didn't never notice it until he started

1 making the turn.

2 Q Okay. And when he -- when he made this turn --  
3 first of all, there's a lot of traffic going down 98; is that  
4 right?

5 A Yes, sir. It was the Chili Cook-Off weekend.

6 Q And there are two deputies that are having to wave  
7 traffic through where the two patrol vehicles are and the  
8 cones down the center?

9 A Yes, sir, I believe so.

10 Q All right. And cars are -- are -- are lined up to  
11 that particular area, and some are turning off onto Putnal  
12 Street?

13 A Yes, sir, some were turning off onto Putnal Street.

14 Q And your purpose was there -- the reason they had  
15 the two narcotics dogs was for narcotics detection?

16 A Yes, sir.

17 Q And you don't recall how many stops were made that  
18 day on Putnal Street?

19 A No, sir, I don't.

20 Q Was anybody supervising you, or did you have any  
21 parameters as to specific actions? Or did you pretty much  
22 have -- you were -- you were self-autonomous, in other words,  
23 you can do whatever you wanted to?

24 A Well, I mean, we were -- we were basically out there  
25 looking for any type of traffic violation, that's what we

1 based our stops on. And my supervisors at that time would  
2 have been Deputy -- I mean, Lieutenant Martina, and then above  
3 him would have been Captain --

4 Q Now, do you recall whether or not Mr. Byrd had a  
5 shirt that was similar in color to a seat belt?

6 A No, sir, I do not recall.

7 Q Okay. Do you recall hearing a dinging sound at any  
8 time when you were around Mr. Byrd's vehicle?

9 A I don't recall.

10 Q Now, if I remember your testimony correctly, you  
11 said that you were -- you guys were working on Putnal Street  
12 specifically, and you were paying particular attention to  
13 people who turned off of 98?

14 A No, I didn't say we were -- we were paying  
15 particular attention to anyone who had a traffic violation.

16 Q And how many people usually turn onto Putnal Street  
17 off 98 on any given day?

18 A I have no idea.

19 Q But what -- there were a number of people that  
20 turned off this day, with this more heavily congested traffic,  
21 because there was a checkpoint set up right up ahead, right?

22 A I don't know what their reason is for turning.

23 Q But you're familiar with Franklin County?

24 A Yes, sir.

25 Q How long have you been a deputy sheriff?

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1 A Nineteen years.

2 Q Nineteen years?

3 A Yes, sir.

4 Q People usually take a right on Putnal Street?

5 A I assume if they live down there, they probably  
6 would.

7 Q Okay. And if they take -- this particular day,  
8 though, the traffic was getting back up; wasn't it?

9 A On Putnal?

10 Q No, sir, not on Putnal.

11 A Oh, on 98?

12 Q Yes, sir.

13 A Yes, sir. There was a lot of traffic on 98, yes,  
14 sir.

15 Q And traffic was backed up?

16 A Yes, sir.

17 Q And why was it backed up?

18 A Oh, as far as backed up, there was just a lot of  
19 people going to St. George Island for the Chili Cook-Off.

20 Q Right. But the traffic was backed up -- well, first  
21 of all, let me back up.

22 A So are you saying -- you're asking if there's a line  
23 of traffic on 98 with people waiting to get through?

24 Q Well, the previous testimony has been that there  
25 were -- the deputies there were having to wave people through.

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1           A     Okay. Well, I can't testify to what the other  
2     deputies were doing. I didn't go over to where they were  
3     posted up on the side of the road that day.

4           Q     As a law enforcement officer, why would you have to  
5     wave a motorist through a specific area?

6           A     So they wouldn't stop, I guess.

7           Q     Okay. Did you transport Mr. Byrd?

8           A     No, sir, I did not.

9           Q     Now, at that time, did anybody else discuss with you  
10    or write any reports or -- well, first of all, let me ask you:  
11    In Criminal Justice Standards and Training, you, as a law  
12    enforcement officer, you're taught that if it's not put in  
13    writing or in a report, it didn't happen?

14          A     That's what we're taught.

15          Q     Okay. And so to make sure there is no question  
16    about this, you did a report as to Mr. Byrd?

17          A     Yes, sir.

18          Q     Okay. And did anybody else do any reports?

19          A     I guess Sergeant Shelley done a report.

20          Q     Anybody else?

21          A     Not that I'm aware of.

22                 MR. PUMPHREY: Could I have a moment, Your Honor?

23                 THE COURT: Uh-huh.

24                 (Pause.)

25

1 BY MR. PUMPHREY:

2 Q Sergeant, out of -- I got that right; Sergeant  
3 Coulter, right?

4 A Yes, sir.

5 Q Okay. Out of the 50 or however many stops that were  
6 made that day on Putnal Street, do you know how many of those  
7 vehicles were detained?

8 A Were detained?

9 Q Yes, sir.

10 A I'm guessing Mr. Byrd. Are you talking about just  
11 detained on a traffic stop or detained as in arrested? Or --

12 Q All the above.

13 A Okay.

14 Q Start from the top.

15 A I don't know how many were stopped on Putnal Street  
16 that day.

17 Q You didn't have any specific directions as to what  
18 your actions were as to people that turned onto Putnal Street;  
19 is that right?

20 A Only, I mean, it didn't matter what -- all we were  
21 looking for was traffic violations.

22 Q And you were familiar with the Operational Plan?

23 A Yes, sir.

24 Q So how many of the vehicles that turned onto Putnal  
25 Street were ticketed?

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1           A     I don't -- I don't recall whether I wrote any  
2 tickets that day or not.

3           Q     Do you know whether or not there were any vehicles  
4 that turned on Putnal Street that were allowed to pass without  
5 being stopped?

6           A     Yes, sir.

7           Q     How many?

8           A     If they didn't commit a violation, they weren't  
9 stopped.

10          Q     well, how many was it?

11          A     Oh, I don't -- I don't have any idea.

12          Q     Do you know whether or not every car was stopped on  
13 Putnal Street?

14          A     No, sir, they were not.

15          Q     Do you know how many cars were stopped at the  
16 checkpoint?

17          A     No, sir, I don't know.

18          Q     Okay. Do you know whether or not there were cars  
19 stopped at the checkpoint?

20          A     Not that I know of, but I wasn't at the checkpoint.

21          Q     Okay. Did you ever see the traffic come to a stop?

22          A     At the checkpoint? No, sir, I did not.

23          Q     At any point.

24          A     I didn't --

25          Q     At any point.

1           A     I didn't observe the traffic come to a stop.

2           Q     As a law enforcement officer and as a sergeant, if  
3     an officer has to wave somebody through, I believe you  
4     testified earlier that's because they either are stopping or  
5     they are about to stop?

6           A     Yes, sir.

7           Q     Okay.

8           MR. PUMPHREY: A moment, Your Honor.

9           (Pause.)

10          MR. PUMPHREY: Your Honor, may I approach the  
11     witness?

12          THE COURT: Sure.

13          MR. PUMPHREY: Let the record reflect I'm showing  
14     what has been premarked for identification as Defendant's  
15     Exhibit 3. I'm showing it to the State. Any objection?

16          MR. PATTERSON: I don't have any.

17          MR. PUMPHREY: Your Honor, may I approach the  
18     witness?

19          THE COURT: Yes, sir.

20     BY MR. PUMPHREY:

21          Q     Sergeant Coulter, y'all were making radio  
22     transmissions that day; weren't you?

23          A     Yes, sir.

24          Q     All right. And radio transmissions were between all  
25     the officers?

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER



1 A Yes, sir.

2 Q Okay. And those are captured or recorded, right?

3 A Yes, sir, they are.

4 Q And that's for officers' safety purposes and for  
5 proof, you know, evidence and everything else; is that right?

6 A Yes, sir.

7 Q And so -- and those are kept in the regular course  
8 of business?

9 A Yes, sir, they are.

10 Q Okay.

11 MR. PUMPHREY: Your Honor, at this time, I would  
12 like to introduce what has been premarked as Defense  
13 Exhibit 3 as Defense Exhibit 3 and ask an opportunity to  
14 publish before this witness the radio transmissions.

15 THE COURT: Sounds like you have no objection, if I  
16 overheard you.

17 MR. PATTERSON: No, Your Honor.

18 (Defendant's Exhibit No. 3 received in evidence.)

19 THE COURT: All right, go ahead.

20 (The radio transmission was played as follows:)

21 UNIDENTIFIED SPEAKER: All right. Stop a vehicle  
22 coming to y'all where the folks just threw marijuana out  
23 the -- or out the window. They may be about to turn.  
24 It's a little van-looking car, got some carriers on the  
25 roof.

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1 UNIDENTIFIED SPEAKER: It's coming up to the road  
2 checkpoint now?

3 UNIDENTIFIED SPEAKER: Yeah, coming to the  
4 checkpoint now. I've got the marijuana in my hand. It's  
5 coming to the checkpoint now. It's a small little  
6 vehicle, container, looks like luggage racks on the roof.  
7 Got a white Chevrolet truck turning off to Putnal Street.

8 (Radio transmission stopped.)

9 BY MR. PUMPHREY:

10 Q Sergeant Coulter, is that you?

11 A No, sir, that's not me.

12 (Radio transmission playing:)

13 UNIDENTIFIED SPEAKER: Put the paraphernalia right  
14 out in front of me.

15 (Radio transmission stopped.)

16 BY MR. PUMPHREY:

17 Q Sergeant Coulter, do you recognize the voice of the  
18 person that's talking about the white truck turning on Putnal  
19 Street, alerting the other officers?

20 A Yes. Yes, sir, I do.

21 Q And do you hear anything in that transmission about  
22 a seat belt violation?

23 A No, sir.

24 Q Would that be something a law enforcement officer  
25 would transmit?

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1 A He could.

2 Q would it be, I mean, important to transmit that so  
3 you would stop the vehicle?

4 A Yeah.

5 Q And you heard the officer in the transmission  
6 referring to the area where the officers were placed with the  
7 two patrol vehicles as a checkpoint?

8 A Yes, sir, I did hear him refer to it that way.

9 Q Did you hear it referred to that while this  
10 operation was going on?

11 A Yes, sir.

12 MR. PUMPHREY: A moment, Your Honor?

13 THE COURT: Uh-huh.

14 MR. PUMPHREY: Nothing further.

15 THE COURT: Redirect?

16 REDIRECT EXAMINATION

17 BY MR. PATTERSON:

18 Q You were asked about the cars traveling down Putna  
19 Street. So there were a number of cars that went down Putna  
20 Street that were not stopped?

21 A Yes, sir.

22 Q why were they not stopped?

23 A They didn't commit a violation.

24 Q when you say a violation --

25 A A traffic violation.

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1 Q They didn't commit a traffic violation?

2 A Yes, sir.

3 Q Now, you said you were familiar with the -- with the  
4 Operational Plan, correct?

5 A Yes, sir.

6 Q And as a matter of fact, that Operational Plan  
7 explicitly stated that only vehicles committing traffic  
8 infractions were to be stopped, correct?

9 A Yes, sir.

10 Q Was that your instruction from your superior?

11 A Yes, sir, it was.

12 Q And did y'all -- did you follow those instructions?

13 A Yes, sir, I did.

14 Q Now, you have been doing -- you have been a law  
15 enforcement officer for 19 years, correct?

16 A Yes, sir.

17 Q You made a lot of traffic stops?

18 A Yes, sir.

19 Q Did you document all those stops?

20 A No, sir.

21 Q You write a report about all those stops?

22 A No, sir.

23 Q You write a report when you arrest somebody?

24 A Yes, sir.

25 Q You document those?

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1           A     Yes, sir.

2           Q     Now, we heard this radio traffic.  There was a lot  
3 going on; wasn't there?

4           A     Yes, sir, there was.

5           Q     And you heard the same voice talking about having  
6 marijuana in his hand and trying to get somebody else to stop  
7 the vehicle that threw it out the window?

8           A     Yes, sir.

9           Q     There's talk back and forth about what type of  
10 vehicle it is, where it's headed?

11          A     Yes, sir.

12          Q     And their phrase was he was headed toward the  
13 checkpoint?

14          A     Yes, sir.

15          Q     well, is that a little easier to say than headed  
16 toward where we have the two cars set up with the cones to  
17 look like we are doing a checkpoint?

18          A     Yes, sir.

19          Q     That was just a point of reference?

20          A     Yes, sir.

21          Q     Because things are happening fast?

22          A     Yes, sir, they are.

23          Q     Now, you and I both know whose voice that was on  
24 that recording?

25          A     Yes, sir.

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1 Q He has a very distinctive voice.

2 A Yes, sir, he does.

3 Q And who was on that recording?

4 A That was Lieutenant Martina.

5 Q That was Lieutenant Gary Martina, correct?

6 A Yes, sir.

7 Q Who is not --

8 A No, not Jody Martina.

9 Q -- not Jody Martina, who is here to testify later.

10 A Yes, sir.

11 Q And it sounded like he got cut off pretty quick?

12 A Yes, sir.

13 Q He talked about the white truck turning on Putnał?

14 A Right.

15 Q But you made your own observation of the truck  
16 turning onto Putnał, correct?

17 A Yes, sir, because that's where I was sitting.

18 Q Because you were sitting right there?

19 A Yes, sir.

20 Q So did you pull that -- did you pull that truck over  
21 because you heard Lieutenant Martina say something about a  
22 white truck?

23 A No, sir.

24 Q Did you even recall Lieutenant Martina saying  
25 something about a white truck until you just heard that?

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1           A     I didn't recall.

2           Q     why did you pull the vehicle over or tell Deputy  
3 Martina to pull the vehicle over?

4           A     Because I seen Mr. Byrd without a seat belt on.

5           Q     So he was moving his vehicle down the highway  
6 without a seat belt on?

7           A     Yes, sir.

8           MR. PATTERSON: Just a moment, Your Honor.

9           (Pause.)

10          MR. PATTERSON: I don't have anymore questions, Your  
11 Honor.

12          THE COURT: Can I just get a clarification? It  
13 sounds like we have two Martinas.

14          MR. PATTERSON: Yes, sir. Well, there's only one  
15 Martina here to testify, that's Deputy Jody Martina.

16          THE COURT: Okay.

17          MR. PATTERSON: The voice that was on that recording  
18 is Lieutenant Gary Martina.

19          THE COURT: Okay.

20          MR. PATTERSON: They are not -- they are related,  
21 but they are not the same person.

22          THE COURT: Okay. All right. And the one you  
23 referred to earlier, Deputy Martina with the K-9 --

24          THE WITNESS: Yes, sir.

25          THE COURT: -- that's Jody?

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1 THE WITNESS: Yes, sir, that's Jody Martina.

2 THE COURT: Okay. All right. Do you want to keep  
3 him under the rule, or what's your pleasure?

4 MR. PATTERSON: I would ask that he stay, Your  
5 Honor.

6 THE COURT: Okay. We may have to call you back, but  
7 you can step down.

8 MR. PUMPHREY: Judge, with permission of the Court,  
9 it's kind of unusual, but could I ask to approach the  
10 witness, just have him put on the diagram where he was  
11 positioned at the time?

12 THE COURT: Sure. I'll give you last word if you  
13 need it.

14 MR. PUMPHREY: I apologize, Judge. Any objection?

15 MR. PATTERSON: No.

16 MR. PUMPHREY: This is -- this will eventually be  
17 Defense -- well, make sure it is marked.

18 RE CROSS EXAMINATION

19 BY MR. PUMPHREY:

20 Q I'm showing you a diagram of Putnal Street and  
21 Highway 98.

22 A Yes, sir. Can I stand up?

23 Q Yes, sir. Yes, sir. Well, here, I'll put it right  
24 in front of you.

25 A Okay. All right.

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER



1           Q     And if you would, with this pen, if you would draw  
2     where you were -- where you were positioned.

3           A     Okay. (witness complying.)

4           Q     Okay. And were you standing, or were you in a  
5     vehicle?

6           A     I was in a black unmarked Tahoe.

7           Q     Okay. Could you draw a little --

8           A     A little box?

9           Q     -- square and show -- show the direction you were  
10    pointed.

11          A     Okay. I was pointed this way (indicating).

12          Q     Okay, very good.

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

14               THE COURT: Mr. Patterson, any questions with regard  
15    to this diagram? Do you have any questions?

16               MR. PUMPHREY: Do you want to see it?

17               MR. PATTERSON: Yes.

18               MR. PUMPHREY: I need to mark it.

19               (Discussion off the record.)

20               MR. PUMPHREY: Is that all right?

21               MR. PATTERSON: Yeah.

22               MR. PUMPHREY: Your Honor, no objection from the  
23    state, I'll introduce this as Defense -- out of line. Is  
24    this Defense --

25               UNIDENTIFIED SPEAKER: Two.

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1 MR. PUMPHREY: Two. And if I could, just a minute  
2 to make sure --

3 (Discussion off the record.)

4 MR. PUMPHREY: I'll mark this as Defense next in  
5 line. Any objection from the State to introducing it?

6 MR. PATTERSON: What number is it?

7 MR. PUMPHREY: It's -- it's actually just an extra  
8 diagram they had.

9 MR. PATTERSON: What number?

10 THE COURT: You can give it number. You don't have  
11 anything introduced yet. Do you want to call it 1? You  
12 said next in line. I don't think you have anything.

13 MR. PUMPHREY: Judge, I will call it 4 for purposes  
14 our clerk because we have already premarked everything.

15 THE COURT: Okay, No. 4, gotcha.

16 MR. PUMPHREY: Mark this as Defense 4. Thank you,  
17 Madam Clerk. Thank you, Your Honor, for your allowing me  
18 to --

19 (Defendant's Exhibit No. 4 received in evidence.)

20 THE COURT: Anything else?

21 MR. PATTERSON: Just briefly, Your Honor, just in  
22 light of the Court's -- the Court's question and the  
23 confusion about the Martinas.

24 FURTHER REDIRECT EXAMINATION

25

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1 BY MR. PATTERSON:

2 Q The voice on the recording was Lieutenant Gary  
3 Martina?

4 A Yes, sir.

5 Q He was not in the area where you were, correct?

6 A No, sir. I don't know exactly where he was. He was  
7 probably somewhere on 98 from the way the transmission sounds.

8 Q But in that very moment he was tied up in trying to  
9 locate another vehicle because they had thrown marijuana out  
10 the window, that he had in his hand, correct?

11 A Yes, sir.

12 Q So he's not the Deputy Martina that you hollered at  
13 out the window to stop -- to stop Mr. Byrd's truck; is he?

14 A No, sir. That's Deputy Jody Martina.

15 Q Okay. So he was the one that was on Putnal Street  
16 with you?

17 A Yes, sir. He's our K-9 officer.

18 Q And you hollered that out the window at him,  
19 correct?

20 A Yes, sir.

21 Q So there would be no recording on the radio dispatch  
22 of that, because you didn't talk to him on the radio?

23 A No, sir, I didn't talk to him on the radio.

24 Q You just hollered out the window at him because he  
25 was just down Putnal Street behind you?

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1 A Yes, sir.

2 Q I believe you said earlier 30 or 40 yards or so,  
3 something like that?

4 A Yeah, not very far.

5 Q Okay.

6 MR. PATTERSON: That's it.

7 MR. PUMPHREY: I have nothing further.

8 THE COURT: That's it? Okay, you may step down.

9 why don't we take a little break. We've been going  
10 a couple of hours, and I think y'all might have  
11 underestimated your time. We've got one more witness  
12 from the State, you say?

13 MR. PATTERSON: Yes, Your Honor. Well, one more  
14 witness that's present here, Your Honor. I mentioned  
15 earlier there was another deputy in the vehicle with  
16 Deputy Coulter who is essentially going to parrot Deputy  
17 Coulter's testimony about what they observed.

18 He was on a special detail with the Highway Patrol  
19 in Jacksonville. He did not make it back. If the Court  
20 would like to hear from him, he will be available  
21 Thursday morning for the trial.

22 THE COURT: Okay. And you have an expert,  
23 Mr. Pumphrey?

24 MR. PUMPHREY: I do, Your Honor.

25 THE COURT: Have you got anything else?

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1 MR. PUMPHREY: Not other than that.

2 THE COURT: Okay. Well, let's take about 10 minutes  
3 then.

4 MR. PUMPHREY: Thank you.

5 (Brief recess.)

6 THE BAILIFF: All rise. Court is now in session.

7 THE COURT: Thank you. Have a seat.

8 So, Mr. Patterson, are you ready with your next one?

9 MR. PATTERSON: Yes, sir. The State calls Deputy  
10 Jody Martina.

11 THE COURT: Is somebody going to get him?

12 MR. PATTERSON: I'll go get him. Sorry.

13 THE COURT: Come right on up by me. Good afternoon.

14 THE WITNESS: Good afternoon.

15 THE COURT: Raise your right hand.

16 whereupon,

17 JODY MARTINA

18 was called as a witness, having been first duly sworn, was  
19 examined and testified as follows:

20 THE COURT: All right, have a seat.

21 DIRECT EXAMINATION

22 BY MR. PATTERSON:

23 Q Good afternoon. Would you state your name, please,  
24 for the record?

25 A Jody Martina.

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1 Q And how do you -- spell your first and last name,  
2 please.

3 A J-o-d-y. Last name, Martina, M-a-r-t-i-n-a.

4 Q And we had something come up previously. Just to be  
5 clear, you are not Gary Martina, correct?

6 A I am not Gary Martina, correct.

7 Q Much to your relief?

8 A (Laughter.)

9 Q How long have you been with the Sheriff's Office?

10 A A total of 12 years.

11 Q And how long have you been working as a sworn law  
12 enforcement officer with the Sheriff's Office?

13 A A sworn law enforcement road deputy, going on five  
14 years.

15 Q Before that where did you work?

16 A I worked in corrections.

17 Q Okay. Now, were you working as a road deputy back  
18 in February of 2014?

19 A Yes, sir.

20 Q February 28th to be specific?

21 A Yes, sir.

22 Q And were you involved in a -- or in an operation in  
23 the Lanark Village area of Franklin County on that day?

24 A Yes, sir.

25 Q And what was your part in that operation?

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1           A     I was the Narcotics K-9 handler.

2           Q     And how long have you been a K-9 handler with the  
3     sheriff's office?

4           A     Going on five years.

5           Q     So almost immediately upon becoming --

6           A     Yes, sir.

7           Q     -- a sworn deputy you got certified with the  
8     narcotics dog?

9           A     I think it was five months after I got put on the  
10    road, I become a K-9 handler.

11          Q     Okay. And you've been the K-9 handler ever since  
12    then?

13          A     Ever since.

14          Q     Now, back on February 28th, 2014, did you have  
15    occasion to come in contact with a white Chevrolet crew cab  
16    pickup truck being driven by somebody that you later figured  
17    out to be a Paul Byrd?

18          A     Yes, sir.

19          Q     And the Mr. Byrd that you came in contact with back  
20    in 2014, is he here in the courtroom today?

21          A     Yes, sir.

22          Q     You recognize him as the same person that you  
23    stopped --

24          A     Yes, sir.

25          Q     -- that day?

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1           A     Yes, sir.

2           Q     Okay. Now, how did you first come in contact with  
3 this vehicle?

4           A     The vehicle turned off of 98 onto Putnal. My  
5 vehicle was already stopped on Putnal. I was out of the  
6 vehicle, and Sergeant Coulter hollered at me to stop the  
7 vehicle; that the driver did not have a seat belt on.

8           Q     And when you say hollered at you, I mean, I think we  
9 use that as a phrase sometimes, but do you literally mean he  
10 hollered at you?

11          A     I literally mean, like, he hollered out of the  
12 window toward me.

13          Q     Okay. And what did you do then?

14          A     I seen the vehicle coming at me, and I recognized  
15 that the subject did not have a seat belt on and began  
16 pointing for the vehicle to pull over. If I'm not mistaken,  
17 it was the opposite side of the road of which my patrol  
18 vehicle was on.

19          Q     Okay. And why were you out of your patrol vehicle  
20 at that time?

21          A     I honestly can't remember, but it was either that we  
22 had just got off of a stop or that we were there -- I mean, I  
23 have the dog, I have to break him from time to time. I really  
24 can't -- I really don't remember why I was outside of my  
25 vehicle.



1 Q By breaking, you mean let him go to the restroom?

2 A I have to let him use the bathroom so he don't do it  
3 in the car.

4 Q You said Deputy Coulter hollered out the window,  
5 told you the truck was coming toward you, the driver didn't  
6 have a seat belt?

7 A I'm almost positive that he said, "Stop that truck,  
8 seat belt."

9 Q Okay. Now, and then you observed that he didn't  
10 have a seat belt?

11 A Yes, sir.

12 Q Now, at the time you observed that he didn't have a  
13 seat belt, was the vehicle still traveling down Putnal?

14 A It was coming toward me, yes.

15 Q Which would have been north on Putnal?

16 A Yes.

17 Q And you saw that before you flagged the vehicle  
18 down?

19 A Yes.

20 Q You made that observation on your own, that he  
21 didn't have a seat belt on?

22 A Yes, sir.

23 Q While the vehicle was still moving?

24 A Yes, sir.

25 Q And what happened after you signaled for the vehicle

1 to pull over?

2 A He pulled over almost directly across from my  
3 vehicle and stopped. Mr. Coulter, Sergeant Coulter turned  
4 around and pulled behind him and activated his lights for a  
5 traffic stop.

6 Q Okay. And what did you do after that?

7 A Mr. Coulter went up to the window to get his  
8 driver's license. I walked up, observed a badge hanging from  
9 the mirror, and I advised him that that was a School Board  
10 truck.

11 I -- then after he took his license, I explained to  
12 Mr. Byrd that I was a Narcotics K-9 handler, and the reason  
13 that I was going to walk the dog and what the dog alerted on,  
14 asked him if there was any reason that a narcotics dog would  
15 alert on his vehicle.

16 Q And did you walk the dog around the vehicle?

17 A Yes, sir, I did.

18 Q Did the dog alert on the vehicle?

19 A Yes, sir. At the driver's door.

20 Q And a search was subsequently conducted based on  
21 that --

22 A Yes, sir.

23 Q -- alert?

24 A Yes, sir.

25 Q And were narcotics found?

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1           A     Yes, sir.

2                   MR. PATTERSON: Just a moment, Your Honor.

3                   No questions at this time, Your Honor.

4                   THE COURT: Cross exam?

5                   MR. PUMPHREY: May I approach the witness, Your  
6 Honor.

7                   THE COURT: Yes, sir.

8                                   CROSS EXAMINATION

9 BY MR. PUMPHREY:

10           Q     I'm showing you what's been introduced into evidence  
11 as Defense Exhibit 4.

12                   MR. PATTERSON: Is that the same thing that Deputy  
13 Coulter drew on?

14                   MR. PUMPHREY: Right, already introduced into  
15 evidence.

16 BY MR. PUMPHREY:

17           Q     I'm showing you what's been premarked into evidence  
18 as Defense Exhibit 4. You recognize this area?

19           A     Yes, sir.

20           Q     Okay. And on Defense Exhibit 4, you see where there  
21 is Highway 98?

22           A     Uh-huh.

23           Q     Say yes.

24           A     Yes, sir.

25           Q     Our court reporter will appreciate that.

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1           A     Yes, sir.

2           Q     I just noticed you're wearing a black jacket.

3           A     Yeah. I'm very sick. But, yes, I'm wearing a black  
4 jacket right now because I'm freezing to death.

5           Q     I'll keep my distance from you.

6           A     Okay.

7           Q     So, now, when you come up Putnal Street, heading  
8 north from Highway 98, what's the first intersection you come  
9 to?

10          A     It appears to be Florida Avenue.

11          Q     Does that look accurate?

12          A     Yes, sir.

13          Q     Does 4 seem to be a fair and accurate representation  
14 of Putnal Street and Florida Avenue and Highway 98 back in  
15 February of 2014?

16          A     Yes, sir.

17          Q     Okay. And this Florida Avenue and Putnal Street,  
18 that's the first intersection you come to when you're headed  
19 north?

20          A     Yes, sir.

21          Q     Okay. And so you were, how far away from Sergeant  
22 Coulter when he made that statement?

23          A     I would say 50, 60 yards.

24          Q     Fifty or 60 yards. Does Sergeant Coulter have a  
25 very loud voice?

1           A     I mean, I guess if you holler, I guess he does.

2           Q     Okay. And was there -- was he seated in his car?

3           A     Yes. He was inside his vehicle.

4           Q     Okay. So you could see where he was?

5           A     Yes, sir.

6           Q     Now, did you have any vision problems at this time?

7           A     No, sir, I do not.

8           Q     And I know you're not feeling good, but do you have  
9 a clear and accurate memory?

10          A     Yes, sir.

11          Q     Okay. So 50 yards, you would agree that that's not  
12 the next intersection up; that's a lot closer to where  
13 Sergeant --

14          A     It is a lot closer, yes.

15          Q     Okay. And you would agree that -- a lot closer  
16 because if you were at that next intersection north of Highway  
17 98, you couldn't have heard Sergeant Coulter say anything  
18 about the stop; could you?

19          A     No, sir.

20          Q     All right. So is it your testimony here today that  
21 you were close to Sergeant Coulter near Highway 98 and not  
22 located at the intersection of Florida Avenue and Putnal?

23          A     Yes, sir.

24          Q     Remember another time when you gave testimony in  
25 this case?

1 A Yes, sir.

2 Q Do you remember I was there?

3 A Yes, sir.

4 Q And Mr. Patterson was there?

5 A Uh-huh. Yes, sir.

6 Q Okay. There was a court reporter?

7 A Yes, sir.

8 Q Now, back on March 1st of 2016 --

9 A Yes, sir.

10 MR. PUMPHREY: Cite Court and counsel to deposition  
11 of Jody Martina, March 1st, 2016, page 10, line 14.

12 BY MR. PUMPHREY:

13 Q Okay. Were you asked these words, and did you give  
14 the answer to these questions?

15 "Question: Okay, and how far were you from Mr. Byrd  
16 down the street when you started to come down the street and  
17 wave him over?

18 "Answer: I was at the next intersection. I mean, I  
19 can't measure that for you right now. But --

20 "Question: That's okay.

21 "When Putnal goes down there, is a -- the first  
22 intersection you come to, the first intersection, that's where  
23 I was."

24 A Yes, sir.

25

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1 Q "So that's where you would be?

2 "Answer: Yes, sir."

3 So when you left that intersection and headed  
4 towards what would be 98 on Putnal?

5 A Yes, sir.

6 Q Now, how many cars did you stop that day?

7 A Sir, I don't have a number on how many I stopped,  
8 but I can tell you it was a bunch.

9 Q And you would agree there would be absolutely no way  
10 you could hear Sergeant Coulter before making a stop from that  
11 intersection north of Highway 98 on Putnal, Florida Avenue?

12 A I would say that if I was there, yes, sir, I -- I  
13 wouldn't be able to hear him.

14 Q You would agree in this deposition that you gave,  
15 you put your position at that first intersection I just showed  
16 you on that map.

17 A Yes, sir.

18 Q Okay. And so was your recollection better then, or  
19 is your recollection better now?

20 A Sir, my recollection of where the stop actually  
21 taken place, I had to drive by it this morning, and I got to  
22 look exactly where the vehicle was stopped at this morning on  
23 the way to this court.

24 Q Right. But that's not what we're talking about.  
25 We're talking about where you were located when you started to

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1 go and pull --

2 A Okay. I was located closer to 98 than what I told  
3 you in that deposition.

4 Q So in this deposition, was there any question about  
5 where the next intersection was?

6 A No, sir.

7 Q Okay. Because if you were at that intersection, you  
8 couldn't have heard Sergeant Coulter; could you?

9 A No, sir.

10 Q But that's a pretty unique area to say you're at,  
11 right?

12 A Yes, sir.

13 Q I mean, it has two highways that come together.

14 A The streets, yes, sir.

15 Q Sergeant Coulter didn't use the radio to contact  
16 you?

17 A No, sir.

18 Q He yelled to you to stop that vehicle?

19 A Yes, sir.

20 Q And he yelled to you -- your testimony here today is  
21 you weren't at that intersection at the north end of Putnam?

22 A Sir, I was closer to 98 than I was that  
23 intersection.

24 MR. PUMPHREY: A moment, Your Honor?

25 THE COURT: Uh-huh.

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1 (Pause.)

2 MR. PUMPHREY: No further questions.

3 THE COURT: Any redirect?

4 REDIRECT EXAMINATION

5 BY MR. PATTERSON:

6 Q Deputy Martina, that deposition was taken in March  
7 of 2016, correct?

8 A Yes, sir.

9 Q And how many years after this incident would that  
10 have been?

11 A That would have been right at two.

12 Q A little over two, right? This happened  
13 February 28th?

14 A Yes, sir.

15 Q So almost two years to the day.

16 A Yes, sir.

17 Q Now, you didn't write any reports in relation to  
18 this case; did you?

19 A No, sir.

20 Q So everything you were testifying to, you were  
21 trying to go off memory?

22 A Yes, sir.

23 Q And today you had a chance, on your way here, to go  
24 by and look at the scene?

25 A Yes, sir.

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1           Q     Did looking at that scene refresh your memory of  
2     what happened that day --

3           A     Yes, sir.

4           Q     -- with Mr. Byrd?

5           A     Yes, sir.

6           Q     And you were asked about making a lot of -- lot of  
7     traffic stops that day.

8           A     Yes, sir.

9           Q     But there weren't arrests made out of every one of  
10    those traffic stops; were there?

11          A     No, sir.

12          Q     So the ones that arrests were made would stand out  
13    more than others?

14          A     Yes, sir.

15          Q     And by going and viewing that area today, did that  
16    help refresh your memory about where exactly you were on that  
17    road on Putnal Street?

18          A     Yes, sir.

19                MR. PATTERSON: May I approach, Your Honor?

20                THE COURT: Yes, sir.

21    BY MR. PATTERSON:

22          Q     Based off this drawing, where -- can you point to  
23    where you were on Putnal Street?

24          A     I would say it's in here. Across from this driveway  
25    because the traffic stop happened there.

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1           Q     At that -- the traffic stop happened in this  
2 driveway?

3           A     Yes, sir.

4           Q     So these are -- look like trees there on the side of  
5 the road. You're indicating that --

6           A     I would have been in between them.

7           Q     -- that the stop happened in between those trees  
8 there?

9           A     Yes, sir.

10           MR. PATTERSON: Nothing further, Your Honor.

11           THE COURT: All right, thank you. You can step  
12 down.

13           THE WITNESS: Thank you.

14           THE COURT: Appreciate it. And that's all from the  
15 State then?

16           MR. PATTERSON: Your Honor, other than the other  
17 witness, who is not here, that was in the vehicle with  
18 Deputy Coulter, I don't know how we want to -- the  
19 Court --

20           THE COURT: well, I think if you want to present it,  
21 you -- I'll give you that opportunity, and I'll also give  
22 them an opportunity to cross examine the witness.

23           MR. PATTERSON: Yes, sir. As I said, he's  
24 essentially, he told me, going to parrot what Deputy  
25 Coulter's testimony was. So, really, it's just

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1 additional --

2 THE COURT: Well, I mean, you can stipulate, if  
3 y'all want to stipulate that's what he'll testify to. I  
4 don't have the advantage of seeing him and looking at his  
5 demeanor and all that stuff.

6 MR. PATTERSON: Obviously, that's Mr. Pumphrey's --

7 THE COURT: If there's something else that you want  
8 to stipulate that he will also testify to, you could do  
9 it that way, but I'll leave it up to y'all, how you want  
10 to do it.

11 (Pause.)

12 MR. PATTERSON: And, Judge, this particular witness,  
13 I don't recall -- I know that -- that he was listed in a  
14 Notice of Taking Deposition, but I don't recall if we  
15 actually -- if the deposition was actually taken or not.  
16 So I know he was listed, but I don't think we actually  
17 took his deposition.

18 THE COURT: What's your pleasure then?

19 MR. PUMPHREY: I'm ready to go.

20 MR. PATTERSON: Are you agreeing that that's what --

21 MR. PUMPHREY: I can't -- I can't stipulate as to  
22 what his testimony would be.

23 MR. PATTERSON: That is what I'm --

24 THE COURT: Okay.

25 MR. PATTERSON: So we'll just -- that's all the

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1 witnesses I have for now. We'll reserve the --

2 THE COURT: He'll be available Thursday?

3 MR. PATTERSON: Yes, Your Honor. He is scheduled to  
4 be at the trial Thursday.

5 THE COURT: Okay. So what have you got for me on  
6 this side? Do you have your expert witness?

7 MR. PUMPHREY: I do, Judge.

8 THE COURT: Okay.

9 MR. PUMPHREY: I would call Justin Morgan to the  
10 stand.

11 whereupon,

12 JUSTIN MORGAN

13 was called as a witness, having been first duly sworn, was  
14 examined and testified as follows:

15 THE COURT: Thank you. Have a seat.

16 MR. PUMPHREY: Your Honor, I don't believe the State  
17 has any objections to our -- what's been premarked for  
18 identification as Defense Exhibit 4.

19 THE COURT: It's in evidence.

20 THE CLERK: One and 2 are not.

21 MR. PUMPHREY: One and 2 are not.

22 THE COURT: You said 4.

23 MR. PUMPHREY: I started with 4, yes, sir.

24 Judge, I would like to introduce them into evidence  
25 without objection from the State, 1 and 2.

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1 MR. PATTERSON: That's these things I have here?

2 MR. PUMPHREY: Yes.

3 MR. PATTERSON: Yes, sir.

4 THE COURT: No problem.

5 MR. PUMPHREY: Without objection, will be  
6 introduced. Do you have a copy?

7 THE WITNESS: Yes, sir, I do.

8 (Defendant's Exhibit Nos. 1 & 2 received in  
9 evidence.)

10 MR. PUMPHREY: Your Honor, if you want to use the  
11 ones that are introduced into evidence as a reference,  
12 I'm also going to make reference to Defense Exhibit 4 as  
13 well, while the witness testifies.

14 DIRECT EXAMINATION

15 BY MR. PUMPHREY:

16 Q Please state your name for the record.

17 A My name is Justin Fox Morgan.

18 Q Hold on just a second, Mr. Morgan. And who are you  
19 employed by?

20 A Sir, I am employed by a firm called Forensic  
21 Engineering Technologies, based out of Lake Mary, Florida.

22 Q Okay. Have you ever been qualified as an expert in  
23 the state of Florida in the areas of reconstruction and human  
24 factors?

25 A Yes, sir.

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1 THE COURT: Reconstruction and what was the last  
2 one?

3 MR. PUMPHREY: Human factors.

4 THE COURT: Human factors, okay.

5 MR. PUMPHREY: All right.

6 BY MR. PUMPHREY:

7 Q And, actually, have you been in this circuit  
8 certified or qualified as an expert by Judge Fitzpatrick, as  
9 an expert in the area of reconstruction and human factors?

10 A Yes, sir, that's correct.

11 Q So can you tell us a little bit about your education  
12 and experience?

13 A Certainly. I hold a bachelor's degree in psychology  
14 from the University of North Carolina at Asheville. I hold a  
15 master's degree in modeling and simulation from the University  
16 of Central Florida, and a doctoral degree in applied  
17 experimental and human factors psychology from the University  
18 of Central Florida.

19 Q Okay. Have you -- do you have any certifications?

20 A Yes, sir. I hold a certification from the ACTAR,  
21 Accreditation Commission for Traffic Accident Reconstruction,  
22 and am a Certified Traffic Accident Reconstructionist.

23 Q Are you a member of any professional affiliations?

24 A Yes, sir. I'm a member of the Society of Automotive  
25 Engineers and also a member of the Human Factors and Ergonomic

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1 Society, including the Safety Group of which I was a former  
2 chair, and also the Surface Transportation Technical Group.  
3 I'm also a member of the Cognitive Engineering and Decision  
4 Making Technical Group, as well as a friend of multiple  
5 committees of the Transportation Research Board of the  
6 National Academies of Sciences.

7 Q All right. Have you previously had employment in  
8 the area of human factors?

9 A Yes, sir. I've been continually employed in the  
10 field of human factors for my professional career. After  
11 earning my doctoral degree, I joined the faculty of Virginia  
12 Tech as a researcher at the Virginia Tech Transportation  
13 Institute.

14 There I performed research for organizations such as  
15 the National Highway Traffic Safety Administration, the  
16 Federal Motor Carrier Safety Administration, as well as  
17 private entities such as automakers and tier 1 suppliers.  
18 Following that I joined the -- a firm in Seattle, Washington,  
19 the Battelle Memorial Institute, that is --

20 Q Can you -- I'm sorry, go ahead.

21 A I'm used to spelling that. That's B-a-t-t-e-l-l-e,  
22 Memorial Institute. They are actually based out of Columbus,  
23 Ohio, but have a research branch in Seattle. There I  
24 performed work for clients, including members of the US  
25 Department of Transportation. Again, the National Highway

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1 Traffic Safety Administration, Federal Motor Carrier Safety  
2 Administration, as well as the Federal Highway Administration.

3 Q Have you been involved in any teaching or curriculum  
4 development?

5 A Yes, sir. I have taught, as an instructor of  
6 record, courses including cognitive psychology, physiological  
7 psychology, and principles of human factors.

8 Q Okay. And you have a list of publications, peer  
9 review papers, chapters, and technical reports which have been  
10 published?

11 A Yes, sir, I do.

12 Q All right. And you have also referred papers that  
13 there's probably about -- enough list to keep us here for an  
14 hour or so?

15 A I do not quite recall how many are in that list,  
16 sir.

17 MR. PUMPHREY: Your Honor, at this time, I would  
18 tender the witness as an expert in the area of  
19 reconstruction and human factors, open him to voir dire.

20 MR. PATTERSON: Judge, I just ask to voir dire the  
21 witness briefly.

22 THE COURT: Okay.

23 VOIR DIRE EXAMINATION

24 BY MR. PATTERSON:

25 Q This falls in the category of we're all ignorant

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1 about something, and you found one of mine. What are human  
2 factors?

3 A Human factors is a branch of science that originated  
4 after the world war II -- or, actually, during world war II  
5 when it was discovered that you could have some of the highest  
6 performing equipment and yet individuals were not able to  
7 operate it. So we had quite high performance envelope planes,  
8 and they were being crashed due to operator error.

9 And because of that, science in the field arose to  
10 study how humans interact with the environment around them and  
11 how humans take in information and process it and make  
12 decisions based on the environment around them. And that  
13 arose, as I mentioned, originally out of aviation, but also  
14 has included disciplines such as manufacturing, as well as my  
15 own, which is transportation.

16 Q So, essentially, it's the study of the human element  
17 interacting with machinery -- or, I mean -- correct me if I'm  
18 wrong, I'm still trying to figure this out.

19 A It's the study of human performance and human  
20 behavior as it applies to the world around it. So decisions  
21 that an individual would make, given the context of their  
22 surroundings as well as their environment.

23 Q So, essentially, what would be a typical decision  
24 that most people would make different given their -- given the  
25 context in which they find themselves?

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1           A     That would be one way to summarize it, yes, sir.

2           MR. PUMPHREY: Any objection?

3           MR. PATTERSON: No.

4           MR. PUMPHREY: Judge, without objection, I tender  
5 this witness as an expert in the area of reconstruction  
6 and human factors.

7           THE COURT: Very well.

8           MR. PUMPHREY: Your Honor, what I would like to do,  
9 rather than go through his entire curriculum vitae, I  
10 would just like to enter that next in line as a defense  
11 exhibit so it would be in the record.

12          THE COURT: All right. Number 5.

13          MR. PUMPHREY: Any objection from the State?

14          MR. PATTERSON: No.

15          (Defendant's Exhibit No. 5 received in evidence.)

16                   CONTINUED DIRECT EXAMINATION

17 BY MR. PUMPHREY:

18          Q     Were you retained by our firm to do an analysis of  
19 the Paul Byrd case?

20          A     Yes, sir, I was.

21          Q     Okay. And you have before you one of the exhibits,  
22 and you also have some diagrams; is that correct?

23          A     That is correct.

24          Q     Okay. And so we'll refer to those that are  
25 composite exhibits, and then there are 1 through a sequential

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1 number; is that right?

2 A That is correct, sir.

3 Q All right. I want to refer you to -- I think it's  
4 Exhibit 4, this exhibit.

5 A Yes, sir.

6 Q All right. And as far as page 2, this is what you  
7 reviewed in order to summarize and come to conclusions?

8 A That is correct, sir.

9 Q Is that in addition to the testimony you heard --  
10 THE COURT: Can I back you up?

11 MR. PUMPHREY: Yes, sir.

12 THE COURT: You said Exhibit 4.

13 MR. PUMPHREY: I'm sorry, you're right, Judge.

14 Exhibit 4 is the diagram. What's that one numbered in  
15 front of you?

16 THE COURT: That's -- that's No. 1 if you're talking  
17 about his --

18 MR. PUMPHREY: It's No. 1, Judge, I apologize.

19 THE COURT: Okay.

20 MR. PUMPHREY: I didn't write it on my copy, so --

21 THE COURT: Well, when you said a page, I'm going,  
22 well, there's not a page.

23 MR. PUMPHREY: So it would be Defense 1.

24 BY MR. PUMPHREY:

25 Q On page 2 of Defense 1, did you look through -- or

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1 did you summarize the material you reviewed?

2 A Yes, sir.

3 Q Okay. And so you reviewed the depositions, offense  
4 reports, witness statements, Operational Plan, police audio  
5 file?

6 A That's correct, sir.

7 Q All right. Do you have experience as a human  
8 factors expert in reviewing audio files in cases such as this?

9 A Yes, sir. That's a normal process of human factors  
10 analysis.

11 Q All right. Material review. Aerial street  
12 photography. Weather data. Weather from underground -- from  
13 Weather Underground. Sun position data from the United States  
14 Naval Observatory. You marked in here Florida Statute  
15 316.126. Is that the Florida Move Over statute?

16 A Yes, sir, that is.

17 Q And Florida Move Over promotional material, and you  
18 also analyzed a 2009 Chevrolet Silverado owner's manual?

19 A That is correct, sir.

20 Q Have you also verified the 2007 Chevrolet Silverado  
21 owner's manual?

22 A Not independently, but I will state that the 2007  
23 and 2009 Chevrolet Silverado are both on the same vehicle  
24 platform. They are both the GMT-900 platform, and in my  
25 professional experience, are likely to share all of the same

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1 safety systems.

2 Q All right. So let's go to what's been marked as No.  
3 4 in Composite 1 or page 4. Can you explain what this is?

4 A Yes, sir. This summarizes the information about the  
5 arrest that occurred on February 28th, 2014, at approximately  
6 5:00 p.m. and in Putnal Street area of Franklin County,  
7 Florida. This also includes an unrotated aerial photograph of  
8 the area.

9 Q And No. 5?

10 A This is an aerial photograph that we obtained from  
11 Google Earth. And what it shows is the date and time of the  
12 most recent aerial photograph available that predates the date  
13 of the arrest. And in it -- this is a scale drawing, so it is  
14 measurement accurate and also indicates some important  
15 landmarks that are referenced in a number of the depositions.

16 Q All right. And we are still on Composite Exhibit 1,  
17 so if we could move through these. No. 6?

18 A No. 6 is a later dated aerial, and what this does  
19 is -- the earlier aerial is not clear and has overgrowth of  
20 the road from trees. And this aerial, we can verify that the  
21 road geometry has not changed in between the earlier 2013 and  
22 May 2014 aerals. So we can use this to understand the area  
23 and locations.

24 Q Okay. And next in line, 7.

25 A Next in line is a scaled aerial photograph, again

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1 showing the overall aerial, and this is not annotated.

2 Q And then 8?

3 A Eight is an aerial diagram that focuses on the area  
4 of the ruse checkpoint. This has the streets labeled, Putnal,  
5 Hinton, and Franklin, as vertical or north-south oriented  
6 roads. US Highway 98 is the east-west oriented road. And on  
7 the diagram, I've placed, as described in the deposition of  
8 Mr. -- sorry, Officer Segree, the ruse checkpoint, which  
9 includes two police vehicles and three to five road cones as  
10 well as officers. And those are visibly close to the  
11 intersection of Franklin Street and US 98.

12 Q All right. Now, this information that you're  
13 gathering, is that from what you reviewed that you documented  
14 and the testimony that was given here today?

15 A That is correct, sir.

16 Q And when you marked this as a ruse checkpoint  
17 diagram, you're using that because that's what they called it?

18 A That is how it was referred to in the Ruse  
19 Checkpoint Operations Plan as well as in the depositions of  
20 Captain Segree.

21 Q Okay. But you're not coming to a conclusion as to  
22 whether it was a ruse checkpoint or not a ruse checkpoint?

23 A No, sir, I'm not making any determination as to  
24 whether or not this was a ruse or a true checkpoint.

25 Q And No. 9?

1           A     No. 9 is an excerpt from the 2009 Chevrolet  
2 Silverado owner's manual.

3           Q     Now, you heard Mr. Byrd's testimony here today?

4           A     Yes, sir.

5           Q     And you were able to observe that he was somewhat  
6 nervous?

7           A     Yes, sir. He did appear to be nervous.

8           Q     Did you inquire prior to coming here today what the  
9 make and model of the vehicle was he was operating?

10          A     Yes, sir, I did inquire about that.

11          Q     Okay. And so was -- it was a 2009 Chevrolet  
12 Silverado?

13          A     That was what was represented to me, yes, sir.

14          Q     Okay. And so the 2009 Chevrolet Silverado owner's  
15 manual, is that marked here in this exhibit?

16          A     Yes, sir, that is correct.

17          Q     Can you explain to us why?

18          A     Because the 2009 is the edition that was -- the  
19 vehicle was represented as a 2009 Chevrolet Silverado. In  
20 performing my research, I went and obtained the 2009 Chevrolet  
21 Silverado owners's manual to help understand the seat belt  
22 reminder system.

23          Q     And what were you able to discover concerning that  
24 seat belt reminder?

25          A     That information summarized on the next page, which



1 is labeled as 10, and this is from the section of the owner's  
2 manual describing seat belts, and states that the vehicle has  
3 indicators as a reminder to buckle the safety belts.

4 It then refers you to another section of the owner's  
5 manual, which is on page 3-36. I've also excerpted that page,  
6 and that's included as 11 in this exhibit.

7 Q And what does it tell you about the seat belt  
8 reminder system?

9 A It states that the chime and light are repeated if  
10 the driver remains unbuckled and the vehicle is in motion.

11 Q Does it -- now, based on your training and  
12 experience, this is a device or a system designed by what type  
13 of engineers?

14 A Typically, it is by people with a human factors  
15 background.

16 Q Okay. And what's the purpose of this?

17 A The purpose of this is to induce a driver to use a  
18 safety belt, to create an environment that is uncomfortable or  
19 annoying in order to encourage the driver to use the safety  
20 belt.

21 Q And what happens if the driver does not buckle the  
22 safety belt?

23 A They will have a repeated chime as well as a  
24 flashing light on their dashboard.

25 Q It's meant to be annoying?

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1 A Yes, sir.

2 Q All right. Next diagram?

3 A So this is the ruse checkpoint diagram. Again, not  
4 trying to reach any legal conclusion as to what -- ruse or not  
5 on the checkpoint. But I've labeled and placed the two signs  
6 that were present in relation to the Sacred Heart Catholic  
7 Church that's referred to in Officer Segree's depositions, as  
8 well as where the patrol cars and the cone area were located.

9 Q Okay. And 13?

10 A Thirteen provides us with a closer 20-scale view of  
11 the orientation of the patrol cars on the road as described by  
12 officer Segree, as well as where the cones would have been  
13 positioned in the roadway.

14 Q Now, earlier you heard testimony from Sergeant  
15 Segree about traffic control devices?

16 A Yes, sir.

17 Q And you heard him testify about they're for -- to  
18 raise awareness?

19 A That is correct, sir.

20 Q In your professional opinion -- or, actually, what's  
21 documented, what is the purpose of traffic control devices?

22 A Well, there's the broader field of traffic control  
23 devices. Those are devices that -- that can inform a driver  
24 of an environment that they are entering or provide regulatory  
25 information as to travel speed; also to inform a driver about

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1 any kind of merges or roadway junctions coming up.

2 But it can also include channelizing devices such as  
3 cones, and those are primarily intended to inform a driver of  
4 a roadway transition and then assist that driver into smoothly  
5 transitioning into the new lane.

6 Q Are there three areas that cones are used?

7 A In general, cones are primarily used to help shift a  
8 driver out of a lane, so events such as a construction event  
9 or a temporary traffic control measure are what's typically  
10 used for cones or where cones are typically used and are  
11 described in the MUTCD.

12 Q What is the MUTCD? For the court reporter.

13 A I apologize, I just realized I did not define that  
14 acronym. That's in the Manual on Uniform Traffic Control  
15 Devices. It is a document published by the Federal Highway  
16 Administration that provides federal guidance on the signing  
17 and marking of roads.

18 Q Now, do human factors experts design cones and look  
19 at things like reflective material and flashing lights on  
20 motor vehicles and police vehicles to affect the human  
21 reaction?

22 A Well, typically, the retroreflective material that's  
23 present on a cone, or the retroreflective material present on  
24 a police vehicle or other first responder vehicle is there in  
25 order to ensure that that vehicle or that roadway element is

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1 highly visible. And that would also include the signing or  
2 the illumination of the police vehicle or other first  
3 responder vehicles, so the flashing lights or the strobes.

4 Q Okay. Next on No. 14 on 1.

5 A What's depicted in 14 is the area of the ruse  
6 narcotics checkpoint, and what I've done here is indicate the  
7 area where a driver approaching this ruse narcotics checkpoint  
8 would be able to directly view the police vehicles that were  
9 present on the roadway.

10 Q Now, did you take into consideration the angle of  
11 the sun on this particular day?

12 A I did obtain information from the United States  
13 Naval Observatory as to what the angle of the sun was for both  
14 that day and also the approximate time of the arrest.

15 Q And so this cone or this yellow shaded area on  
16 Highway 98, that's an area where the driver would first make  
17 observation of the checkpoint?

18 A That is correct, sir. The yellow shaded area that  
19 is depicted on page 14 of this exhibit indicates where a  
20 driver would have a direct line of sight to the checkpoint  
21 area.

22 Q Okay. And No. 15 of Defense Exhibit 1?

23 A Fifteen depicts the area of Putnam Street as it lies  
24 between Florida Avenue and US Highway 98.

25 Q Go ahead.

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1           A     And that is the area that is represented as where  
2     Mr. Byrd turned and was stopped by officers.

3           Q     Now, you -- you also are familiar with what's been  
4     introduced into evidence as Defense Exhibit No. 4. I think I  
5     got that one right. That's the -- that's the diagram that's  
6     right here in front of the Court?

7           A     Yes, sir, I am.

8           Q     Okay. The intersection of Florida Avenue and Putnal  
9     Street, based on your professional training and experience,  
10    approximately how far a distance is that from Highway 98?

11          A     If I may refer to the drawing.

12                THE COURT: Sure.

13    BY MR. PUMPHREY:

14          Q     Okay.

15          A     That is a distance of approximately 540 feet between  
16    Florida Avenue and US Highway 98.

17          Q     Okay. Is it -- is it -- did you evaluate Deputy  
18    Martina that just testified, his transcript?

19          A     I was able to review his deposition transcript, yes,  
20    sir.

21          Q     Okay. And did he clearly identify the location  
22    where he was when Sergeant -- when he started to move towards  
23    Mr. Byrd to stop him?

24          A     Yes, sir, he did.

25          Q     And from that distance would it be physically

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1 possible for him to see whether or not a person was wearing a  
2 seat belt?

3 A Not from that distance, no, sir. It would be highly  
4 unlikely that an individual would be able to observe a seat  
5 belt.

6 Q And did you -- did you hear his testimony today  
7 where he changed the location where he was located?

8 A Yes, sir.

9 Q When -- when you reviewed his deposition, did it  
10 appear there was any confusion about where he was describing  
11 or familiarity with the location?

12 A No, sir. There did not appear to be any confusion  
13 as to his location at the intersection directly north of US  
14 Highway 98 down Putnal.

15 Q So next in line is 16. Can you explain why you have  
16 this in here referencing the Florida Move Over statute?

17 A Yes, sir. I am not attempting to make any kind of a  
18 legal conclusion or recommendation, that is certainly the --  
19 the domain of the trier of fact. Instead, I was trying to  
20 understand how drivers are informed to approach such an area.

21 Q And you have a copy of Florida Chapter 326 --  
22 316.126. And, finally, we have their Move Over -- hashtag  
23 Move Over Florida sign with the emergency vehicles and trash  
24 trucks and emergency police vehicles?

25 A That is correct, sir. This is promotional material

1 that was produced to help drivers understand the Move Over Law  
2 and was promoted by FDOT/AAA as well as various law  
3 enforcement agencies.

4 Q Now, if we move to Defense Exhibit 2, these are  
5 enhanced or larger diagrams of the same areas we have just  
6 gone over?

7 A That is correct, sir. Those are full-scale diagrams  
8 of what appears in the eight-and-a-half-by-11, Exhibit 2, I  
9 believe.

10 Q You need to go through those again?

11 A No, sir.

12 Q All right, good. Those now having been entered into  
13 evidence, have you rendered any opinions about your evaluation  
14 as to this particular case as it regards reconstruction and  
15 human factors?

16 A Yes, sir, I have.

17 Q And what are those?

18 A Primarily, that given the area and the time, as well  
19 as the vehicle, it would be very difficult to observe a seat  
20 belt infraction until the vehicle was at a very close distance  
21 to the observer.

22 Q What about the -- the traffic control devices and  
23 their effect on the drivers in this particular case?

24 A The traffic control devices that were placed -- and  
25 in this I'm also including the police vehicles as traffic

1 control devices -- but all of these together would have an  
2 influence on drivers traveling through this area.

3 The presence of the police vehicles on either side  
4 of the highway would induce a driver through the Move Over Law  
5 to attempt to move over. And given the impossibility of that,  
6 as it's a two-lane road and there's a police vehicle on either  
7 side of the road, then it would require the driver to slow by  
8 20 miles per hour as they pass through this area.

9 In addition, there are cones that are present, and  
10 as I have depicted in my diagrams, as Captain Segree has  
11 described, these cones are lining or running down the  
12 centerline of the roadway. And what that does is create a --  
13 that creates a traffic calming effect. And traffic calming is  
14 a field where the human's perception of an environment is used  
15 to affect how they travel through the roadway.

16 In this case, placing cones in the middle of the  
17 road visually narrowed the road. So it made it a narrower  
18 path available to a driver traveling through this roadway, and  
19 would therefore likely lower any average driver's speed as  
20 they went through this area.

21 Q Now, you heard testimony earlier that there were two  
22 men that had to be posted to wave traffic through.

23 A That is correct, sir, I did hear that.

24 Q In your professional opinion, did that indicate that  
25 all of the drivers or some of the drivers that were



1 approaching this area believed they had to stop?

2 A That would be one certain interpretation of the --  
3 certainly would be one interpretation of this; that drivers  
4 approaching this would have a high degree of uncertainty of  
5 how to proceed through this checkpoint area and may not  
6 understand that they were able to freely travel through it  
7 without stopping.

8 Q Did you render any other opinions as to this  
9 particular case?

10 A Only in looking at the area and trying to understand  
11 the road geometry, it became apparent that there were valid  
12 routes around the checkpoint.

13 Q Now, when you say "valid routes," what is that?  
14 what do you mean?

15 A By valid routes I simply mean that there was a way  
16 to travel around the checkpoint using the roads that were  
17 present in the area at the time.

18 MR. PUMPHREY: A moment, Your Honor?

19 THE COURT: Uh-huh.

20 (Pause.)

21 MR. PUMPHREY: No further questions at this time.

22 THE COURT: Cross exam?

23 CROSS EXAMINATION

24 BY MR. PATTERSON:

25 Q Mr. Morgan, first I want to go back to this

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1 vehicle -- I believe it's pages 9 and 10 -- 9, 10, and 11 of  
2 your -- well, Defense No. 1. And you say that -- that it was  
3 represented to you that it was a 2009 truck. Who represented  
4 that to you?

5 A Mr. Byrd, sir.

6 Q Mr. Byrd represented that to you? You heard him  
7 testify today that it was a 2007?

8 A Yes, sir, I did.

9 Q You would agree with me that a 2007 manual would  
10 be -- possibly be different than a 2009 manual?

11 A It could possibly be different, yes, sir.

12 Q And as I'm reading this, it says the chime and light  
13 are repeated if the driver remains unbuckled, correct?

14 A That is correct.

15 Q It doesn't say it's constantly repeated?

16 A No. Constant alerts are typically not as effective  
17 as intermediate.

18 Q So it would be an intermediate alert; it would go,  
19 then it would stop, then it would go, then it would stop?  
20 There would be --

21 A That is correct, sir. That is typically more common  
22 for alerts such as this.

23 Q There would be a break in time between ding, ding,  
24 ding, then possibly a three- to five-minute break before ding,  
25 ding, ding?

1           A     I would disagree on the three to five minutes.

2           Q     Well, I'm guessing because I'm --

3           A     It's more likely to be much less than one minute.

4           Q     But it's not ding, ding, ding, ding, ding, ding,  
5 ding, ding, ding, ding, ding, ding, ding, ding, ding, ding,  
6 ding, ding, ding?

7           A     No, sir, because people typically habituate to that  
8 and no longer pay attention to it if you constantly provide  
9 the alert. Having an alert that has a temporal break and then  
10 resumes, especially if it's not on an easily predictable  
11 pattern, is much more hard to ignore.

12          Q     And people that do anything with frequency can  
13 habituate to it, correct?

14          A     That depends on the stimulus and the response and --

15          Q     Well, I've got a five-year-old child I can ignore  
16 the heck out of. So people that are in an environment, they  
17 tend to be able to acclimate to that environment, agreed?

18          A     To some extent I would agree to that. It is highly  
19 dependent on the environment, the stimuli, and the --

20          Q     And the individual?

21          A     And the individual, amongst a number of other  
22 factors, yes, sir.

23          Q     So you would agree with me that Mr. Byrd could have  
24 conditioned himself to ignore that seat belt chime?

25          A     That is possible, yes, sir. Although I would also

1 state that these alerts are specifically designed to be very  
2 hard to habituate to.

3 Q I understand that people in your field have worked  
4 very hard to get us to buckle our seat belt, but you would  
5 agree with me that not everybody does it?

6 A That is correct, sir.

7 Q Irregardless of whatever is chiming, beeping, or  
8 flashing at us?

9 A That is correct, sir.

10 Q And you weren't in the truck with Mr. Byrd that day?

11 A No, sir, I was not present in the vehicle with  
12 Mr. Byrd.

13 Q Now, you talk about these cones that were used to  
14 control the flow of traffic. And according to your diagram  
15 you have here, they were placed along the -- what I'm going to  
16 call the yellow -- yellow dotted line in the center of the  
17 road, correct?

18 A Yes, sir, that is correct. I placed those based on  
19 the deposition testimony of Captain Segree.

20 Q They didn't block the roadway in any way, did they?  
21 cars were able to -- cars were able to pass, going both  
22 directions, pass those cones?

23 A That's correct, cars were able to travel past the  
24 cones. The cones were placed along the centerline of the  
25 roadway. And given that these were -- these were channelizing

1 devices, what they would be doing is visually narrowing that  
2 road. So although they weren't -- they weren't literally  
3 reducing the width of the road, they were visually narrowing  
4 the road.

5 Q But they didn't stop anybody, did they?

6 A No, sir, that's not the function of a cone.

7 Q Exactly. They could pass right by the cone? Cars  
8 traveling down that road could pass right by the cones? The  
9 cones didn't stop them; it didn't funnel them off the road,  
10 correct?

11 A Yes, sir, that is correct.

12 Q So while cars traveling down Highway 98 would have  
13 had -- would have been prompted by their human factors to slow  
14 in that area because of the blue lights and the cones, they  
15 would not have had to stop?

16 A A single vehicle traveling through would not have to  
17 stop. However, as the traffic levels and the level of service  
18 of that road changed and more traffic volume was put through,  
19 the likelihood of a slow-down occurring would increase.

20 Q And you heard that testimony today, because you were  
21 the only one allowed to sit in here, right?

22 A I not only heard that, but that is also in the  
23 deposition testimony of Captain Segree at multiple points.

24 Q That travel slowed, and it was kind of backed up,  
25 but it wasn't stopped?

1           A     He's never providing a clear description of what the  
2     traffic conditions were, but I would just have to let his  
3     deposition speak for itself.

4           Q     Now, on Defense Exhibit No. 4, the large drawing  
5     there that we had the officer draw on earlier --

6           A     Yes, sir.

7           Q     -- do you have that in front of you? Can you  
8     look -- can you look at that for me?

9           A     Yes, sir.

10          Q     Now, you talk about the distance back to Putnal  
11     Street or back from Highway 98 back to Florida Avenue.

12                   MR. PATTERSON: May I approach the witness, Your  
13     Honor?

14                   THE COURT: Uh-huh.

15     BY MR. PATTERSON:

16          Q     Can you tell me what the distance would be from this  
17     intersection here to the center of these two trees?

18                   THE COURT: Well, when you say "this intersection  
19     here" --

20     BY MR. PATTERSON:

21          Q     The intersection of Highway 98 and Putnal Street  
22     where Deputy Coulter indicated his vehicle was.

23          A     Could you indicate which tree, sir? Because there  
24     are quite a few on here.

25          Q     These -- these two trees on side of the road.

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1 This -- this -- in between these two trees here, can you  
2 approximate that distance --

3 A Certainly.

4 Q -- based on your scale? And I'm saying the distance  
5 away from the vehicle Deputy Coulter drew there.

6 A As measured to the center of the vehicle, that would  
7 be approximately 150 feet, sir.

8 Q One hundred fifty feet. So between -- I'm doing  
9 math in my head, so somewhere around 40 to 50 yards?

10 A Approximately 50 yards, sir.

11 Q Which is what Deputy Martina testified to today,  
12 correct?

13 A If I recall correctly, yes, sir.

14 Q That that's where he was located?

15 A As he testified today, yes, sir.

16 Q And I understand that that's different than what he  
17 said in the depo. We covered that with him and with you. But  
18 based on what he said today, he was only approximately 40 to  
19 50 yards away from Deputy Coulter?

20 A Yes, sir, based on today's testimony.

21 Q Which would have been close enough to hear him yell,  
22 correct?

23 A In certain environmental conditions, yes, sir.

24 Q Well, he swore under oath that he did, correct?

25 A Yes, sir. I have no reason to dispute that.

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1           Q     Now, you also said that if he was back at Florida --  
2     at the corner of Florida Avenue and Putnal, it would have been  
3     very difficult for him to see a seat belt violation, correct?

4           A     That is correct, sir.

5           Q     But it would have been a lot easier if he was where  
6     he said he was today, at the trees, correct?

7           A     That is correct.

8           Q     And forgetting Deputy Martina for a minute, Deputy  
9     Coulter would have had every opportunity in the world to  
10    observe it, correct? Based on -- based on his positioning?

11          A     Based on his position, he would have a much greater  
12    likelihood of observing a seat belt violation, yes, sir.

13          Q     They would have passed within feet of each other,  
14    correct? Three to five feet?

15          A     It would definitely be below 12 feet, yes, sir.

16          Q     On the -- on the roadway there?

17          A     Yes, sir.

18          Q     And you would agree that while you, in your field,  
19    do a great deal of study into how people as a whole react to  
20    things, individuals react differently, correct? Not everyone  
21    is going to react the same way to whatever is -- stimulus  
22    they're perceiving?

23          A     Well, what -- a better way of describing that, in  
24    terms of how we study human behavior, is we study what  
25    average, attentive drivers do and what average pedestrians or

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1 observers are able to see, hear, understand, and react to.

2 Q what about average drivers who are carrying a large  
3 quantity of narcotics?

4 A That's not something that's typically studied, sir,  
5 although that would --

6 Q Could that affect their response to the stimulus?

7 A That certainly could, yes, sir. what I would state  
8 is that it would -- and, also, going back to what I was  
9 stating earlier, is, as Mr. Byrd stated, he was concerned  
10 about that. So we would simply understand that he had a  
11 heightened level of awareness or a heightened level of anxiety  
12 as he traveled through the area.

13 Q And this truck, you don't know what model it is, you  
14 just know what somebody told you, right?

15 A I was relying upon the information as it was relayed  
16 to me by Mr. Byrd, yes, sir.

17 Q So you didn't inspect the vehicle?

18 A No, sir, I have not been able to inspect the  
19 vehicle.

20 Q So you don't know if the chime was working, wasn't  
21 working? You don't have a clue? In this specific vehicle,  
22 you have no clue whether the seat belt chime was working, not,  
23 working, disassembled, disabled --

24 A As I stated --

25 Q -- functioning?

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1           A     Sorry, sir.

2           Q     You don't know?

3           A     As I stated earlier, I was not able to inspect this  
4     vehicle and instead had to rely upon the representation of the  
5     vehicle to me as well as what Mr. Byrd testified to earlier.

6           Q     So you relied on the representation of the Defendant  
7     in this case?

8           A     Yes, sir.

9                     MR. PATTERSON: I don't have anymore questions, Your  
10    Honor.

11                    MR. PUMPHREY: May I have just a moment, Your Honor?

12                    THE COURT: Sure.

13                    (Discussion off the record.)

14                    MR. PUMPHREY: Judge, can we have just a moment?

15                    THE COURT: Uh-huh.

16                    (Discussion off the record.)

17                    MR. PUMPHREY: Judge, may I approach the witness?

18                                   REDIRECT EXAMINATION

19    BY MR. PUMPHREY:

20           Q     I'm going to show you what's going to be premarked  
21     into evidence --

22                    MR. PUMPHREY: And, Judge, this is -- the State  
23     provided this to me. That's what we were looking for.

24                    And I want to make a representation about the State. The  
25     State has found information that wasn't provided to them,

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1           and so this is information that has been provided to us,  
2           and we were -- we were looking for and the State just  
3           provided it to us. I think that will clear up the issue  
4           about the vehicle.

5           THE COURT: This would be 6, maybe?

6           MR. PUMPHREY: Six?

7           THE CLERK: Six.

8           (Defendant's Exhibit No. 6 received in evidence.)

9           MR. PUMPHREY: Right. If we could kindly ask the  
10          clerk to make us a copy of that so I can give a copy back  
11          to Mr. Patterson as well as keep a copy in my file.

12          THE COURT: Do you have the ability to do that?

13          THE CLERK: There is a machine back here. I don't  
14          know if you need a code because it is court admin.

15          THE COURT: We have one back near where I am.

16          MR. PUMPHREY: Your Honor, may I approach the  
17          witness?

18          THE COURT: Maybe our bailiff can help.

19          Yes, sir.

20       BY MR. PUMPHREY:

21       Q     All right. I'm showing you what's been --

22           MR. PUMPHREY: No objection to introducing this into  
23           evidence?

24           MR. PATTERSON: No, no, no.

25

1 BY MR. PUMPHREY:

2 Q As Defense Exhibit 6, ask you to take a look at that  
3 and see if that clears up the issue of the vehicle.

4 A Yes, sir, it does.

5 Q And how does it clear up the issue of the vehicle?

6 A In, actually, two different ways. One, it provides  
7 the year, make, and model of the vehicle, and identifies it as  
8 a 2009 Chevrolet Silverado. It also provides the vehicle  
9 identification number, which would allow me to verify that in  
10 a separate way.

11 Q Okay. Now, that's information -- this is the first  
12 time you've seen that, isn't it?

13 A That is correct, sir.

14 Q All right. Based upon that information, is there  
15 any question that the research you did on the 2009 Silverado  
16 that was provided in your presentation was accurate?

17 A Sir, there is no question on the research at this  
18 point.

19 Q Okay.

20 MR. PUMPHREY: I have no further questions, Your  
21 Honor.

22 THE COURT: Okay. I guess, unless you have  
23 something else --

24 MR. PATTERSON: I don't have anymore questions, Your  
25 Honor.

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1 THE COURT: Okay. You can step down then. Thank  
2 you.

3 THE WITNESS: You're welcome, sir.

4 THE COURT: Nothing else from the Defense.

5 MR. PUMPHREY: Judge, the State has a witness they  
6 are wanting to produce and the Court has allowed them --  
7 Mr. Ufferman in this case --

8 MR. PATTERSON: Judge, Judge, at this point, I think  
9 given the fact that the testimony is only going to simply  
10 be testimony the Court has already heard, the Court is  
11 perfectly capable of making a credibility determination  
12 about the testimony it's heard. I'm -- I'm willing to go  
13 ahead with argument and let's get this over with.

14 THE COURT: Okay.

15 MR. PUMPHREY: Judge, if it please the Court, Mr.  
16 Ufferman is going to make the legal argument based upon  
17 the facts presented here and the motions, and I believe  
18 for the State --

19 THE COURT: And, incidentally, you mentioned two  
20 other motions. I have never received a copy of them. Do  
21 you have copies for me?

22 MR. PUMPHREY: I'm sure -- I'm sure we do, Judge.  
23 They were in -- I believe they were in the E-filing  
24 portal, so --

25 THE COURT: Yeah, well --

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1 MR. PUMPHREY: I understand.

2 THE COURT: -- just another reminder, E-filing  
3 doesn't come to me. I don't get it if you E-file it.

4 MR. UFFERMAN: I assume you have the Motion to  
5 Suppress, Your Honor.

6 THE COURT: I do have that --

7 MR. UFFERMAN: I printed out --

8 THE COURT: -- and that's because I did go on  
9 because I knew it was there and copied it off the --

10 MR. UFFERMAN: Right. This morning I also printed  
11 out a copy of the Motion to Dismiss and the Motion to  
12 Transfer to Drug Court. I can approach the Court with a  
13 copy of those.

14 THE COURT: Okay. Thank you. I'm sorry, I was  
15 looking at the -- at the other motion about Drug Court.

16 MR. UFFERMAN: Of course, Your Honor. Take your  
17 time.

18 THE COURT: But you go ahead, I'll listen.

19 MR. UFFERMAN: And I'm going -- I'm going to start  
20 by focusing on the Motion to Suppress. It may bleed into  
21 a little bit of the Motion to Dismiss, but it'll be minor  
22 argument relating to the Motion to Dismiss. Then I'll, I  
23 think, address the Motion for Drug Court separately, Your  
24 Honor.

25 The initial argument regarding the suppression

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1 and/or dismissal really focus on this ruse drug  
2 checkpoint. The State has acknowledged that, in fact, in  
3 this case it was a ruse. We know from the *Edmond* case  
4 from the United States Supreme Court that drug  
5 checkpoints in and of themselves are unconstitutional.  
6 There are certain types of drug -- or there are certain  
7 types of checkpoints that can be legal, but a drug  
8 checkpoint or a narcotics checkpoint is not one of those,  
9 and that's clear under the U.S. Supreme Court's case law.

10 So the obvious argument initially would be if it's  
11 unconstitutional to have an actual checkpoint, why should  
12 the law enforcement officials be able to engage in  
13 something that would be a ruse, for something that itself  
14 would be illegal?

15 And I submit in this case, based on Mr. Morgan's  
16 testimony and based on the testimony of the officers  
17 today, that we do have a restriction on freedom of  
18 movement.

19 There was testimony that the officers had to wave  
20 people through because they were stopping or believing  
21 that they had to stop because of the cars that were set  
22 up in the roadway.

23 So our initial argument would be that if an actual  
24 drug checkpoint is illegal, then a ruse checkpoint should  
25 also be illegal. I will acknowledge that a case --

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1           there's no case law on that point.

2           THE COURT:   Okay, I was going to ask you.

3           MR. UFFERMAN:   There's -- there's no court in either  
4           federal or state jurisdictions that have reached that  
5           issue and said that a ruse drug -- drug checkpoint in and  
6           of itself is illegal, so we're extending that argument  
7           for the first time and either asking you to agree with us  
8           or at least preserve it so we can present that down the  
9           road.   But, again, I acknowledge that there is no case at  
10          this stage that has held that it's unconstitutional *per*  
11          *se* to have a ruse drug or narcotics checkpoint.   But in  
12          this case --

13          THE COURT:   Let me -- let me ask you this:   In your  
14          research did you come up with anything, whether legal or  
15          illegal, a checkpoint with people who avoid that?

16          MR. UFFERMAN:   Yes.

17          THE COURT:   That in and of itself is not enough;  
18          there's nothing in Florida, is there, on that?

19          MR. UFFERMAN:   No.   But there is a split among -- in  
20          the country, and I think the -- the better reason, the  
21          decisions, including at least one if not more than one,  
22          federal appellate decisions, and I believe the most  
23          recent one is from the Tenth Circuit, that have held that  
24          if you stop someone solely because they flee from a  
25          drug -- or a ruse narcotics checkpoint, that is not

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1 enough, and that's a violation of the Fourth Amendment.

2 THE COURT: I know there's some somewhat analogous  
3 cases about just because you run away from police is not  
4 enough to stop them without something more, anyway.

5 MR. UFFERMAN: Correct. So that's going to be the  
6 focus of my argument, Your Honor.

7 THE COURT: Yeah. But -- but what about situations  
8 in which it's illegal, not that they don't actually go  
9 through the checkpoint, and there's some other reason to  
10 stop them?

11 MR. UFFERMAN: And that's the issue. So there are  
12 cases that have said that you can have a ruse narcotic  
13 checkpoint; and then if you observe illegal conduct, that  
14 can be a basis to stop someone.

15 I'm not sure those cases strictly talk about if you  
16 observe that conduct in someone who avoids the checkpoint  
17 versus anyone else, and I think that's a distinction  
18 we -- that did come out through today's testimony. And I  
19 believe it was Lieutenant Segree specifically  
20 acknowledged when he came up with this plan, he came up  
21 with this plan for the sole purpose of seeing who would  
22 try to avoid the checkpoint.

23 And I think he started to say that it was his belief  
24 that the criminal element would see the checkpoint and  
25 then flee. And then he was -- when he was further

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1       pressed on that, he was asked, "why do we need to have a  
2       ruse checkpoint at all? why can't you just have someone  
3       on the side of the road?"

4               And he said, "Oh, because we're giving more scrutiny  
5       to anyone who tried to flee from the checkpoint." And  
6       they're actually going to look at the violation from  
7       those people; that he was directing the officers that if  
8       you see someone fleeing, that's someone you should focus  
9       on. So we know that, and he acknowledged that.

10              Now, the other officers didn't acknowledge that, or  
11       at least Sergeant Coulter didn't acknowledge that, and  
12       I'll get into that with his credibility. But I  
13       appreciate Lieutenant Segree acknowledging that, yes,  
14       that was the purpose and the reason we do the ruse is  
15       because we want to see who is going to flee, and those  
16       are the people we're going to focus on. So --

17              THE COURT: Is there -- is there any case law on  
18       that, that that's improper?

19              MR. UFFERMAN: well, if that was the basis for the  
20       stop, and that's what I intend to argue today, Your  
21       Honor.

22              THE COURT: But that in and of itself -- in other  
23       words, we're going to have this ruse, and I want you to  
24       focus on people that avoid it, is there any authority  
25       that says that's improper?

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1           MR. UFFERMAN: We know that's not a basis to stop  
2 someone in and of itself. Or, certainly, there's case  
3 law that says if they are stopped solely because they  
4 fled the ruse checkpoint, then that's an unlawful stop,  
5 violates the Constitution. And I submit that that's  
6 what's happened in this case. And let me -- let me  
7 connect some dots to make that point.

8           THE COURT: But there's -- but my question, is there  
9 anything wrong with, say, I want you to focus -- if  
10 somebody tries to run, I want you to look at, if there's  
11 a violation, stop them. But --

12          MR. UFFERMAN: Correct. Well, so I don't know. I  
13 think that's getting close. I'm not sure a court has  
14 specifically acknowledged that if the only people  
15 targeted, if the only people that they're even attempting  
16 to see if a traffic violation occurred --

17          THE COURT: Well, I don't know that that's the  
18 testimony. I think he admitted and acknowledged that,  
19 yeah, I want them to focus on that because those are the  
20 people I'm suspicious of.

21          But I don't think he said that if somebody went  
22 through the checkpoint, we could say, oh, wait a second,  
23 they're speeding; or they are doing something else wrong,  
24 stop them. I think that was his testimony.

25          MR. UFFERMAN: I -- I don't disagree that -- he

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1        didn't specifically point to anyone else who tried to go  
2        through the checkpoint and then said that we observed a  
3        traffic violation, so I don't think that came out today.  
4        But I also agree with you that he didn't say that had we  
5        seen that, we wouldn't have stopped that person. I do  
6        think he acknowledged that the focus was on those that  
7        were trying to flee from the checkpoint.

8                THE COURT: I think he was specific with this, if  
9        somebody came by and they were speeding, we would stop  
10       them.

11               MR. UFFERMAN: He did say that, that's correct, Your  
12       Honor. And --

13               THE COURT: But, yeah, he did say -- you know, one  
14       of -- one of the ideas of that was to get -- see the  
15       people who might be a little more suspicious because they  
16       tried to avoid it.

17               MR. UFFERMAN: And I submit when you look at -- when  
18       you make the credibility determination in this case, that  
19       that is exactly why Mr. Byrd was stopped in this case.  
20       And here is why I make that argument.

21               So we have Lieutenant Segree acknowledging that this  
22       is the purpose, but then we have Sergeant Coulter's  
23       testimony. And he claims that he sees a seat belt  
24       violation, but he has a little memory about anything else  
25       that he observed that day. He doesn't remember

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1       Mr. Byrd's clothing. He doesn't remember, really, anyone  
2       else that was even stopped on Putnal Street that day.

3             He was asked several times, "Come on, how many  
4       people did you stop? Is it -- is it in this particular  
5       range?"

6             He couldn't say. He couldn't say whether when he --  
7       if people were stopped, whether they were given some type  
8       of -- whether they were arrested, whether they were given  
9       a warning, whether they were given a traffic infraction.  
10       He couldn't give any details about anyone else. He could  
11       only remember that Mr. Byrd himself wasn't wearing a seat  
12       belt. He doesn't remember what he was wearing that day.  
13       He doesn't remember if there was a contrast between his  
14       clothing and the seat belt to allow him to see that. But  
15       that's the only thing that he really came in here to  
16       testify to.

17            He wouldn't even acknowledge that it was part of the  
18       Operational Plan to focus on those that were trying to  
19       flee from the roadblock. He was asked that, and he said,  
20       "That's not what we were doing," even though Lieutenant  
21       Segree specifically said, "Yes." And I appreciate his  
22       candor in that regard. "That's what we were focused on  
23       in this case. That's what I told everyone else, we were  
24       going to be focusing on those that were trying to flee  
25       from the roadblock."

1           So then you add into that -- and there's obviously  
2 two Deputy Martinas in this case, but I'm going to focus  
3 on the one that was supposedly the person who was, I  
4 guess, jogging along and told Mr. Byrd to stop.

5           Today he said that he was within shouting distance  
6 at the point he came into contact with Mr. Byrd. But yet  
7 a year ago, when he was deposed under oath, he said,  
8 "When I first came into contact with Mr. Byrd, I was all  
9 the way at the other end of the street, on the other end  
10 of Putnam, at Florida Avenue, the other intersection, and  
11 that's when I had first contact with Mr. Byrd."

12           And yet today, because he has to fit his testimony  
13 into Sergeant Coulter's testimony, he changes it and  
14 says, "No, I was within shouting distance," because he  
15 admitted that if I was at the other end of the street, at  
16 the other intersection, I could not have heard that. And  
17 the only way his testimony could be consistent now is if  
18 he changes his testimony and said, "No, I was right up  
19 there within shouting distance, and that's when I made  
20 the -- the -- that's when I was directed to go ahead and  
21 make the stop because of the seat belt violation," the  
22 alleged seat belt violation.

23           But I submit that the best evidence you have in this  
24 case as to exactly what occurred is that radio  
25 transmission. And we hear a radio transmission that

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1        says -- and I tried to write this down as it was being  
2        played, "Got a white Chevrolet truck turning onto Putnal  
3        Street."

4                Now, what are the odds that law enforcement is just  
5        saying in their radio transmission -- a different  
6        Martina, in a different position, making that  
7        observation, "We got a white Chevrolet truck turning onto  
8        Putnal Street," that's the direction to stop the guy  
9        who's avoiding the checkpoint.

10               No indication about, oh, a seat belt violation. And  
11        it just so happens at the same time, the State wants you  
12        to believe that Sergeant Coulter happened to be right  
13        there, and he happens to observe the seat belt violation.  
14        I submit that's very convenient for them when we know  
15        what started this whole thing is that direction from  
16        someone saying, "Hey, we got that Chevrolet truck turning  
17        onto Putnal, that's the guy we've got to stop. That's  
18        consistent with our purpose. We've got to stop anyone  
19        trying to avoid this checkpoint."

20               And I submit that's exactly what occurred in this  
21        case. They didn't stop him because of any alleged seat  
22        belt violation. They stopped him because they were  
23        stopping everyone who tried to avoid this checkpoint, and  
24        we know that's not permissible, or at least the better  
25        authority and recent Federal Circuit Court opinions have

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1 held that's not permissible; that's no different than  
2 evidence in an actual drug checkpoint; that's not  
3 reasonable suspicion or probable cause to make the stop.

4 And when you're making that comparison, obviously,  
5 you have to compare their testimony, which we know was  
6 contradicted by deposition from a year ago, with  
7 Mr. Byrd's testimony. And I submit to you Mr. Byrd is a  
8 very credible witness. He was very truthful in what he  
9 said today.

10 He simply said, "I was driving, but I was driving  
11 with my seat belt on. If my seat belt wouldn't have been  
12 on, my signal device would have been going off." Yes, it  
13 wasn't going off ding, ding, ding consistently. There  
14 was temporal breaks. We all know that because we all  
15 know how annoying it is to have that thing go off in our  
16 car, and that's why we all generally wear our seat belts.

17 Now, I understand some people don't. Our expert  
18 acknowledges some people don't, but that's a very good  
19 reason why people do because that's incredibly annoying.

20 So when you're trying to judge his credibility, I  
21 submit his explanation is credible. He had his seat belt  
22 on. Why would he not have it on? That thing would be  
23 going off the whole time. If he was trying to enjoy his  
24 drive down to St. George, why would he not be wearing his  
25 seat belt while he's going down to St. George and avoid



1 the noise so he can enjoy this peaceful drive?

2 And he only took it off after the car was in park,  
3 and he was instructed to provide his DL. And why was he  
4 being instructed to provide his driver's license?  
5 Because he had been stopped simply because he tried to  
6 avoid the checkpoint.

7 Now, they acknowledge you can take Putnal, and he  
8 said, "Yes," very honest. "was part of the reason why  
9 you tried to avoid this, because of what you had in your  
10 car? You didn't want to come in contact with the law  
11 enforcement?" He acknowledged that today, "Yes."

12 And there was another reason, because Putnal will  
13 take me to Florida Avenue, and I can avoid this whole  
14 stop? Yes. But they only stopped him solely because he  
15 avoided the checkpoint. That's unconstitutional, and I  
16 would ask you to find his credible -- his testimony  
17 credible, and I'd ask to rely upon the radio transmission  
18 for the real reason they stopped him. And I would ask  
19 you to not find the law enforcement officers' testimony  
20 credible, especially in light of the fact that they were  
21 contradicted by their deposition a year ago, and grant  
22 the Motion to Suppress.

23 I would add, just from a dismissal standpoint, and  
24 this goes back to the original argument, which I  
25 acknowledge there is no case law to support, but I do

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1 think it is outrageous conduct for law enforcement to  
2 engage in a ruse that if they actually had carried out  
3 the checkpoint, that would be unconstitutional in and of  
4 itself.

5 But, again, the strong argument from our standpoint  
6 is he is credible. He wasn't stopped for a seat belt  
7 violation; he was stopped simply because he tried to  
8 avoid the checkpoint. Thank you, Your Honor.

9 THE COURT: Okay. You want to do the Drug Court  
10 later?

11 MR. UFFERMAN: I'll would do whatever you'd like me  
12 to do, Your Honor.

13 THE COURT: Might as well take it all as one.

14 MR. UFFERMAN: Can I grab two cases real quick?

15 THE COURT: Uh-huh.

16 MR. UFFERMAN: The Drug Court argument is pretty  
17 straightforward. It's partly a statutory construction  
18 argument. I think the bottom line is we submit you have  
19 the authority to place him into Drug Court. And the  
20 statute, which is 948.08(6), gives you that authority  
21 even if the State were to object.

22 So you have the option of placing him in Drug Court.  
23 I think the State, in talking to them -- and I appreciate  
24 their candor up front -- they were initially going to  
25 take the position that because he's charged with a

1 first-degree felony, he doesn't fit within the language  
2 of the statute.

3 I submit a plain reading of the statute -- and I'll  
4 just read it. It says, "For purposes of this subsection,  
5 the term "nonviolent felony" means a third-degree felony  
6 violation of Chapter 810 or any other felony offense that  
7 is not a forcible felony as defined in Section 776.08."

8 So I submit we fall into the latter of those  
9 categories. What he has been charged with is any other  
10 felony offense that is not a forcible felony as defined  
11 in 776.08. And the statute goes on to say that if  
12 you're charged with a forcible felony, and you meet other  
13 requirements, which -- or it's not a particular charge  
14 that would otherwise be exempted, and then I submit that  
15 the charges in this case are not, then he's eligible for  
16 placement into a Drug -- into Drug Court.

17 Now, the State, I also know, is going to argue that  
18 there is an administrative order in our circuit that was  
19 signed by the Chief Judge. And it is true that the  
20 statute goes on to say you're eligible to be placed into  
21 a Drug Court program as established by the Chief Judge.

22 There is an administrative order in our circuit,  
23 it's been amended a couple of times, but I think the  
24 original order is what's most important, and it's  
25 Administrative Order 97-12. And our administrative order

1 in this circuit does limit people that are eligible for  
2 Drug Court to second- and third-degree felonies.

3 So our argument there would be simply because our  
4 administrative order doesn't include who the Legislature  
5 specifically said can be included in Drug Court is not a  
6 basis to deny him the opportunity to be in Drug Court.  
7 And we would then challenge the administrative order as  
8 not being in compliance with the statute, and we would  
9 then argue that the Legislature controls in this regard.  
10 And the Legislature has already defined who would be  
11 eligible in this situation.

12 The one case that I found, and I apologize, I only  
13 have one copy of this, but I'll give the Court the cite,  
14 and I'll give this to opposing counsel. It's a case  
15 called *King v. Nelson*. And it's from the Fifth DCA back  
16 in 1999. The cite is 746 So.2d 1217. And in this case  
17 the judge had placed the defendant -- or a couple of  
18 defendants into Drug Court, and the State filed a writ of  
19 Cert.

20 And the state initially argued that the Judge didn't  
21 have the right to do this over our objection. And the  
22 Fifth DCA said, yes, actually, they do. The statute  
23 gives the Judge the opportunity to do this even if the  
24 State objects.

25 The Fifth DCA went on to say, however, the issue

1 here is -- and I'll read it, "The difficulty in this case  
2 is that pursuant to the statute, as a prerequisite there  
3 must be in place a Pretrial Substance Abuse Education and  
4 Treatment Intervention Program approved by the chief  
5 judge of the circuit in order for persons to be admitted  
6 to it."

7 And at the time these four defendants were placed  
8 into the program by the trial judge, apparently no such  
9 program had yet been approved by the chief judge of the  
10 Fifth Judicial Circuit; thus, the trial judge acted  
11 prematurely in these cases.

12 But they didn't go on to say, thus, they're  
13 eligible; or, thus, the chief judge could actually say on  
14 an administrative order that he could limit their ability  
15 to get in. It assumed that whatever program would be  
16 established by the chief judge would be consistent with  
17 the criteria set up by the Legislature.

18 So I submit that even though our administrative  
19 order doesn't allow someone charged with a first-degree  
20 felony to be admitted into a Drug Court program, I submit  
21 you should follow the statute itself, which says that he  
22 would be eligible; and, therefore, we would ask you to  
23 use your discretion and place him in Drug Court. Thank  
24 you, Your Honor.

25 THE COURT: Any evidence you want to present in

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1 support of your motion?

2 MR. UFFERMAN: May I have a moment, Your Honor?

3 THE COURT: Yeah.

4 (Pause.)

5 MR. UFFERMAN: I believe the only evidentiary issue  
6 on this would be the statute goes on to say if the state  
7 attorney believes that the facts and circumstances of the  
8 case suggest the defendant's involvement in the dealing  
9 and selling of controlled substances, the court shall  
10 hold a preadmission hearing. And if the state attorney  
11 establishes by a preponderance of the evidence at such  
12 hearing that the defendant was involved in the dealing or  
13 selling of a controlled substance, the court shall deny  
14 the defendant's admission into a pretrial intervention  
15 program. That may not be why you were asking the  
16 question, but to the extent that it was --

17 THE COURT: It wasn't. I saw that part, but I'm  
18 looking at the first part. It says, "Notwithstanding  
19 any provision of this section, a person who is charged  
20 with a non-violent felony," which you say this would be,  
21 "and is identified as having a substance abuse problem,  
22 or is charged with a felony of the second or third degree  
23 for purchase or possession of a controlled substance --"

24 MR. UFFERMAN: So you are asking because it says,  
25 "and is someone who has been identified as having a

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1 substance abuse problem --"

2 THE COURT: Yes.

3 MR. UFFERMAN: -- and in order for us to meet our  
4 prerequisite, we'd have to put on some evidence to  
5 establish that.

6 THE COURT: Yes, sir.

7 MR. UFFERMAN: May I have a moment, Your Honor?

8 MR. PUMPHREY: Call Mr. Byrd to the stand.

9 THE COURT: Mr. Byrd, come on back up. And you're  
10 still under oath, so I don't need to swear you in again.

11 THE WITNESS: Yes, sir.

12 whereupon,

13 PAUL WALLACE BYRD, JR.

14 was recalled as a witness, having been previously duly sworn,  
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. PUMPHREY:

18 Q Please state your name for the record.

19 A Paul Wallace Byrd, Jr.

20 Q Mr. Byrd, back in February of 2014, February 28th,  
21 2014, did you have a substance abuse problem?

22 A I did.

23 Q And how long had that substance abuse problem been  
24 going on?

25 A Maybe a year or two.

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1           Q     Okay. Have you -- have you actually, since that  
2 time, been evaluated by someone?

3           A     Yes, I have.

4           Q     Have you received counseling?

5           A     Yes, I have.

6           Q     Okay. And are you amenable to treatment concerning  
7 the addiction?

8           A     Yes, sir.

9           Q     Okay. And do you dispute the fact that you -- you  
10 had an addiction, or I guess it would be called a  
11 polysubstance abuse addiction, or it was an addiction to  
12 certain types of drugs?

13          A     Yes.

14          Q     Okay. Now, the State has charged you with  
15 possession of Hydromorphone.

16          A     Yes, sir.

17          Q     Okay. And you've contacted your doctor in that  
18 case, regarding that?

19          A     Yes, sir. I'm not sure which doctor prescribed it.

20          Q     Okay. But you had a prescription for the  
21 Hydromorphone?

22          A     Yes, sir. I had a knee operation, I'm thinking.

23          Q     Mr. Byrd -- and my co-counsel did this. You and I  
24 had a discussion before. You understand the testimony that  
25 you give here today could be used against you in trial on

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1 Thursday, right?

2 A Yes, sir.

3 Q Okay. And so, given that, though, there -- you  
4 cooperated and you admit here today, as you have with the  
5 specialist, that you have an addiction problem?

6 A Yes, sir.

7 Q Okay. And, actually, what occurred on  
8 February 28th, 2014, probably was a life-altering experience?

9 A Lifesaving.

10 Q Okay. You were in a bad place, weren't you?

11 A Must have been.

12 Q All right.

13 MR. PUMPHREY: Tender the witness.

14 THE COURT: Cross exam?

15 CROSS EXAMINATION

16 BY MR. PATTERSON:

17 Q Mr. Byrd, back on this date in February of 2014, you  
18 said you were in a bad place? Is that what you just said?  
19 Must have been in a bad place?

20 A Yes, sir.

21 Q And you said you had a prescription for the  
22 Hydromorphone; is that what you said?

23 A I believe I do. I had had a knee operation from  
24 Dr. Thornberry, and I'm trying to run down the prescriptions.

25 Q Did you have a prescription for the cocaine?

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1 A No, sir.

2 Q Now, since you got arrested back in February, you  
3 said you had been to see somebody?

4 A Yes, sir.

5 Q And been to counseling?

6 A Some, yes, sir.

7 Q You haven't used drugs since that time?

8 A No, sir.

9 Q So you've been clean for over -- almost three years  
10 now?

11 A Yes, sir, absolutely clean.

12 Q Haven't used a drop in over three years?

13 A Not a drop.

14 MR. PATTERSON: I don't have anymore questions.

15 THE COURT: Any redirect?

16 MR. PUMPHREY: A moment, Your Honor?

17 (Pause.)

18 MR. PUMPHREY: No, Your Honor.

19 THE COURT: So what -- what kind of counseling did  
20 you do?

21 THE WITNESS: Psychologist, Dr. Weaver.

22 THE COURT: Dr. Weaver? And how long did you see  
23 Dr. Weaver?

24 THE WITNESS: Probably five and a half hours.

25 THE COURT: I mean, weeks? Months? Years? Are you

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1 still seeing him?

2 THE WITNESS: It's a she.

3 THE COURT: Oh, a she? Are you still seeing her?

4 THE WITNESS: Yes.

5 THE COURT: How often do you see her?

6 THE WITNESS: I haven't scheduled my next -- I  
7 didn't know what the disposition was going to be. I  
8 haven't --

9 THE COURT: Do you have a regular appointment,  
10 though, with her?

11 THE WITNESS: I will, yes, sir.

12 THE COURT: No, I mean, do you have like a  
13 standing --

14 THE WITNESS: No, I do not.

15 THE COURT: When was the last time you went to Dr.  
16 Weaver?

17 THE WITNESS: Two weeks ago.

18 THE COURT: Is there any kind of particular regimen  
19 that she has you on that you think is working? You said  
20 you've been clean for almost -- or over three years, I  
21 guess. No, not quite three years.

22 THE WITNESS: Not quite three years.

23 THE COURT: Is there anything in particular you  
24 ascribe that to?

25 THE WITNESS: well, I came to a self-realization

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1       that that was not the right thing to do. And in my  
2       visits with Dr. Weaver, I understand why I have fallen  
3       into that rut and how to get out of it. And it comes to  
4       self-knowledge and recognizing your weaknesses and  
5       strengths and trying to overcome your weaknesses without  
6       drugs, I guess. But, primarily, each one of us has -- we  
7       have our demons, I guess. And she -- she is very good at  
8       what she does.

9           THE COURT: Okay, very good.

10          Any follow-up questions, Lawyers?

11          MR. PUMPHREY: Judge, just briefly.

12                           FOLLOW-UP EXAMINATION

13   BY MR. PUMPHREY:

14       Q     Mr. Byrd, you're going to need to be in a lot of  
15     counseling concerning addiction and everything else even  
16     though you've been clean for the last three years; is that  
17     what you've been advised?

18       A     Yes, sir.

19       Q     And if the Court were to order you into drug court  
20     or consider that, based upon the circumstances of this case,  
21     would you follow through and utilize every resource accessible  
22     to you?

23       A     I would probably do it if the Court didn't order me  
24     to. Yes, sir, I would.

25       Q     Okay. And the -- and you -- you understand now that

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1 this is something you're going to have to deal with for the  
2 rest of your life?

3 A Yes, sir.

4 Q Just because you've been able to seek help and go  
5 through this, do you believe you would benefit from a  
6 substance abuse program?

7 A Everyone would.

8 Q But would you?

9 A Yes, I would.

10 Q And is there also an issue of you -- you resigned  
11 from the school board after this particular incident, didn't  
12 you?

13 A Immediately.

14 Q And your retirement and everything has been  
15 suspended, and you've had some financial difficulties?

16 A That's putting it mildly, yes, sir.

17 Q All right. Does it embarrass you to take the stand  
18 and have to admit to those things?

19 A I think the world knows that there are things like  
20 that going on in my life. I'm sorry that I have to bother  
21 everybody being here and doing this, going through this.

22 Q Now, early on in this case, we had asked the State  
23 to consider you for drug court, and you were willing to take  
24 whatever help you could get?

25 A Yes, sir.

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1           Q     Okay. And even with your financial difficulties,  
2     you were able to find somebody and seek help?

3           A     Absolutely.

4           Q     Okay. And this is something that you're going to  
5     have to continue working on from this point forward?

6           A     Yeah. This is a lot bigger issue than this  
7     particular case.

8           Q     In other words, when you said "demons," there are  
9     personal issues in your past that have created the  
10    circumstances that brought you to this courtroom?

11          A     Yes.

12          Q     All right.

13               MR. PUMPHREY: I have no further questions. I will  
14    tender the witness.

15               THE COURT: Mr. Patterson, any other questions?

16               MR. PATTERSON: No.

17               THE COURT: Okay, you can step down. Thank you.

18               So when did you ask the State to see if they would  
19    agree?

20               MR. PUMPHREY: Judge, I don't have the specific  
21    date; but when we first got this case, Mr. Patterson and  
22    I discussed it, and he discussed it with Mr. McCaul, I  
23    believe; is that right?

24               MR. PATTERSON: Yes. Owen McCaul, who runs our --

25               THE COURT: Yeah. So approximately when?

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1           MR. PATTERSON: It had to be over a year ago, Your  
2 Honor --

3           THE COURT: Okay. All right.

4           MR. PATTERSON: -- I would imagine.

5           MR. PUMPHREY: Actually -- actually, I think it was  
6 closer to two years now.

7           MR. PATTERSON: Yeah. It's been a while.

8           THE COURT: It was right after you got on the case.

9           MR. PUMPHREY: Right. Yes, sir, Judge. And the --  
10 and the State declined it for numerous reasons. And  
11 there was a reason that we -- the case has been  
12 postponed, not due to the Court or anything. So that's  
13 it. I understand the State's position.

14          THE COURT: All right. So, Mr. Ufferman, have you  
15 got something else to say?

16          MR. UFFERMAN: I don't, Your Honor. That's the  
17 conclusion of my arguments.

18          THE COURT: Okay. All right. Let me hear from the  
19 State then.

20          MR. PATTERSON: Judge, there's -- a lot of things  
21 happened simultaneously here, so if I miss one, just  
22 remind me.

23          THE COURT: I'll try.

24          MR. PATTERSON: I guess I'll go in the order they  
25 went in; first, as to the Motion to Suppress. If I may

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1 approach, Your Honor.

2 I provided the Court with some case law, Your Honor,  
3 related to ruse narcotics checkpoints, and they are out  
4 of the United States Eighth Circuit Court of Appeals.  
5 There's multiple cases. They all come to the same  
6 conclusion.

7 Just to recite the facts here, we've got two  
8 deputies who have sworn under oath that they saw the  
9 Defendant without a seat belt on, in violation of Florida  
10 traffic laws.

11 As to the checkpoint or lack of a checkpoint,  
12 however we want to refer to it, again, I don't know how  
13 else to refer to it other than a checkpoint or a ruse  
14 checkpoint, but the situation that was set up here.  
15 Lieutenant Segree, who was the captain at the time,  
16 explicitly said cars were not to be stopped that did not  
17 commit traffic violations. He even wrote it down in the  
18 Operational Plan, that cars were not to be stopped that  
19 did not commit a traffic violation.

20 Now, while cars may have been slowing down because  
21 of the signs and because of the presence of law  
22 enforcement on the sides of the road, that's -- that did  
23 not restrict their freedom of movement. They weren't  
24 seized in any way. They weren't stopped. They weren't  
25 searched. They weren't -- they weren't done anything but

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1        waved at. Similar to a wreck on the side of the road, a  
2        construction zone on the side of the road, any number of  
3        factors that you can pull up to in an automobile, a deer  
4        standing on the side of the road that would cause you to  
5        slow down. There's any number of factors that can cause  
6        you to slow down that don't restrict your freedom of  
7        movement.

8                Did it keep some people from getting to St. George  
9        Island 15 minutes before they might have? Okay, maybe.  
10       But is that -- that's not any seizure by law enforcement  
11       or any great imposition on their freedom of movement.

12               Now, the focus on cars avoiding the checkpoint,  
13       whether there was or wasn't, is irrelevant because we  
14       can. *Whren* versus United States says we can; that  
15       pretextual stops are perfectly fine as long as there is a  
16       valid traffic stop reason to stop the car.

17               So whether they were focusing on the cars because  
18       they looked like they were trying avoid the checkpoint or  
19       not is entirely beside the point.

20               The question is: Did they have a traffic stop  
21       reason to stop the car? And two deputies testified that  
22       they saw him without a seat belt on while the vehicle was  
23       traveling down the highways of the state of Florida.

24               Now, if you look at the cases that the state  
25       provided, in *Williams* -- the *United States versus*

1        *Williams* is 359 F.3d 1019. The Court -- the Court had  
2        decided a previous case called *United States versus*  
3        *Yousif*. And in the *Yousif* case, they concluded that that  
4        checkpoint in that case was, in fact, a checkpoint.

5            And they make a distinction, and it's written into  
6        this case of why they make the distinction. In the  
7        *Yousif* case, troopers along an interstate put up same  
8        signs as what was put up in this case, "Caution,  
9        Narcotics Checkpoint Ahead," "K-9s working," same signs  
10       on the interstate. But there was nothing -- they -- they  
11       weren't on the interstate; they were at the exit after  
12       the signs. They were on the exit ramp. And they stopped  
13       every car coming off the exit ramp, and they walked the  
14       dog, or they searched every car that came off the exit  
15       ramp. The court said, no, you can't do that based on --

16            THE COURT: I'm sorry, I'm sorry, go ahead.

17            MR. PATTERSON: That's in *Yousif*.

18            THE COURT: Okay.

19            MR. PATTERSON: And they relied on *Indianapolis*  
20        *versus Edmond* and said you can't do that. Officers came  
21        back in the same location -- and if you read at the  
22        bottom of page 2, the Sugar Tree exit has been the  
23        subject of a prior opinion in the *United States versus*  
24        *Yousif*. In that case we held drugs discovered at the  
25        exit should be suppressed because a drug checkpoint set

1 up at the end of the off-ramp was conducted in violation  
2 of the Fourth Amendment under *City of Indianapolis versus*  
3 *Edmond*.

4 "Williams contends the Sugar Tree ruse involved here  
5 is unconstitutional because it is," in essence, the same  
6 situation. And they go on to say, "We are unpersuaded.  
7 In *Yousif*, all motorists who exited the interstate were  
8 stopped ... including Yousif."

9 "Although some of the drivers exiting I-44 may have  
10 been seeking to avoid detection, that did not give rise  
11 to the requisite individualized suspicion," because they  
12 could have taken the exit for wholly innocent reasons.

13 In this case, in *Williams*, there -- the Court  
14 writes, "Here there was no checkpoint, so there was no  
15 police-citizen encounter that had as its primary purpose  
16 'the general interest in crime control.' To the  
17 contrary, individualized suspicion -- indeed, probable  
18 cause -- arose when the deputy observed Williams run the  
19 stop sign."

20 So in this *Williams* case they saw the vehicle run  
21 the stop sign. They stopped the vehicle for running the  
22 stop sign. Then they got the narcotics dog and the  
23 search continued. And the Court said that was okay.

24 They also -- they also cite in here that even though  
25 the deputy "... probably pursued the traffic violation

1       because he suspected drug trafficking -- that was -- that  
2       was after all the conduct to which the operation was  
3       geared. But a law enforcement officer's ulterior motives  
4       in initiating contact with an individual (or his pursuit  
5       of the more general programmatic purposes of the  
6       operation) are irrelevant to the Fourth Amendment  
7       question when probable cause, the *sine qua non* of which  
8       individualized suspicion, exists."

9               So whether they were focusing on the cars or not, if  
10       there is a valid traffic stop, they got a valid traffic  
11       stop.

12              This is repeated in *United States versus Martinez*,  
13       358 F.3d 1005. And again they cite back to *Yousif* and  
14       the distinction between this -- because, again, the  
15       individual ran a stop sign, and they weren't stopping  
16       every vehicle. They were only stopping vehicles  
17       committing traffic infractions. And this -- in this  
18       case, the court the same court, the Eighth Circuit Court  
19       of Appeals, they quoted *Whren* in saying that because,  
20       "... the officers may have believed Martinez was carrying  
21       illegal drugs does not invalidate an otherwise valid  
22       stop."

23              And they went on to say that, "Furthermore, the  
24       officers' use of deceptive signs does not make the stop  
25       illegal, as it is well established that officers may use

1       deception to uncover criminal behavior."

2               The State's contention is based on the cases that's  
3       been provided, there was no checkpoint. There were  
4       officers there. Traffic was required to slow. Due to  
5       safety concerns, similar to any number of safety concerns  
6       or hazards that may be found on the highway, and that the  
7       officers only stopped vehicles, as they all testified to,  
8       that committed traffic infractions.

9               The deputy stated at the time numerous cars passed  
10      down Putnal Street that were not stopped because they did  
11      not commit a traffic violation. Untold hundreds passed  
12      down Highway 98 that were not stopped because they had  
13      not committed a traffic infraction.

14             The only vehicles stopped were vehicles that  
15      committed a traffic infraction. And the cases that the  
16      State has provided to the Court are directly on point  
17      with the facts of this case. The credibility of the  
18      witnesses, and it was discussed about the credibility of  
19      the Defendant, as in any case, particularly in this one,  
20      this case doesn't involve anyone in Franklin County.  
21      These officers didn't know Paul Byrd from Adam's house  
22      cat. He was just a guy in a white truck who didn't have  
23      a seat belt on.

24             There was no particular reason to target him, look  
25      at him, go after him, other than, yes, he turned off in

1 the appearance of avoiding the checkpoint, and he was not  
2 wearing a seat belt, as testified to by two officers who  
3 independently observed that while the vehicle was in  
4 motion.

5 Now, did the Defendant's recollection of things  
6 differ? Sure it did. But his credibility is called into  
7 question just based on the situation he finds himself in.  
8 His memory could tend to skew to what helps him the most.  
9 And I can imagine that I might be in the same boat if I  
10 was looking at a three-year minimum mandatory DOC  
11 sentence. But to just say he's credible and the officers  
12 aren't, there's plenty enough motivation to not tell the  
13 story -- to tell a story on the Defendant's part when  
14 there's not any motivation on the officers' part.

15 They're out there running this operation. They've  
16 stopped dozens and dozens of cars, and they had no reason  
17 in the world to lie on Mr. Byrd or pick on Mr. Byrd.

18 Mr. Byrd was carrying narcotics. Mr. Byrd got  
19 scared of the appearance of the checkpoint. Mr. Byrd  
20 turned off the road. Mr. Byrd wasn't wearing a seat  
21 belt. Mr. Byrd got searched and found out. And that's  
22 the bottom line of the situation, in that while there was  
23 no checkpoint here -- and even if they were viewing with  
24 more scrutiny vehicles turning off, that's allowable as  
25 long as they obtain a traffic violation.

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1           In the -- the *United States versus Martinez* case  
2           that the State cited earlier says that any traffic  
3           violation, however minor, provides probable cause for a  
4           traffic stop. That's what occurred in this case, and I  
5           would ask the Court to deny that Motion to Suppress.

6           As to the Motion to Dismiss, I haven't seen it,  
7           because I haven't been in my office all day, and it got  
8           filed this morning. I've been here preparing for this.

9           THE COURT: *Ipso facto*, if I don't grant the Motion  
10          to Suppress, obviously --

11          MR. PATTERSON: That's what I was going to say.  
12          I -- I would argue against the Motion to Dismiss for the  
13          same reasons I'm arguing against the Motion to Suppress.  
14          I think it follows along. There was nothing outrageous  
15          about this police conduct. And, in fact, this exact  
16          police conduct has been approved by federal courts on  
17          multiple occasions. So there was nothing greatly  
18          egregious about the police contact or activity in this  
19          case.

20          The -- as to the Motion for Drug Court, the  
21          Defendant wasn't allowed into the Drug Court program  
22          because he was charged with a first-degree felony, which  
23          doesn't comport with the statute or with the -- this  
24          Court's administrative order. It says a second- or  
25          third-degree felony.

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1           Now, I will acknowledge to the Court that I have no  
2 evidence and intend to present no evidence at trial that  
3 the Defendant was somehow selling these narcotics or  
4 going to St. George Island to sell these narcotics; and,  
5 in fact, plan on admitting a statement that he gave to  
6 law enforcement that it was all for his personal use, and  
7 he buys it a certain amount of times -- he gave out the  
8 times he buys it and the amount he pays. And so I -- I  
9 don't have any evidence and don't intend to present any  
10 evidence that he was somehow selling or distributing  
11 these items because I don't have any evidence to that  
12 effect. But the fact remains he's charged with a  
13 first-degree felony, he doesn't qualify under the  
14 statute.

15           THE COURT: well, how do -- how do you -- I mean,  
16 their argument is that it can be a second- or  
17 third-degree if he's got a substance abuse and  
18 possession; but it also says if he's charged with any  
19 non-violent felony.

20           MR. PATTERSON: Judge, I would go back to the  
21 administrative order.

22           THE COURT: well, an administrative order is one  
23 thing, but you said it's not in compliance with the  
24 statute.

25           MR. PATTERSON: well, it's not in compliance with



1 the administrative order, and that's the reason he was  
2 rejected by our office.

3 THE COURT: I understand that.

4 MR. PATTERSON: And if you go and look at subsection  
5 (2) of that same statute -- if you look at subsection (2)  
6 of that same statute, it states that the -- charged with  
7 a misdemeanor or a felony of the first degree is eligible  
8 for release to pretrial intervention program on the  
9 approval --

10 THE COURT: You're going too fast.

11 MR. PATTERSON: -- on the approval of the  
12 administrator of the program, the state attorney, and the  
13 judge. I'm not aware of any approval from any  
14 administrator of the program. The state attorney doesn't  
15 approve. The -- the program is intended for people  
16 charged with second- and third-degree felonies. And in  
17 this case, it would not fall into that category.

18 THE COURT: 948.06?

19 MR. UFFERMAN: 948.08, Your Honor.

20 THE COURT: Oh, .08, okay.

21 MR. PATTERSON: I have a copy of the administrative  
22 order if the Court needs to see that.

23 THE COURT: No, I mean, y'all agree that's what the  
24 administrative order says, so I just wanted to -- okay.  
25 Pretrial intervention program. This talks about a

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1 pretrial intervention program. Where -- where were you  
2 reading? Subsection (2), you say, Mr. Patterson?

3 MR. PATTERSON: Yes, Your Honor, that's where I was  
4 reading from.

5 THE COURT: Which starts out, if the state attorney  
6 believes -- that's about if he believes he's dealing, and  
7 you said you don't think he was.

8 MR. PATTERSON: No, no, I know. Further up in the  
9 statute, Your Honor, 948.08(2).

10 THE COURT: Okay, pretrial intervention programs.  
11 Okay.

12 MR. PATTERSON: And it says further down in that,  
13 under subsection (5) "The state attorney shall be  
14 final -- the state attorney shall make the final  
15 determination as to whether the prosecution shall  
16 continue," even after they participated in this program.

17 THE COURT: Well, is -- is there a difference,  
18 though, between a pretrial intervention program? I  
19 thought that's where, you know, the prosecutor says,  
20 okay, do all these things, and I'll dismiss the charge as  
21 opposed to Drug Court.

22 MR. UFFERMAN: Your Honor, that's the Defense  
23 position. I believe --

24 MR. PATTERSON: I would -- I would agree that those  
25 are two different things, Your Honor. Drug Court is a

1 pretrial intervention program, but it's not run  
2 necessarily through the State Attorney's Office the way  
3 the -- because there's all these other people who are  
4 involved in it, these service providers, and it's not  
5 like they just do what we tell them, and --

6 MR. UFFERMAN: Your Honor, I believe (1) through (5)  
7 of the statute are talking about pretrial intervention  
8 that definitely requires the State Attorney to be on  
9 board with that decision, and I believe (6) goes into a  
10 completely different type of pretrial intervention  
11 program, which is a Drug Court program, which does not  
12 require the State Attorney to agree. It's up to the  
13 Court's discretion.

14 THE COURT: Administrator of the program and the  
15 consent of the victim, the state attorney, and the judge.  
16 It's not a very well-written statute because it seems to  
17 shift gears. But -- because then after (5) it goes to  
18 (6) and talks about this subsection, and then it talks  
19 about a substance abuse program.

20 MR. PATTERSON: And, Judge, I would argue further  
21 that the only person identifying him as having a  
22 substance abuse problem is him. And he says he hasn't  
23 used it in over three years.

24 THE COURT: Yeah.

25 MR. PATTERSON: So --

1           THE COURT: But it doesn't mean that I would agree  
2           that he goes. I'm just trying to see if I have authority  
3           to do it, and it seems like it would. Now, there's a lot  
4           of arguments why I wouldn't, but -- okay. So any other  
5           argument from the State?

6           MR. PATTERSON: No, Your Honor.

7           THE COURT: Okay. And your motion, I'll give you  
8           last word on it.

9           MR. UFFERMAN: Your Honor, I don't have much more to  
10          say. From the supression standpoint, I'll be quick.  
11          We're moving towards some type of technology that allows  
12          us to verify things that happen out in the field.

13          We're moving towards police cams so we can know  
14          exactly what occurred. We're moving towards recording  
15          interrogations so we know exactly what was said. I think  
16          there was a bill that was moving through the Legislature  
17          today.

18          But in this context, it's their word against  
19          Mr. Byrd's. And I submit that it's very easy for them to  
20          simply stop everyone who tried to avoid the roadblock;  
21          and if they don't -- if the K-9 goes around the car and  
22          doesn't alert, that person is going on their merry way,  
23          and we never hear from them again. And if the K-9  
24          alerts, we're all of a sudden coming up with a seat belt  
25          violation because there's no way to verify it or not

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1           verify it.

2           But I submit that the reasons you should find that  
3           they're not credible in this case is: Number one, I do  
4           believe Mr. Byrd is credible. And this whole idea with  
5           the seat belt alert, I think is a common-sense one, that  
6           someone wouldn't want to be driving with that alert going  
7           off constantly. And there's no evidence that -- the  
8           state, you know, had access to this car at this time --  
9           that it wasn't working.

10          But beyond that, their story wasn't straight. It  
11          should be clear cut what happened in this case. And  
12          during the deposition, they said that, you know, Deputy  
13          Martina was all the way at the end of the street, and now  
14          they're changing it today so their stories can be clear.  
15          But that's all in the face of this radio transmission  
16          that says, "Hey, there's a Chevrolet truck pulling off."  
17          And I believe that's the reason that they stopped him.  
18          And we know that, from the radio transmission, that they  
19          are stopping everyone that is trying to avoid this  
20          particular roadblock. And for those reasons we would ask  
21          you to find Mr. Byrd credible in this situation and grant  
22          the Motion to Suppress.

23          Beyond that I would submit that this is a perfect  
24          case for Drug Court. This is exactly why Drug Court was  
25          created. We have someone in our community that could

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1       really benefit from this. He is eligible under the  
2       statute. It is a first-degree felony.

3               But, nevertheless, under this language it's a  
4       non-violent felony; and, therefore, he qualifies  
5       regardless of the fact that it's a first-degree felony.  
6       And the administrative order should be in line with what  
7       the Legislature has said for those people that are  
8       eligible.

9               He is eligible, and we would ask that you use your  
10      discretion and put him into the Drug Court program, and  
11      we believe he'll be very successful out of that. Thank  
12      you.

13              THE COURT: Okay. Well, I did get a chance to do a  
14      little research beforehand on that. I didn't find much  
15      either to help me. I -- I'm going to deny all your  
16      motions, Mr. Byrd. I -- I was impressed with your  
17      testimony. I think you're sincere, and maybe you were  
18      mistaken, maybe not. Maybe the officers were mistaken,  
19      but I'm convinced that the officers weren't lying. And  
20      if they were mistaken, I'm sure that they thought for  
21      sure they saw that you weren't wearing your seat belt.  
22      And it is consistent with the fact that, you know, well,  
23      maybe he took it off, but that would be unusual.

24              You know, I never take mine off to reach in my  
25      pocket, front or back. Yours was the front. But they

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1 did write you a warning for that, which kind of  
2 corroborates it as well.

3 And I know there was testimony that that's annoying,  
4 people don't do it. But I sure read a lot about people  
5 who get killed or hurt seriously, and then there's the  
6 notation, weren't wearing their seat belts. So I -- I  
7 would -- I would not find that to be unusual. I don't  
8 like it. It's annoying as hell, I agree. I've always  
9 got my seat belt on for that reason. But I don't know  
10 happens after it dings real quick for a little while  
11 because I've always got mine on.

12 And for the same reason, it's not outrageous  
13 conduct. The law seems to support it. If, in fact,  
14 there was a traffic violation, regardless of their mode  
15 or pretext, et cetera, pretty straightforward about why  
16 they wanted to do it. There was some inconsistencies,  
17 but I felt minor, didn't take away from the credibility  
18 of the deputies.

19 The Drug Court, there are a couple of things. I'm a  
20 little reluctant to -- to overrule what, basically,  
21 people got together and set up this program and said,  
22 okay, here is -- here is what we're going to -- the  
23 people we think we can most help, providers, but the  
24 chief judge and the state attorney and probably the  
25 public defender.

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1           I might be a little more inclined to do it, assuming  
2           that the statute allows me to do it. It seems like a  
3           reasonable argument that I could do it. If this had been  
4           done early on, if they came in and said -- before we got  
5           in a posture of litigating this thing, and said, "Listen,  
6           I want to do Drug Court. Can we do it? The State won't  
7           agree. Judge, can we do it?" And I would sit down and  
8           say, "What's the problem? Can we make an exception?"  
9           But it's kind of late in the game to come to me, I think,  
10          and say let's do it. So to the extent I have discretion,  
11          that's -- I'm not going to exercise it that way.

12          So we are still set for Thursday for trial. See you  
13          then. Nine o'clock.

14          Anything else? Do we need to come in a little early  
15          about anything? Any Motions in Limine? Any evidence  
16          issues that you anticipate?

17          MR. PUMPHREY: Judge, we're trying to make sure we  
18          don't have any Richardson issues. We've been getting  
19          evidence as this is going on. And I -- I have to go back  
20          and read what I received today from the Florida  
21          Department of Law Enforcement to see what testing they  
22          actually did. I only had a sheet. Not Mr. Patterson's  
23          fault. He absolutely has tried to give me everything he  
24          can. He's had to, I think, work extra hard to try to get  
25          the information to me. But I need to go back tonight and

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1 look at it.

2 I think we probably should tell the jurors to be  
3 present on a delayed basis, because there are going to be  
4 issues I'm going to have to argue as far as the evidence.  
5 And, also, the State has made me aware that -- that the  
6 tape-recorded confession no longer exists. And so we'll  
7 just have to take all that into consideration and let the  
8 Court make a ruling at that time. But --

9 THE COURT: Yeah. I'm a little reluctant to tell  
10 the jury any particular time when you say let's put it  
11 back a little bit, because y'all told me two hours, and  
12 it's 7:30 right now, and --

13 MR. PUMPHREY: I understand, Judge.

14 THE COURT: And I'm glad I didn't tell the jury to  
15 come in at 10:00 on Thursday. So do you have any -- can  
16 you give me some idea of what might be the problems? Can  
17 we get something in writing, Motions in Limine, if you've  
18 got some issues?

19 MR. PATTERSON: Judge, I know we are not necessarily  
20 prepared for any sort of full-blown thing, and I don't  
21 know if it would be filed, but just the issue with the  
22 statement, I found that out yesterday.

23 Now, the officer wrote a lengthy report about what  
24 was said in the statement, but according to the officer,  
25 he recorded it on his telephone. Shortly after he

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1 recorded it, before he memorialized it onto any disk or  
2 anything of that nature, the phone was damaged, and he  
3 couldn't get the recording.

4 Now, as to the items from FDLE, I have no idea what  
5 these items are. I have never heard of them. I have  
6 never seen them in any case before. I didn't even know  
7 they -- I mean, Mr. Pumphrey made me aware of them after  
8 our January court date and asked me for them. And I told  
9 him, "I don't have them. I don't even know what you're  
10 talking about. I've never had them in any drug case I've  
11 ever had."

12 So I called FDLE. FDLE said in order to turn that  
13 over they had to have a Chapter 119 request. I called  
14 Mr. Pumphrey back, made him aware of that, gave him the  
15 e-mail address to send that request to.

16 He mentioned it again after court last week, so I  
17 called FDLE back again and said, "Hey, is there any way  
18 y'all can get this to us?" And this was last Friday  
19 after we picked the jury, and I made the public records  
20 request, and they sent it to me today. So it's -- it's  
21 not something I intend to admit into trial. It's not  
22 anything that I intend to admit. So I don't know  
23 about -- if there's going to be a full-blown Richardson  
24 thing on it. But that's just the situation with the tape  
25 and with the items that was received from FDLE. It's

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1 the -- it's the actual -- as far I'm aware, it's the  
2 actual printout graph of the testing that FDLE did.  
3 We -- we qualify them as expert --

4 THE COURT: So is there going to be an issue, you  
5 think, then, about the substance? A contest of what the  
6 substance is?

7 MR. EVANS: Judge, let me explain what it is. My  
8 understanding is that, you know, when they do -- when  
9 they do drug testing, it's the -- I think it's the  
10 electrocardiogram.

11 MR. PATTERSON: The gas chromatograph.

12 MR. EVANS: The gas chromatograph. And, basically,  
13 you -- they stick it in there, do it, and it gives a  
14 result, and the person interprets the result as to  
15 whether -- what the substance is based upon the burning.

16 And what Mr. Pumphrey has requested is the -- the  
17 result from the gas chromatograph. And so if you've done  
18 many of these drug cases, you probably never actually had  
19 one of those introduced in the case. If you have, it has  
20 been extraordinary, to where most of the time the expert  
21 just comes in and says, "I tested it. This is what the  
22 results were."

23 THE COURT: All right.

24 MR. EVANS: And so he's asked for the actual results  
25 from the machine. I think that's what they are talking

1           about.

2           THE COURT:  So I'm back to my question:  Is that --  
3           is that going to be an issue at trial?  Are you  
4           contesting --

5           MR. PUMPHREY:  I -- I can't give up my trial  
6           strategy here before the Court.  I can tell you that --  
7           that regardless of FDLE's position about a 119 request,  
8           this is an ongoing investigation.  You know, and,  
9           fortunately, Mr. Wayt in my office has actually been to a  
10          gas chromatograph/mass spectrometer school that I sent  
11          him to for a week.  I haven't had a week to take off to  
12          do that.

13          But what we've asked for is all the information that  
14          showed what testing they did do.  We received a sheet of  
15          paper that was a printout, and I wanted to see -- if  
16          they're using a GC or gas chromatograph, I wanted to see  
17          the gas chromatogram, which is printed out.  For example,  
18          in drug cases or DUI/manslaughter cases, that's normally  
19          there.

20          They also did what's called a gas chromatograph and  
21          then a mass spectrometer.  And I -- on the sheet that we  
22          received, which was just a printout memo of what they  
23          tested and what they didn't test and what the detection  
24          was, I want -- I want to know everything they tested and  
25          what they didn't test.  And so I don't think it's going

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1 to be an issue. I just haven't had a chance to go back  
2 and read that and make the Court aware of it.

3 Now, as to the confession, the recorded confession,  
4 my only concern there is if there are any Brady or Giglio  
5 issues as the case develops during trial. Obviously,  
6 we'll challenge -- and the State will have to lay their  
7 foundation if they can lay it, but it comes in. But then  
8 there is --

9 THE COURT: As we sit here now, you don't have a  
10 motion in your mind that you haven't yet filed but you  
11 have in your mind that I need to hear Thursday morning?

12 MR. PUMPHREY: No, sir, I don't. And I -- I will  
13 represent to the Court that although we are getting this  
14 late, I've been staying up late and preparing, and I  
15 think I'm going to go back and read everything. And I  
16 don't think it will halt the trial or continue it.

17 I may have some Motion in Limines. But, obviously,  
18 I'm going to hold the State to their burden of proof and  
19 their foundations under the Rules of Evidence, and I just  
20 don't want any --

21 THE COURT: I can't blame you for that.

22 MR. PUMPHREY: Yeah. I don't want any surprises  
23 from any experts from the Pensacola lab, which we -- you  
24 know, I always believe, when there's a gas chromatograph  
25 or a mass spectrometer, a piece of equipment, and a human

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1       that's performing it, there's always a chance for error.  
2       And so in this particular case, the State's -- the  
3       state's asserting certain things. I'm not questioning  
4       the detection as of yet. I want to look at it. If the  
5       gas chromatograms say what I think they are going to say,  
6       then there will be no issue about it.

7             If they don't, and we find out something different,  
8       like, it was an over-the-counter medication that was  
9       tested, which has occurred in the past in the Pensacola  
10      lab, well, then, we are going to have a problem, and I am  
11      going to have a motion, and I'll make it at that time.  
12      But I think we have tomorrow before trial --

13            THE COURT: I guess -- I guess I'll be surprised one  
14      way or the other then.

15            MR. PUMPHREY: Yes, sir.

16            THE COURT: Never mind, then. I'll just see you at  
17      9:00 on Thursday, and we'll see what comes up.

18            MR. PUMPHREY: Yes, sir.

19            Judge, we probably need to go back on the record as  
20      to the exhibits and who is transporting them.

21            THE COURT: Yes. They are -- I just thanked the  
22      clerk, who is not from Franklin County, for being here,  
23      especially all this time, and our bailiff. But they had  
24      a question about that. I said I will -- I will take the  
25      exhibits and bring them to Franklin County with me.

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1           MR. PUMPHREY: All right, and we have no objection  
2 to that. Does the State?

3           MR. PATTERSON: No, no, Your Honor.

4           MR. PUMPHREY: All right. Thank you very much, Your  
5 Honor.

6           (The proceedings concluded at 7:40 p.m.)

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## CERTIFICATE

STATE OF FLORIDA:

COUNTY OF LEON:

I, SUSAN BRYANT, Registered Merit Reporter, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages are a true and correct record of the aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED this 25th day of May 2017.



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