

RECEIVED

Apr 28 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PHILLIP RONALD MILLER,

APPELLANT

APPELLATE CASE NO. 2024-000320

RECORD ON APPEAL

JESSICA M. SAXON
Appellate Defender

ALAN WILSON
Attorney General

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

JOSHUA A. EDWARDS
Assistant Attorney General

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

ATTORNEY FOR APPELLANT

BARRY BARNETTE
Solicitor, Seventh Judicial Circuit

180 Magnolia St.
Spartanburg, SC 29306
(864) 596-2575

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
PLEA NEGOTIATION HISTORY	9
MOTIONS TO SUPPRESS	13
TESTIMONY (IN-CAMERA)	
CODY RUSSELL	
Direct Examination by Mr. Hunter	15
Cross-Examination by Mr. MacDonald	24
CONFRONTATION CLAUSE OBJECTION	32
TESTIMONY (IN-CAMERA) CONT'D	
ZACHARY BRUNSON	
Direct Examination by Mr. Hunter	34
Cross-Examination by Mr. MacDonald	49
DEREK VASSAR	
Direct Examination by Mr. Hunter	52
Cross-Examination by Mr. MacDonald	65
ARGUMENTS RE: CONFRONTATION CLAUSE AND SUPPRESSION	73
RULINGS BY THE COURT	108
TESTIMONY	
ZACHARY BRUNSON	
Direct Examination by Mr. Hunter	113
Cross-Examination by Mr. MacDonald	123
Re-Direct Examination by Mr. Hunter	126
CODY RUSSELL	
Direct Examination by Mr. Hunter	127
Cross-Examination by Mr. MacDonald	137
Re-Direct Examination by Mr. Hunter	141
DEREK VASSAR	
Direct Examination by Mr. Hunter	142
Cross-Examination by Mr. MacDonald	151
Re-Direct Examination by Mr. Hunter	155

MOTION TO SUPPRESS	158
TESTIMONY (IN-CAMERA)	
SARAH POWELL	
Direct Examination by Mr. Hunter	158
Cross-Examination by Mr. MacDonald.....	177
ARGUMENTS REGARDING MOTION TO SUPPRESS.....	181
RULING BY THE COURT.....	193
TESTIMONY	
SARAH POWELL	
Direct Examination by Mr. Hunter	194
Cross-Examination by Mr. MacDonald.....	218
BLAKE BARTON	
Direct Examination by Mr. Hunter	220
Cross-Examination by Mr. MacDonald.....	229
PROFFER TESTIMONY (IN-CAMERA)	
BLAKE BARTON	
Direct Examination by Mr. MacDonald	231
ARGUMENTS REGARDING WITNESS TESTIMONY.....	233
RULING BY THE COURT.....	234
TESTIMONY	
KENNETH HANCOCK	
Direct Examination by Mr. Hunter	236
Cross-Examination by Mr. MacDonald.....	241
Re-Direct Examination by Mr. Hunter	243
ROBERT ROSENBERG	
Direct Examination by Mr. Hunter	243
Cross-Examination by Mr. MacDonald.....	247
BETH STUART	
Direct Examination by Mr. Hunter	248
Cross-Examination by Mr. MacDonald.....	258

STATE RESTS	259
RENEWAL OF PREVIOUS MOTIONS	260
RULING BY THE COURT.....	260
MOTION FOR DIRECTED VERDICT.....	261
RULING BY THE COURT.....	262
ADVICE OF RIGHTS.....	263
DEFENSE RESTS.....	267
CLOSING ARGUMENT BY MR. HUNTER.....	269
CLOSING ARGUMENT BY MR. MACDONALD.....	280
CHARGE ON THE LAW	289
VERDICT	315
JURY POLL.....	316
RENEWAL OF ALL MOTIONS.....	317
SENTENCING	320
DEFENDANT’S EXHIBIT NO. 2 (INCIDENT REPORT OF RUSSELL).....	321
INDICTMENTS AND SENTENCE SHEETS.....	322
CERTIFICATE OF COUNSEL	332

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The state,)
4 -vs-) TRANSCRIPT OF RECORD
5) 2022-GS-42-2533;2534
6 Phillip Ronald Miller,)
7 Defendant.) February 27 - 28, 2024
8) Spartanburg, South Carolina
9)

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12
13

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

15 JAMES EDWARD HUNTER, ESQUIRE
16 Attorney for the State

17 DANIEL JAMES MACDONALD, IV, ESQUIRE
18 Attorney for the Defendant
19
20

21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	CODY RUSSELL (SW) In-camera	
4	Direct examination by Mr. Hunter	14
5	Cross-examination by Mr. MacDonald	24
6	ZACHARY BRUNSON (SW) In-camera	
7	Direct examination by Mr. Hunter	32
8	Cross-examination by Mr. MacDonald	49
9	DEREK VASSAR (SW) In-camera	
10	Direct examination by Mr. Hunter	48
11	Cross-examination by Mr. MacDonald	62
12	ZACHARY BRUNSON (SW)	
13	Direct examination by Mr. Hunter	155
14	Cross-examination by Mr. MacDonald	165
15	Redirect examination by Mr. Hunter	168
16	CODY RUSSELL (SW)	
17	Direct examination by Mr. Hunter	169
18	Cross-examination by Mr. MacDonald	179
19	Redirect examination by Mr. Hunter	183
20	DEREK VASSAR	
21	Direct examination by Mr. Hunter	184
22	Cross-examination by Mr. MacDonald	193
23	Redirect examination by Mr. Hunter	197

24

25

1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	SARAH POWELL (SW) In-camera	
4	Direct examination by Mr. Hunter	200
5	Cross-examination by Mr. MacDonald	219
6	SARAH POWELL (SW)	
7	Direct examination by Mr. Hunter	236
8	Cross-examination by Mr. MacDonald	260
9	BLAKE BARTON (SW)	
10	Direct examination by Mr. Hunter	262
11	Cross-examination by Mr. MacDonald	271
12	KENNETH HANCOCK (SW)	
13	Direct examination by Mr. Hunter	278
14	Cross-examination by Mr. MacDonald	283
15	Redirect examination by Mr. Hunter	285
16	ROBERT ROSENBERG (SW)	
17	Direct examination by Mr. Hunter	285
18	Cross-examination by Mr. MacDonald	289
19	DR. BETH STUART (SW)	
20	Direct examination by Mr. Hunter	290
21	Cross-examination by Mr. MacDonald	300

1	Jury qualification	88
2	Jury sworn	141
3	Opening statements	149
4	Closing arguments	311
5	Jury charge	331
6	Verdict	356
7	Sentence	360
8	Certificate	363

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	<u>STATE'S SUPPRESSION EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-6	Cody Russell's body-worn-camera video		14
4	S-9	Copy of warrant		20
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1	<u>DEFENDANT'S SUPPRESSION EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	D-1	Citation	29
4	D-2	Incident report	24
5	D-4	Incident report	72
6	D-5	Defendant's statement	64
7	D-7	Canine Powell body cam	72

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	S-1	Gun and ammunition	134 267
4	S-2	Drugs	134 296
5	S-3	Backpack	134 264
6	S-4	Plastic baggies	134 266
7	S-5	Scales	134 265
8	S-6	Cody Russell's body-worn-camera video	134 171
9	S-7	Sarah Powell's body-worn-camera video	134 203
10	S-8	Canine training	203
11	S-9	Copy of warrant	
12	S-10	Canine certification	200 212
13	S-11	Stipulation	200 278
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1	<u>COURT'S EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	C-1	Printout of cases		138
4	C-2	Printout of cases		138
5	C-3	Printout of cases		138
6	C-4	Question from the jury and response		356
7	C-5	Notice of life sentence, copy of indictment		359
8		and sentence sheet		
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 (Proceedings February 27, 2024)

2 THE COURT: All right. We are here in the matter of
3 the State vs. Phillip Ronald Miller.

4 Any pretrial matters to address?

5 MR. HUNTER: Yes, Your Honor.

6 First, I want to address the guilty-plea offers. The
7 state has been consistent with an offer to Mr. Miller on
8 his case of 20 years. That would be a plea to all of the
9 charges in this case with concurrent 20-year sentencing.
10 Some are 5-year sentences, but 20 years.

11 All other charges against Mr. Miller in Spartanburg
12 County would be dismissed, as well as any other charges
13 against any codefendants of Mr. Miller in any of these
14 cases would also be dismissed.

15 I believe the defense has countered with 15. We have
16 rejected that offer. I would just like for him to reject
17 the 20-year offer on the record because the state has
18 served him with life notice pursuant to 17-25-45.

19 THE COURT: And are there other charges besides these
20 that I have before me here?

21 MR. HUNTER: Yes, Your Honor. He has a prior
22 trafficking charge with a search warrant that happened, I
23 believe, two years prior to that.

24 THE COURT: And those are still pending.

25 MR. HUNTER: Those are still pending. The officer

1 involved in that was shot. So, we couldn't try those for a
2 while because of his recovery. Not shot during the
3 incident with Mr. Miller but...

4 THE COURT: All right. Mr. MacDonald.

5 MR. MACDONALD: Your Honor, from the defense, we just
6 have some suppression motions that we would like to have
7 addressed.

8 One is we want to suppress the stop of the vehicle
9 that Mr. Miller was in.

10 One, we want to suppress the search on the basis of
11 both the stop being unlawful and also the stop being
12 extended.

13 Your Honor, we also have a motion to suppress the
14 drug-dog sniff.

15 Your Honor, we also have a motion -- sorry, Judge --
16 to suppress the stop as being pretextual. And that would
17 be it, Your Honor.

18 THE COURT: All right. And, Mr. MacDonald, you've
19 talked to Mr. Miller about the negotiations that you and
20 Mr. Hunter have been engaged in?

21 MR. MACDONALD: Yes, Your Honor.

22 I have gone over the offer with him this morning.
23 And, in fact, the counter offer that Mr. Hunter spoke of
24 was one that we made this morning. It's my understanding
25 that he wishes to reject that offer, but I'll allow him to

1 make that call, Your Honor.

2 THE COURT: All right. You're Phillip Ronald Miller.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Miller, you've heard what's been said.
5 Is everything that's been said by the lawyers up to this
6 point accurate?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Well, it appears to me that
9 you have an interest in working out some type of a plea
10 agreement.

11 Y'all haven't come to terms, but it appears that
12 you're interested in it because your lawyer says that he's
13 made an offer to the state on your behalf and you tell me
14 you agree with that statement.

15 Has Mr. MacDonald explained to you that the state has
16 made an offer? Of course you don't have to accept it. You
17 have every right to reject it. You can go forward without
18 any offers if you want to. You've made an offer which the
19 state has rejected.

20 Do you understand the offer the state has made to you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you understand that what I've been
23 told is that you have been served with a notice, which
24 would result in a life sentence without the possibility for
25 parole if you are convicted of the crime of trafficking in

1 heroin?

2 Mr. MacDonald's explained that to you, hasn't he?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Well, you made an offer of 15.
5 The state says they've made an offer of 20.

6 Do you understand that you don't have to take it, but
7 if you reject it now, the reason we're here, if you reject
8 it now there'll be no more offers that the Court will
9 consider?

10 In other words, we'll have to go to trial. You can
11 plead guilty. You can go to trial. You can do whatever
12 you want to about the disposition of your case, but there
13 will be no offers or recommendations made to the Court.

14 If you're convicted of the crimes the sentence will be
15 totally up to me. However, if you're convicted by a jury
16 of trafficking, I don't have any discretion. It's a life
17 sentence without the possibility of parole.

18 Mr. MacDonald has explained all of that to you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you made a decision about whether you
21 wish to accept or reject the state's offer?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you need to talk to Mr. MacDonald about
24 it any further?

25 All right. He shared with you the evidence the state

1 has, has he not?

2 THE DEFENDANT: I understand.

3 THE COURT: So, you know what the evidence is that
4 they would present.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. So, you said you've made a decision
7 about the acceptance or rejection of the offer?

8 THE DEFENDANT: I ain't taking it.

9 THE COURT: All right. So, your final decision is you
10 reject the state's offer?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You wish to go to trial before a jury?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you understand that's a final answer.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. All right. First motion is a
17 motion to suppress.

18 MR. HUNTER: Your Honor, I'll just call three
19 witnesses in order we can deal with all of the motions at
20 the same time.

21 THE COURT: Okay.

22 MR. HUNTER: We'll start with Investigator Cody
23 Russell. Or excuse me. Not investigator. Deputy Cody
24 Russell.

25

Cody Russell (In-camera)
Direct examination by Mr. Hunter

1 CODY RUSSELL, having been
2 first duly sworn, testified as follows:

3 MR. MACDONALD: Your Honor, I just have one request.
4 I've given my client Mr. Miller some pen and paper so that
5 he can assist me with the defense of his case. However,
6 he's currently handcuffed.

7 would he be allowed to have one of his handcuffs
8 removed so that he could write down on the notepad I've
9 provided him and assist me with anything that he'd like for
10 me to argue for him?

11 THE COURT: All right. Is there are any objection to
12 that?

13 (No response.)

14 THE COURT: All right. Motion is granted.

15 MR. MACDONALD: Thank you, Judge.

16 MR. HUNTER: Your Honor, for the purpose of the
17 hearing, the state would offer State's Exhibit 6 into
18 evidence for the hearing, Your Honor, which is Mr.
19 Russell's body-camera video.

20 THE COURT: All right.

21 MR. MACDONALD: No objection.

22 (Cody Russell's body-worn-camera video marked State's
23 Suppression Exhibit No. 6.)

24 MR. HUNTER: Instead of playing it for the Court, I'll
25 just allow to have it afterwards if that's okay. or would

Cody Russell (In-camera)
Direct examination by Mr. Hunter

1 you prefer me to play it for you?

2 THE COURT: No. I can look at it later.

3 MR. HUNTER: Okay. All right.

4 DIRECT EXAMINATION BY MR. HUNTER

5 Q Deputy Russell, who are you employed by?

6 A Spartanburg County Sheriff's Office.

7 Q And how long have you been employed at the Spartanburg
8 County Sheriff's Office?

9 A Ten years.

10 Q Okay. And what unit are you in?

11 A Uniform patrol.

12 Q Okay. What are the duties of uniform patrol?

13 A Answer calls for service, traffic stops, warrant
14 service, things of that nature.

15 Q And were you working uniform patrol on March 2nd of
16 2021?

17 A Yes, sir.

18 THE COURT: Let me ask you to pull that mic down just
19 a little bit and pull your chair up to it.

20 THE WITNESS: Okay.

21 BY MR. HUNTER

22 Q Go ahead and speak so we can hear you.

23 A Cody Russell.

24 Q Speak a little bit louder into that mic, because I
25 can't hear you very well either.

Cody Russell (In-camera)
Direct examination by Mr. Hunter

- 1 A Can you hear me now?
- 2 Q Hit the button. There we go.
- 3 THE COURT: Green light.
- 4 Q All right. Now say your name again.
- 5 A Cody Russell.
- 6 Q Okay. Now, what were you doing on March 2nd of 2021?
- 7 A working on patrol.
- 8 Q Okay. Did you receive a call that day?
- 9 A I did.
- 10 Q who did you receive a call from?
- 11 A From Investigator Vassar and Investigator Pennington.
- 12 Q Okay. What did they tell you?
- 13 A They informed me that they had a subject that they --
- 14 that had a warrant and needed me to stop him or stop the
- 15 vehicle.
- 16 Q Who was that subject?
- 17 A Phillip Miller.
- 18 Q Okay. And do you see Mr. Miller in the courtroom
- 19 today?
- 20 A I do.
- 21 Q Okay. Where is he seated?
- 22 A Right there.
- 23 Q At the defense table?
- 24 A Yes, sir.
- 25 Q Did they tell you anything else prior to the stop?

Cody Russell (In-camera)
Direct examination by Mr. Hunter

- 1 A Possible drug case. I knowed since narcs were
2 contacting me that's what it's going to be about.
- 3 Q Any other information given to you?
- 4 A That he might have a gun.
- 5 Q In fact, during the stop, prior to approaching the
6 vehicle, do you contact dispatch that Mr. Miller might have
7 a gun?
- 8 A I told the person that I was riding with that he might
9 have a gun.
- 10 Q And what did -- what were your exact words?
- 11 A He might have a 15-A.
- 12 Q Okay. And 15-A in your dispatching, that would be a
13 weapon?
- 14 A Yes, sir. A gun.
- 15 Q Why -- was Mr. Miller driving?
- 16 A He was not.
- 17 Q Okay. Why did you initiate the traffic stop?
- 18 A Both, I was told that Mr. Miller was in the vehicle
19 and we had a warrant. Also, I observed the vehicle cross
20 the yellow line multiple times while on 26.
- 21 Q Okay. First of all, what road were you on?
- 22 A I was on 26 West -- westbound.
- 23 Q And what county?
- 24 A Spartanburg County.
- 25 Q In the state of?

Cody Russell (In-camera)
Direct examination by Mr. Hunter

- 1 A South Carolina.
- 2 Q Okay. What did you observe? What kind of vehicle was
- 3 it?
- 4 A It was a black Chevy Tahoe.
- 5 Q With a tag of?
- 6 A SMQ 301.
- 7 Q And what did you observe that vehicle doing?
- 8 A Failed to maintain its lane by crossing a yellow line
- 9 multiple times.
- 10 Q Okay. So, not just once?
- 11 A Twice. I believe twice.
- 12 Q Excuse me?
- 13 A Twice. Yes. Both times.
- 14 Q Okay. Did the vehicle pull over?
- 15 A It did.
- 16 Q Okay. Where did you approach?
- 17 A On the passenger side.
- 18 Q And what did you do at that point?
- 19 A I made contact with the driver, and which was a Laura
- 20 Miller. And Phillip Miller was in the passenger seat.
- 21 Q What items did you request from the driver?
- 22 A License and insurance and registration.
- 23 Q And did you receive some of those items?
- 24 A I did.
- 25 Q Did you request anything from Mr. Miller?

Cody Russell (In-camera)
Direct examination by Mr. Hunter

- 1 A I did. I requested his license.
2 Q Okay. And was that provided to you?
3 A Yes, sir.
4 Q Once the license was provided to you -- why did you
5 ask for his license?
6 A Just to verify that's who I was talking to -- Phillip
7 Miller.
8 Q Okay. And was that confirmed?
9 A Yes, sir.
10 Q And you were aware that he had a warrant?
11 A Yes, sir.
12 Q Okay. Was that confirmed in hand at the sheriff's
13 office?
14 A Yes. It was.
15 Q Do you know what that warrant number was?
16 A Do you want me to read it out?
17 Q That's correct. Yeah.
18 A 2021A4210200537.
19 Q And what was that warrant for?
20 A Assault and battery third.
21 Q I'm going to show you State's Exhibit 9. Do you
22 recognize this?
23 A Yes, sir.
24 MR. HUNTER: And, Your Honor, for the purpose of this
25 hearing, the state would offer State's Exhibit 9 into

Cody Russell (In-camera)
Direct examination by Mr. Hunter

1 evidence.

2 MR. MACDONALD: No objection.

3 (Copy of warrant marked State's Suppression Exhibit No.
4 9.).

5 Q What is State's Exhibit 9, Deputy Russell?

6 A That is a warrant for Mr. Miller's arrest.

7 Q Okay. And that's the warrant you served on him that
8 day?

9 A Yes, sir.

10 Q After he's given you the license, you've confirmed
11 it's him, what do you do?

12 A I have him step outta the vehicle and I place him in
13 handcuffs to detain him.

14 Q Okay. Where do you take him?

15 A I take him to the front of my vehicle and search his
16 person.

17 Q Okay. What did you locate on his person?

18 A A sum of money.

19 Q Do you know how much that was?

20 A I do not. I handed it directly to Investigator
21 Vassar.

22 Q Okay. So, you handed the money that you found on Mr.
23 Miller to Investigator Vassar.

24 A Correct.

25 Q Okay. What was Mr. Miller saying at the time?

Cody Russell (In-camera)
Direct examination by Mr. Hunter

- 1 A He asked me what am I doing and can't search my
2 vehicle.
- 3 Q So, he asked you what you were doing and, obviously,
4 you can't search his vehicle.
- 5 A Correct.
- 6 Q Did you ask him to search his vehicle?
- 7 A No, sir. I did not.
- 8 Q Okay. Where did you place him?
- 9 A The rear in my patrol vehicle.
- 10 Q Okay. Now, did an investigator come and speak to him,
11 or did Mr. Miller want to speak to Investigator Vassar?
- 12 A I think investigator -- an investigator did come and
13 speak to him at one point, but I think he requested.
- 14 Q Who requested it?
- 15 A Mr. Miller did.
- 16 Q Okay. Did you transport him to the jail and
17 ultimately book him in jail on this '21 warrant?
- 18 A I did.
- 19 Q Okay. Did you also give a warning ticket to Ms.
20 Miller?
- 21 A Yes, ma'am, or yes, sir.
- 22 Q When did you give her that warning ticket?
- 23 A What is that?
- 24 Q When did you give her that warning ticket?
- 25 A Before I left the scene.

Cody Russell (In-camera)
Direct examination by Mr. Hunter

- 1 Q And do you remember when that was?
- 2 A Not sure. That day.
- 3 Q But it was that day.
- 4 A Yes, sir.
- 5 Q Okay. What was the warning ticket for?
- 6 A Improper -- improper lane use.
- 7 Q And while you did stop this vehicle, were you the only
- 8 one present at the time?
- 9 A No, sir.
- 10 Q Who else was there?
- 11 A Several people, several investigators.
- 12 Q Can you just name some of them?
- 13 A Vassar, Pennington, Blake Barton. And that's all I
- 14 can think of right now.
- 15 Q Okay. Was Ken Hancock there?
- 16 A I'm not sure.
- 17 Q What about Brendall Mathis?
- 18 A Yes. He was there.
- 19 Q All right. So, there were multiple narcotics officers
- 20 there. Those are all narcotics officers.
- 21 A Correct.
- 22 Q Okay. And they were basically right behind you when
- 23 you pulled the vehicle over?
- 24 A Yes, sir.
- 25 Q Why did you pull the vehicle over and not them?

Cody Russell (In-camera)
Cross-examination by Mr. MacDonald

1 A They like to have a marked patrol unit to pull the car
2 over so there's no discrepancies or argument that they
3 didn't know it was a police officer that pulled -- pulling
4 them over.

5 Q Okay. So, what kind of car were you driving?

6 A Unmarked black-and-white.

7 Q Okay. And what kind of car were the investigators,
8 the narcotics investigators, driving?

9 A I think one was a truck, and other vehicles.

10 Q But they're not marked sheriff's office.

11 A Correct.

12 Q They don't have sheriff's office uniform like you're
13 wearing today.

14 A No, sir.

15 Q Okay. So, is that something that you've done in the
16 past and currently for narcotics officers?

17 A Yes, sir.

18 Q It's kind of a standard procedure?

19 A Yes, sir.

20 Q Just to be sure, you didn't participate in the search
21 of the vehicle.

22 A No, sir.

23 Q And outside of arresting Mr. Miller and searching his
24 person, you didn't really participate pretty much in
25 anything else with the traffic stop.

Cody Russell (In-camera)
Cross-examination by Mr. MacDonald

1 A Correct.

2 Q So, it's really Investigator Vassar's traffic stop?

3 A Yes, sir.

4 Q Please answer -- obviously, put the video in. Please
5 answer any questions that Mr. MacDonald may have for you.

6 CROSS-EXAMINATION

7 BY MR. MACDONALD

8 Q Deputy Russell, is it okay if I call you Deputy
9 Russell?

10 A Yes, sir.

11 MR. MACDONALD: Your Honor, may I approach the
12 witness?

13 Q I'm handing you what's being marked as Defense Exhibit
14 2. Can you tell me what that is?

15 A That's my narrative.

16 Q Does that narrative fairly and accurately represent
17 the incident report that you wrote for this case?

18 A Yes.

19 MR. MACDONALD: Judge, at this time for pretrial
20 purpose I'd like to admit Defense Exhibit 2 into evidence.

21 THE COURT: It is.

22 MR. MACDONALD: Thank you, Judge.

23 (Incident report marked Defendant's Suppression Exhibit
24 No. 2.)

25 Q Now, in your report -- you wrote in your report that

Cody Russell (In-camera)
Cross-examination by Mr. MacDonald

1 you were driving westbound at the time on I-26, is that
2 correct?

3 A Correct.

4 Q Okay. And you -- you noticed the vehicle in question
5 commit a lane violation, and that's why you initiated the
6 traffic stop, is that correct?

7 A One of the reasons, correct.

8 Q Okay. That's what's in your incident report.

9 A Correct.

10 Q You had no personal knowledge of who was in that car
11 when you pulled it over, isn't that correct?

12 A I was informed that Phillip Miller was in the car.
13 But as far as me seeing him in the vehicle, no.

14 Q But from -- from your personal perspective, your
15 knowledge, you did not know who was in that car --

16 A Correct.

17 Q -- until after you had gotten their driver's licenses.

18 A Correct.

19 Q And then you were able to identify them, is that
20 correct?

21 A Yes, sir.

22 Q Okay. It wasn't until you looked at Mr. Miller's
23 driver's license, until you were able to confirm that's --
24 that's who he was?

25 A To confirm fully, yes, sir.

Cody Russell (In-camera)
Cross-examination by Mr. MacDonald

1 Q Okay. And then after you confirmed who he was, you
2 were able to confirm that he had a warrant --

3 A Yes, sir.

4 Q -- for his arrest. And that was for the assault and
5 battery third that's in your incident report, is that
6 correct?

7 A Yes, sir.

8 Q Okay. Now, you wrote in your incident report that law
9 enforcement already had the arrest warrant in hand that
10 day, is that correct?

11 A Correct.

12 Q Okay. You placed Mr. Miller in the patrol vehicle
13 yourself, is that correct?

14 A Correct.

15 Q And you said in your incident report with no issue.

16 A Yes.

17 Q Okay. You were the one that called for the canine
18 unit, is that correct?

19 A Yes, sir.

20 Q Okay. And it was that, on your body camera. It was
21 Vassar who told you to call the canine unit, is that
22 correct?

23 A Yes, sir.

24 Q Okay. So, basically, Vassar was kinda just
25 instructing you on -- on what to do that day.

Cody Russell (In-camera)
Cross-examination by Mr. MacDonald

- 1 A Correct.
- 2 Q When it comes to the stop and calling the canine unit,
3 that was the through the orders of Investigator Vassar, is
4 that correct?
- 5 A Yes, sir.
- 6 Q Okay. When you -- when you pulled over or when you
7 initiated the traffic stop, did you activate your blue
8 light?
- 9 A Yes, sir.
- 10 Q Okay. When you activate your blue light does your
11 dash cam go off in your vehicle?
- 12 A I don't have a dash cam.
- 13 Q You don't have a dash cam. Okay. Do you have an
14 in-camera or an in-camera in your car?
- 15 A In-camera in my car, no, sir.
- 16 Q Do you have any sort of recording devices in your car
17 at all?
- 18 A My body camera.
- 19 Q Your body camera. Did you activate your body camera?
- 20 A Yes, sir.
- 21 Q Okay. At what point did you activate your body
22 camera?
- 23 A Right after I got done calling the stop out --
- 24 Q Okay.
- 25 A -- while I was still in my vehicle.

Cody Russell (In-camera)
Cross-examination by Mr. MacDonald

1 Q So you are -- did you witness the infraction before
2 you activated your body camera, or did you have your body
3 camera on and then you noticed the infraction?

4 A I noticed the infraction first and then activated my
5 body camera.

6 Q Okay. So, the infraction would not be on your body
7 camera.

8 A Correct.

9 Q Okay. And the reason why you activated your body
10 camera is because it's Spartanburg Sheriff's Office policy
11 that when you're going to initiate a traffic stop, you
12 activate your body camera, is that correct?

13 A Correct.

14 Q Okay. And that's also a Spartanburg Sheriff's Office
15 Policy that you're to leave your body camera on for the
16 duration of the stop, is that correct?

17 A Correct.

18 Q Okay. You ended up writing a warning citation to the
19 driver, is that correct?

20 A A warning, yes, sir.

21 Q Ms. Laura Miller?

22 A Yes, sir.

23 Q Now, I know that Mr. Hunter has asked this already,
24 but this happened three years ago. What was -- how many
25 years experience did you have as a deputy in 2021?

Cody Russell (In-camera)
Cross-examination by Mr. MacDonald

- 1 A Seven years.
- 2 Q Okay. So, you were -- you were experienced?
- 3 A Yes, sir.
- 4 Q Have you written -- at that time had you written a lot
5 of tickets and citations?
- 6 A Yes, sir.
- 7 Q So, it was second nature for you?
- 8 A Yes, sir.
- 9 Q It wasn't difficult for you to do?
- 10 A No, sir.
- 11 Q It wasn't time consuming for you to do?
- 12 A No, sir.
- 13 Q As long as you have the information you needed.
- 14 A Correct.
- 15 Q Okay.
- 16 MR. MACDONALD: Your Honor, may I approach?
- 17 THE COURT: You may.
- 18 MR. MACDONALD: Your Honor, I am moving to admit
19 Defense Exhibit 1, which is the citation that was issued by
20 Mr. Russell.
- 21 THE COURT: Admitted.
- 22 MR. MACDONALD: Thank you, Judge.
- 23 (Citation marked Defendant's Suppression Exhibit No.
24 1.)
- 25 Q Mr. Russell or Deputy Russell, did you -- you

Cody Russell (In-camera)
Cross-examination by Mr. MacDonald

1 completed that citation, is that correct?

2 A Yes, sir.

3 Q Okay. Did anyone else have any -- take any part of
4 that citation?

5 A No, sir.

6 Q So, you did the entirety that was -- was done by you.

7 A Correct.

8 Q Okay. In that citation there's no other traffic
9 violations mentioned, is that correct?

10 A Correct.

11 Q So, there's no speeding.

12 A No, sir.

13 Q In your report, your reason for the stop that you
14 wrote was that you witnessed the traffic, the failure to
15 maintain lane. That was the reason for you initiating the
16 traffic stop.

17 A That and the knowledge that he was in the vehicle with
18 a warrant, yes, sir.

19 Q When you first approached the vehicle, did you receive
20 a driver's license from the driver Laura Miller?

21 A I did.

22 Q Okay. You testified today that you witnessed the
23 vehicle cross over the yellow line multiple times, but in
24 your incident report you did not specify how many times
25 that vehicle crossed the yellow line, is that correct?

Zachary Brunson (In-camera)
Direct examination by Mr. Hunter

1 A Correct.

2 Q So, in -- in the incident report you just stated that
3 you witnessed the vehicle cross the yellow line and you
4 initiated a traffic stop.

5 A Yes, sir.

6 Q In fact, you were -- you were waiting for a traffic
7 violation to occur so you could issue a traffic stop, is
8 that correct?

9 A No.

10 Q Okay.

11 A I already had enough to stop the vehicle for -- with
12 the knowledge that he was in the vehicle with a warrant.

13 Q But you still waited for a traffic violation to occur
14 first before you stopped it.

15 A No.

16 Q You --

17 A As soon as I got behind the vehicle, I observed the
18 violation before I even turned my blue lights on.

19 MR. MACDONALD: Your Honor, I have no further
20 questions.

21 THE COURT: Step down.

22 MR. HUNTER: Your Honor, at this time the state would
23 call Task Force Officer Zachary Brunson.

24

25

3 MR. MACDONALD: Your Honor, before we get into this
4 testimony, I just want to raise an issue, because this
5 testimony is going to continue to cause me to raise this
6 issue.

16 Judge, so what I'm asking Your Honor to do is not to
17 allow any testimonial statements that the investigator
18 learned from the confidential informant in this case
19 involving Richland County.

23 I do have some case law I can provide Your Honor that
24 would support not allowing this officer to testify to
25 statements that he learned from talking, speaking to a

Zachary Brunson (In-camera)
Direct examination by Mr. Hunter

1 confidential informant in this case who is not present
2 today, Judge.

3 THE COURT: Mr. Hunter.

4 MR. HUNTER: Your Honor, as he stated, this is a
5 pretrial suppression hearing.

6 Some of the things that he is going to testify to
7 include statements from this confidential source, but a lot
8 of his testimony is also going to be based on what he
9 observed, what he did, what he actually saw through an open
10 recording.

11 So, we think at least for suppression at this point
12 that that's an improper motion and he should be allowed to
13 testify for the suppression hearing.

14 In fact, he is going to be the reason that the car
15 stop happened in the first place. What he observed, what
16 he did, he can testify to that.

17 THE COURT: Well, of course he can testify to what --
18 of his own -- what he knows of his own personal knowledge.
19 That's not what Mr. MacDonald is objecting to.

20 MR. HUNTER: Well, he's basically objecting to
21 hearsay, and this is a suppression hearing. The hearsay
22 rule doesn't apply. So, he should be able to testify to
23 that. Now, at a trial that -- that isn't going to be an
24 issue. But for a suppression hearing, I don't believe
25 that.

Zachary Brunson (In-camera)
Direct examination by Mr. Hunter

1 THE COURT: Well, at trial it won't be an issue
2 because this is a pretrial determination.

3 MR. HUNTER: Yeah.

4 MR. MACDONALD: And, Your Honor, I -- I -- and just
5 differentiate from hearsay in the confrontation clause, and
6 I've got some case law that supports that. And I can wait
7 until Mr. Hunter tries to elicit that testimony if you'd
8 prefer. I just knew it's going to be an issue.

9 THE COURT: Well, we'll let him present the testimony
10 noting your objection you'll have to state when you get to
11 a point of an objection.

12 MR. MACDONALD: Yes, sir.

13 THE COURT: And then you can make your argument at the
14 end.

15 MR. MACDONALD: Thank you, Judge.

16 DIRECT EXAMINATION BY MR. HUNTER

17 Q Please state your name for the record.

18 A Zachary Brunson.

19 Q Who are you employed by?

20 A Richland County Sheriff's Department.

21 Q Okay. And what department are you in at the sheriff's
22 department?

23 A I'm assigned to the criminal investigation and I'm in
24 narcotics.

25 Q And how long have you been in that unit?

Zachary Brunson (In-camera)
Direct examination by Mr. Hunter

1 A I've been in narcotics approximately eight years.

2 Q Since 2016?

3 A About that time, yes, sir.

4 Q Okay. And in March of 2021, were you working for
5 another unit at the same time?

6 A I was. For the past three years I've been assigned to
7 a D.E.A. task force. So, I'm part of a D.E.A.
8 hide-a-group, which is high intensity drug trafficking
9 areas, a section of D.E.A.

10 Q Okay. So, you were both working as a sheriff's office
11 narcotics unit, as well as a --

12 A Task force officer.

13 Q -- task force officer for the drug enforcement
14 administration.

15 what did -- what did you do as a task force officer?
16 what are your duties?

17 A Identify drug traffickers, investigate their sources
18 of supply, write reports, conduct search warrants, work
19 with confidential sources or informants, things of that
20 nature.

21 Q Okay. And what would the informants for the
22 confidential sources do for you as the officer?

23 A They help provide intelligence on different
24 individuals who are distributing drugs. They also conduct
25 control buys sometimes.

Zachary Brunson (In-camera)
Direct examination by Mr. Hunter

1 Q And did you conduct a controlled buy with a
2 confidential source on March 2nd of 2021?

3 A Yes, I did. I assisted Sergeant David Caldwell with
4 the -- with a controlled buy on that day.

5 Q Okay. And who was the target of that buy?

6 A Phillip --

7 MR. MACDONALD: Objection, Judge.

8 THE COURT: All right. Note it.

9 Continue.

10 Q Who was the target of that buy?

11 A Phillip Miller who also used an alias of Flip A Beeb
12 or Phil Miller.

13 Q Just generally, how do you -- how do you as an officer
14 do an undercover buy with a confidential source? What are
15 the steps that you take?

16 A I get the information from the per -- about the person
17 they're going to buy from, get their phone number,
18 description, what they drive, where they live, things of
19 that nature.

20 You know, obviously, we discuss what they're going to
21 be purchasing, the price. It's common that we'll sign them
22 up using a confidential-source form either with the Richland
23 County form or through the D.E.A.

24 And then we'll meet up with that confidential source,
25 instruct them what to do. Most of the time they'll reach

Zachary Brunson (In-camera)
Direct examination by Mr. Hunter

1 out to the individual that's selling the drugs and figure
2 out a meeting location, the price and things of that nature.

3 And then before the buy we tell them that we're going
4 to search their person and their vehicle, that is their
5 vehicle, and that they're going to be sometimes provided
6 with a recording device prior to the buy.

7 And then we also provide funds, U.S. currency, for the
8 purchase of the narcotics.

9 Q Specifically with this case, what is a pre-search or
10 what is a prebuy search?

11 A A search of the confidential source's person and
12 vehicle, the vehicles involved, for any currency that we're
13 not giving them, U.S. currency or weapons, contraband.

14 Q Contraband being drugs?

15 A Paraphernalia, drugs, anything of that nature.

16 Q Okay. And did you perform a prebuy search of both the
17 source and the vehicle?

18 A Yes.

19 Q And what were the results of that search?

20 A We did not find any contraband.

21 Q If you had found any contraband or currency, would you
22 have completed the buy at this point?

23 A No.

24 Q Would have called it off?

25 A Yes.

Zachary Brunson (In-camera)
Direct examination by Mr. Hunter

1 Q Okay. What did you provide the confidential source
2 with?

3 A We provided the confidential source with \$1,900 in
4 U.S. currency.

5 Q What about any equipment?

6 A And, yes, our recording device.

7 Q What does that recording device do?

8 A It tracks the confidential source's location, as well
9 as it provides real time audio and video and also makes a
10 recording of that audio and video.

11 Q Were you present when that confidential source called
12 Phillip Miller?

13 A I was.

14 Q Okay. Did you listen to that conversation?

15 A Yes.

16 Q What did Mr. Phillip Miller state?

17 A He stated that he wanted the confidential source to
18 come to his aunt's residence.

19 Q Okay. What location was that?

20 A Ended up being [REDACTED] -- I'm sorry. [REDACTED] Sumter Street.
21 Sorry.

22 Q Okay. And that's in Richland County?

23 A No. That's in Lexington County.

24 Q That's in Lexington County. Okay.

25 A In West Columbia.

Zachary Brunson (In-camera)
Direct examination by Mr. Hunter

1 Q Okay. So, at this point you're acting as the task
2 force officer, because you wouldn't have had jurisdiction
3 as a Richland County officer?

4 A Correct. And we also had a Lexington County narcotics
5 agent.

6 Q Did you have quite a large team on this one?

7 A We did.

8 Q Okay. Do you remember who else was with you?

9 A Sergeant David Caldwell with the Richland County
10 Sheriff's Department; Narcotic Agent Christopher Mastrianni
11 with the Richland County Sheriff's Department; Special
12 Agent Jerry Dyer.

13 Q And he's a D.E.A.

14 A With the D.E.A. Another task force officer with SLED,
15 JeneI McMillan; a task force officer from -- with the
16 Lexington County Sheriff's Department, Michael Merkle; Task
17 Force Officer with the Orangeburg County Public Safety,
18 John Calhoun; and then a task force officer from Orangeburg
19 County Sheriff's Department, Rashad Moore.

20 Q Okay. And, so, all of y'all are doing different
21 duties?

22 A Yes.

23 Q Okay. How much money did you give to the confidential
24 source?

25 A \$1,900.

Zachary Brunson (In-camera)
Direct examination by Mr. Hunter

- 1 Q And you also gave him the video recording equipment?
- 2 A Correct.
- 3 Q Now, are you able to listen or watch in real time the
- 4 video recording equipment?
- 5 A Yes.
- 6 Q And did you do that in this case?
- 7 A Yes.
- 8 Q Okay. So, who turns on that equipment?
- 9 A We do. Law enforcement.
- 10 Q Okay. And did you do that in this case?
- 11 A We did.
- 12 Q All right. Who turns off the equipment?
- 13 A We do -- law enforcement controlling agent.
- 14 Q Okay. And have you checked to see if that equipment
- 15 had been turned on or off any other time since this case?
- 16 A Yes.
- 17 Q Well, for -- for that time period.
- 18 A Yeah. It appeared it hadn't been turned off during
- 19 that time period and continued --
- 20 Q Continued to play the whole time?
- 21 A -- to play the whole time.
- 22 Q And you were watching and listening to this device in
- 23 real time?
- 24 A Yes.
- 25 Q What time did the informant leave your location?

Zachary Brunson (In-camera)
Direct examination by Mr. Hunter

- 1 A Refer to my report.
2 (Pause.)
3 Q Go to bullet point No. 8.
4 A 12:59 p.m.
5 Q Did they make any stops?
6 A They did.
7 Q Where at?
8 A They stopped at a 7-11 gas station.
9 Q Okay. Now, are you following -- you and Sergeant
10 Caldwell following the informant at this time?
11 A It was actually myself and Task Force Officer Merkle,
12 Michael Merkle.
13 Q How close do you get to Sumter Street?
14 A Not very close. It was a tight road. So, we were a
15 couple of streets away in the area.
16 Q But, again, you're able to listen and hear to this
17 recording equipment?
18 A Yes.
19 Q Who did it appear that the confidential source is
20 talking to?
21 A Appeared he was talking to a male -- Mr. Miller.
22 Q And were you able to hear their conversation?
23 A Yes.
24 Q Can you tell me what you remember hearing and seeing
25 at [REDACTED] Sumter Street on that video recording device?

Zachary Brunson (In-camera)
Direct examination by Mr. Hunter

1 A My C.S. gets there, and Miller asked, like, what
2 are -- what are you doing. C.S. says the whole thing. He,
3 Miller, says I ain't got the whole thing. They continue
4 kind of talking about different truck talk. There's
5 mention of a fent.

6 Q What is fent?

7 A In my experience, fentanyl, the drug.

8 Q And that's through your training and experience as a
9 narcotics officer?

10 A Yes. There's some discussion about weighing the bags.
11 There's some -- Mr. Miller says 16-8, and says he'll get
12 the C.S.I. 12 grams.

13 They continued to engage in some conversation talking
14 about mixing drugs, is what it appears based on my training
15 and experience.

16 Mr. Miller talks about looking at different houses,
17 kind of all over the place. Also, mentioned Anderson and
18 the Upstate of South Carolina.

19 And then there's some discussion, what appears some
20 discussion, about a weapon and that it can hold 20 rounds.

21 There's also a point in the conversation where Miller
22 talks about a gun safe.

23 Q Do they talk about users at all? Or, specifically,
24 did Mr. Miller talk about any drug users?

25 A He didn't -- he didn't make mention of shooters, which

Zachary Brunson (In-camera)
Direct examination by Mr. Hunter

1 in my training and experience is people who inject -- they
2 call it shooting -- drugs intravenously in their arms. And
3 then he mentioned something about one round on that toast.

4 Q And, again, you're listening and watching this video
5 in real time?

6 A Yes.

7 Q Okay. And at a certain point the source leaves this
8 Sumter Street?

9 A That's correct.

10 Q Okay. Where do y'all meet back up?

11 A We meet back at a location. We contact the source and
12 tell him to meet at a location with myself and Sergeant
13 Caldwell. He does meet us at that location.

14 Q And did you meet with the source at that time?

15 A We did.

16 Q All right. And did y'all receive the video recording
17 equipment?

18 A We did.

19 Q All right. And y'all can actually be seen turning it
20 off on the video?

21 A Yes.

22 Q Okay. What is a post search, a post-buy search?

23 A A search of the confidential source's person for any
24 contraband other than the, you know, drugs he turned over
25 to us, any weapons, any additional currency, and then, you

Zachary Brunson (In-camera)
Direct examination by Mr. Hunter

1 know, to recover if there's any currency left over from the
2 buy, to obtain that.

3 Q Did you conduct the post-buy search?

4 A We did.

5 Q Was there any contraband or anything that you
6 shouldn't have been able to find on his person or the
7 vehicle?

8 A No.

9 Q Did you recover any of your currency?

10 A We did. We recovered the extra hundred dollars,
11 because during the deal Miller agreed to sell the
12 confidential source the drugs for \$1,800 instead of the
13 already agreed on \$1,900.

14 Q What did you receive from the informant?

15 A He turned over two plastic bags with light-colored
16 powder to Sergeant Caldwell.

17 Q Okay.

18 A Those were placed into Richland County evidence.

19 Q Were those ultimately tested by your department?

20 A They were tested by our lab.

21 Q Okay. What did they turn out to be?

22 A Both of the bags of powder tested positive for heroin
23 and fentanyl.

24 Q Now, when you are doing a drug buy and you have a
25 target, do you run their N.C.I.C. rap sheet before doing a

Zachary Brunson (In-camera)
Direct examination by Mr. Hunter

1 buy?

2 A Yes.

3 Q Did y'all do that with Mr. Miller?

4 A We did.

5 Q Okay. Is he federally allowed to possess a weapon?

6 A No.

7 Q Okay. And, again, there was conversations that you
8 heard by Mr. Miller stating that he had a weapon on him?

9 A That's correct.

10 Q At this point is there a team on Mr. Miller at Sumter
11 Street --

12 A Yes.

13 Q -- or nearby?

14 A There was a team nearby.

15 Q Okay. What do you do?

16 A I was -- after we departed from the confidential
17 source, it was relayed to me that there was a black Tahoe
18 that left the area. And that Tahoe was observed, I guess,
19 earlier in the buy.

20 There was a Tahoe that showed up after there was some
21 conversation with Mr. Miller and the confidential source. A
22 black Tahoe showed up to [REDACTED] Sumter Street.

23 Our agents on surveillance after the buy observed that
24 Tahoe leave with an individual that appeared to be Mr.
25 Miller in the passenger seat, as well as a female driving.

Zachary Brunson (In-camera)
Direct examination by Mr. Hunter

- 1 Q Did y'all run the tag of that vehicle?
2 A We did.
3 Q Do you know who it came back to?
4 A I believe it came back to Laura Miller.
5 Q Okay. So, the same last name as Mr. Miller?
6 A Correct.
7 Q What direction does that car go?
8 A Ultimately, it entered I-26 westbound.
9 Q Heading which direction?
10 A Heading towards, like, the Spartanburg area. It would
11 have to, obviously, go through, you know, Newberry but --
12 Q Through Newberry, Clinton.
13 A Correct.
14 Q But, basically, I-26 westbound from Columbia to
15 Spartanburg.
16 A Correct.
17 Q Do you start tracking that vehicle?
18 A We did. Our surveillance team continued to follow the
19 vehicle.
20 Q And did you, ultimately, get behind that vehicle?
21 A Yes. I called out towards the end of, before he was
22 stopped or before the vehicle was stopped.
23 Q As you're trying to catch up to that vehicle, who do
24 you call?
25 A I called Task Force Officer Robert Cheeks.

Zachary Brunson (In-camera)
Direct examination by Mr. Hunter

1 Q And Cheeks at the time had the same position that you
2 did of Spartanburg County?

3 A Yes, to my knowledge, yes, he was.

4 Q And who did he get you in contact with?

5 A Derek Vassar of the Spartanburg County Sheriff's
6 Department, or office.

7 Q What did you tell Investigator Vassar?

8 A I told him that we had just conducted a control
9 purchase of suspected heroin from Mr. Miller at his
10 location and that he was in his vehicle traveling I-26
11 westbound toward the Spartanburg area.

12 Q Did you tell him if he had anything on him?

13 A Yes. I told him that we believed he had additional
14 narcotics, as well as a firearm inside a bookbag in the
15 vehicle.

16 Q And that's from your viewing -- both in speaking with
17 the confidential source but also your viewing and listening
18 to the device in real time?

19 A Yes. Mostly from listening. And I did not observe a
20 firearm or narcotics in the bookbag on the video but from
21 the audio talking about the 20 rounds and the firearm, as
22 well as the debriefing after that controlled purchase from
23 the C.S., confidential source.

24 Q So, basically, all the information you learned, you
25 then passed on to Investigator Vassar?

Zachary Brunson (In-camera)
Cross-examination by Mr. MacDonald

1 A I did.

2 Q Okay. And, ultimately, when the car was stopped in
3 Spartanburg County, how far were you behind the vehicle?

4 A I -- I observed it getting stopped. I didn't -- I
5 didn't see -- I don't know exactly how far I was behind,
6 but I did -- wasn't there when the units were stopping.

7 Q You weren't there when it was stopped, but you were
8 able to observe it later?

9 A Yes.

10 Q Okay. So, you weren't there at the exact time of the
11 stop, but you were able to pull up sometime --

12 A Correct.

13 Q -- before the stop was over?

14 A Correct.

15 Q Okay. Did you inform Investigator Vassar anything
16 about money?

17 A I don't recall if I told him how much money we had
18 spent on the buy.

19 Q But you had just spent \$1,800 of -- whose currency was
20 it?

21 A It was issued by the D.E.A.

22 Q Okay. For the purposes of a controlled buy?

23 A Correct.

24 Q And do you know how much money was recovered? You can
25 look at...

Zachary Brunson (In-camera)
Cross-examination by Mr. MacDonald

1 A I believe I was told it was \$2,080.

2 Q Okay. And that's what you wrote in your report?

3 A Correct.

4 Q Okay. And, again, how much ultimately was the buy
5 for?

6 A \$1,800.

7 Q Please answer any questions Mr. MacDonald may have for
8 you.

9 CROSS-EXAMINATION

10 BY MR. MACDONALD

11 Q Investigator Brunson -- is that what you go by?

12 A That's fine.

13 Q Okay. You stated that there's a lot of different
14 agencies involved in this case, right?

15 A Correct.

16 Q So, you said there's Richland County, there's
17 Lexington County, there's D.E.A. Task Force as well, is
18 that correct?

19 A That's correct.

20 Q Okay. You said this address was in Lexington County,
21 is that correct, West Columbia?

22 A That's correct.

23 Q Okay. And you said that there was constant
24 surveillance on this house throughout this time period that
25 these events are supposed to have happened, is that

Zachary Brunson (In-camera)
Cross-examination by Mr. MacDonald

1 correct?

2 A I wouldn't say constant surveillance. We would drive
3 by the residence. It was hard to watch.

4 Q You put in your report that there's regular
5 surveillance on the house, is that correct?

6 A Right, like driving by, correct.

7 Q You noted that on drivebys that there was two cars in
8 the driveway at one point, another driveby, there's another
9 car in the driveway. So, there's a regular constant
10 driveby to see what was going on at that residence, is that
11 correct?

12 A That's correct.

13 Q Okay. And you did have an officer that had
14 jurisdiction in Lexington County to make any stops there,
15 is that correct?

16 A That's correct.

17 Q Okay. But no stops were done in Lexington County even
18 though there's constant surveillance on the house, is that
19 correct?

20 A That's correct.

21 Q And according to your testimony there's supposedly a
22 controlled buy that occurred here and there was no -- no
23 arrest made.

24 A That's correct. There was no arrest made for that
25 buy.

Derek Vassar (In-camera)
Direct examination by Mr. Hunter

1 Q Okay. And to this day there is still no warrant out
2 on Mr. Miller for this alleged buy, is that correct?

3 A That's correct.

4 Q Okay. You called Investigator Vassar in advance to
5 have them set up, I guess, for a stop in Spartanburg
6 County.

7 A Correct. I notified him about what was going on.

8 Q Okay. About how much notice do you think he got until
9 the stop was made?

10 A I don't know exactly. Maybe 30 minutes, 20 minutes.
11 I don't know exactly. I'm sorry.

12 Q That's okay. And the information that you received
13 that there would be additional narcotics and a gun in the
14 yellow bookbag, that information was learned when you spoke
15 with the C.I. after the alleged buy was completed, is that
16 correct?

17 A There was conversation on our recording device during
18 the buy that sounded like a gun was being discussed and
19 being shown to the C.S. during the buy with the 20 rounds
20 they mentioned. And then also, yes, the information from
21 the confidential source --

22 Q Right.

23 A -- about additional narcotics being in the bookbag.

24 Q So, when you met back up with the -- with the C.I., he
25 had provided you with that information that you then

Derek Vassar (In-camera)
Direct examination by Mr. Hunter

1 relayed to Investigator Vassar, is that correct?

2 A He did provide information that there was additional
3 narcotics, as well as confirm that the firearm was in that
4 bookbag.

5 Q Okay.

6 (Pause.)

7 MR. MACDONALD: No further questions, Judge.

8 THE COURT: Step down.

9 MR. HUNTER: The state would call Investigator or
10 actually Sergeant Derek Vassar.

11 DEREK VASSAR, having been
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. HUNTER

14 Q Can you give your full name for the record?

15 A Derrick Vassar.

16 Q Okay. And what's your current position with the
17 Spartanburg County Sheriff's Office?

18 A I'm a sergeant with the Spartanburg County Sheriff's
19 Office Narcotics Division.

20 Q Okay. And prior to being at Spartanburg County, do
21 you have prior law enforcement experience?

22 A I do.

23 Q Okay. Can you go over your law enforcement
24 experience?

25 A Yes. I started in 2003 as a patrolman in Oklahoma.

Derek Vassar (In-camera)
Direct examination by Mr. Hunter

1 Approximately 2008, I went to work as a T.F.O. for a drug
2 and violent crime task force in Oklahoma.

3 And after that I was hired full time as a state
4 investigator and assigned to a drug or violent crimes task
5 force for the State of Oklahoma working for the district
6 attorney's office.

7 I then moved to Spartanburg County in 2019 where I went
8 to work for the Spartanburg County Sheriff's Office.

9 Q Did you do a short stint in uniform patrol before
10 going to narcotics?

11 A Yes, I did.

12 Q Okay. And what was your position on March 2nd of
13 2021?

14 A I was a narcotics investigator.

15 Q Okay. Did you know the name Phillip Miller at that
16 time?

17 A I did.

18 Q Okay. And how did you know that name?

19 A Through numerous previous investigations that my unit
20 had conducted on him.

21 Q Okay. In fact, at this time he actually had warrants
22 pending in court?

23 A He did.

24 Q Okay. For what?

25 A Assault and battery third.

Derek Vassar (In-camera)
Direct examination by Mr. Hunter

1 Q All right. Well, that wasn't pending in court yet.

2 But did he have any drug warrants?

3 A Oh, yes. I'm sorry. Yes. He did.

4 Q Okay. You weren't involved in that case, but you were
5 aware?

6 A I was.

7 Q Okay. For large scale trafficking?

8 A That's correct.

9 Q Okay. Did you receive a call on March the 2nd of
10 2021?

11 A I did.

12 Q Who did you receive that call from?

13 A D.E.A. Columbia. Excuse me. I believe I initially
14 received a call from Robert Cheeks.

15 Q Okay.

16 A And then I talked to Columbia D.E.A.

17 Q Okay. And Robert Cheeks was your task force officer
18 assigned to the D.E.A.

19 A Yes. He was.

20 Q Okay. And did you speak to Investigator Brunson?

21 A I did.

22 Q Okay. Can you tell me how that conversation went?

23 A He advised that they'd just done a controlled buy from
24 Phillip Miller in the Richland County area and that he was
25 en route back to, towards Spartanburg County and that he

Derek Vassar (In-camera)
Direct examination by Mr. Hunter

1 should have a bookbag containing a quantity of heroin and a
2 firearm.

3 Q Okay. Did y'all talk anything about money?

4 A I don't recall.

5 Q Okay. Upon learning that information, what did you
6 do?

7 A At that point I gathered a group of narcotics
8 investigators to start heading toward Richland County on 26
9 to the edge of our jurisdiction. And I contacted Deputy
10 Cody Russell that I knew worked in that area to conduct a
11 traffic stop.

12 Q I know he stated this, but why did you have Cody
13 Russell do a traffic stop?

14 A He was in the area. He worked in that patrol area and
15 we had contacted him before to do stops for us. And it was
16 going to be the most efficient way to get someone on 26 at
17 that point.

18 Q What kind of vehicle were you in?

19 A I was in a silver Chevy Silverado.

20 Q Okay. And what were you wearing?

21 A I was wearing a hoodie and some jeans.

22 Q Did you have a vest?

23 A I had a vest. Initially, I wasn't wearing it.

24 Q Okay. But, basically, a combat vest?

25 A Yes.

Derek Vassar (In-camera)
Direct examination by Mr. Hunter

1 Q Okay. Did you look like a police officer?

2 A No. Typically, we do not look like police officers.

3 Q Is that the whole point of the narcotics unit?

4 A Yes, sir.

5 Q Okay. What did you tell Deputy Russell?

6 A I advised him that Phillip Miller was traveling
7 towards Spartanburg County, he should -- on I-26. He
8 should cross in our jurisdiction. I think I gave an
9 approximate timeframe. I don't recall what it was. What
10 the vehicle description was, was a black Chevy Tahoe, and
11 that he had an active arrest warrant and then I believe I
12 told him there should be a female driving.

13 Q Did you tell him anything about a gun?

14 A Yes. I did tell him that we were -- we were advised
15 that he may have a gun in the vehicle with him.

16 Q Okay. And that's, again, information from Task Force
17 Officer Brunson --

18 A Yes.

19 Q -- that's relayed to you?

20 A Yes, sir.

21 Q Okay. And what is a 15-A?

22 A 15-A is a code for a gun.

23 Q Okay. Is that the code you use when you're talking to
24 dispatch or the other officers?

25 A Yes.

Derek Vassar (In-camera)
Direct examination by Mr. Hunter

- 1 Q Okay. How far behind were you and other narcotics
2 officers when the traffic stop was initiated?
- 3 A I don't recall exactly how far I was. We -- we
4 stagger for surveillance purposes. So, we essentially have
5 one car follow, calling out, and then the car turns off,
6 they can continue on. The next car can pick them up.
- 7 Q Were you close?
- 8 A I was fairly close.
- 9 Q In fact, have you had a chance to watch Deputy
10 Russell's body camera?
- 11 A I have.
- 12 Q Were narcotics officers present before you even
13 approached the vehicle?
- 14 A Yes.
- 15 Q Okay. Can you tell me who the other narcotics
16 officers present were?
- 17 A I believe Ken Hancock was present. Blake Barton.
18 They would have been riding together. I believe Brendall
19 Mathis arrived on scene as well, and myself and my partner,
20 Investigator Lauren Pennington.
- 21 Q Was Mathis your sergeant at the time?
- 22 A He was.
- 23 Q Okay. So, there's at least five of y'all there --
- 24 A I believe so, yes.
- 25 Q -- at the time of the traffic stop?

Derek Vassar (In-camera)
Direct examination by Mr. Hunter

1 A Yes, sir.

2 Q As stated, Deputy Russell, while he's the one who
3 initiated the traffic stop, was this your traffic stop?

4 A It was -- technically, it was his traffic stop, but I
5 advised him of the -- of the probable cause that I had
6 previous to his seeing the -- the lane violation and
7 advised him to stop the car.

8 Q Hold on one second.

9 (Pause.)

10 Q Did you make contact with Phillip Miller?

11 A Yes. I did.

12 Q Where was that contact made?

13 A On the side of the interstate -- I-26.

14 Q Okay. What did he state?

15 A Initially, he advised we could not search his car, I
16 believe.

17 Q Were those the exact words or is it a little animated?

18 A He was animated. And if you let me refer to my
19 report, I think I quoted him in my report. I quoted him as
20 saying, "You're not searching my car."

21 Q Okay. At some point do you ask Deputy Russell to call
22 a canine?

23 A I did.

24 Q Why did you do that?

25 A Abundance of caution. And a lot of times we working

Derek Vassar (In-camera)
Direct examination by Mr. Hunter

1 with the D.E.A. and what they -- they had as far as their
2 investigation, we want to try to prevent things from
3 looking as if something may have been -- we had a
4 confidential informant in play in the -- in the case.

5 Q Did you ask Laura or did somebody from your unit ask
6 Ms. Miller for consent to search?

7 A I believe so.

8 Q Was it granted?

9 A It was not.

10 Q Okay. At that point you asked for the canine?

11 A Yes.

12 Q I know he's probably asked. Why -- if you were going
13 to stop this car and search it, why did you not already
14 have a canine present?

15 A We -- we didn't have much time and notice to get -- to
16 get down there. We were conducting the stop at the
17 southern edge of Spartanburg County. We were coming from
18 the northeastern part of the county.

19 Honestly, I didn't even get time to get -- get
20 everybody situated and get down there. We were actively
21 talking to D.E.A. as they were following him back. So, and,
22 ultimately, didn't know that we were going to need a canine.

23 Q But, ultimately, a canine came out?

24 A Yes.

25 Q And she informed you that the canine alerted to the

Derek Vassar (In-camera)
Direct examination by Mr. Hunter

- 1 vehicle.
- 2 A Yes. She did.
- 3 Q Okay. And a search was conducted?
- 4 A Yes.
- 5 Q Okay. And, ultimately, a bag of heroin, a gun and a
- 6 few other things were located?
- 7 A That's correct.
- 8 Q Did you ever go and question Phillip Miller once the
- 9 bag of heroin was located?
- 10 A I spoke with him.
- 11 Q Okay. But did you question him?
- 12 A I did not.
- 13 Q Okay. Tell me how that went.
- 14 A After -- while we were still searching the vehicle, I
- 15 believe Mr. Miller at that time was asking to talk. I -- I
- 16 told him I would talk to him when I get a chance.
- 17 Q Right.
- 18 A So, we were trying to sort some things out.
- 19 Q And that's actually in Deputy Russell's body-worn
- 20 cameras, correct?
- 21 A Yes.
- 22 Q Okay. But at a certain point Deputy Russell turns off
- 23 his body camera. Why is that?
- 24 A We asked him to. I asked him to.
- 25 Q And why did you ask him to?

Derek Vassar (In-camera)
Direct examination by Mr. Hunter

- 1 A That's our policy.
- 2 Q Okay. Well, explain the policy.
- 3 A The policy for the Spartanburg County Sheriff's Office
- 4 is when clandestine officers are on the scene, i.e.,
- 5 narcotics undercover, that all body cams be, and dash cams
- 6 be, turned off.
- 7 Q That's not a policy you made?
- 8 A No.
- 9 Q Just one that you have to adhere to?
- 10 A Yes.
- 11 Q Okay. So you requested him to turn his camera off.
- 12 A Yes.
- 13 Q During the search of the vehicle were you requested to
- 14 come back to Mr. Miller?
- 15 A I was.
- 16 Q By who?
- 17 A I believe -- let me refer and see if there's something
- 18 in my report. I don't recall who exactly told me, but told
- 19 me he wanted to talk to me. I was advised by Deputy
- 20 Russell.
- 21 Q Okay. So, what did you do when he advised you that he
- 22 wanted to talk?
- 23 A I went back to talk to him.
- 24 Q Okay. Explain how that conversation went.
- 25 A So, he was asking me about what we found.

Derek Vassar (In-camera)
Direct examination by Mr. Hunter

- 1 Q So, let me just get this straight. Did you ask him
2 any questions at this point?
- 3 A I did not.
- 4 Q Okay. Who was initiating the conversation?
- 5 A Mr. Miller.
- 6 Q Okay. What did he state?
- 7 A I advised him that we didn't know what we had found
8 and we would talk later and he -- he stated it's her-on
9 [sic], you already know.
- 10 Q All right. That's in your report. Is that a
11 misspelling?
- 12 A No. That is a correct spelling on how he stated it.
- 13 Q Okay. He didn't say it's hera -- heroin.
- 14 A He did not.
- 15 Q What were his exact words?
- 16 A It's her-on.
- 17 Q Okay. How did -- did he provide a written statement
18 to you?
- 19 A He did.
- 20 Q How did that come about?
- 21 A We had spoken with him about his further cooperation
22 in going to his source of supply.
- 23 Q Well, basically, after he tells you it's her-on, tell
24 me the conversation from then on.
- 25 A I don't recall the exact conversation. We,

Derek Vassar (In-camera)
Direct examination by Mr. Hunter

1 obviously -- I turned the evidence that, I believe,
2 Investigator Barton recovered from the vehicle.

3 We kinda got a tally what we had to see what the
4 charges were be -- would be. And initially in a --
5 generally, in -- in this case we're always trying to go up
6 the chain to the text supplier that supplies the most drugs
7 to the area. So, I began a discussion with him about,
8 obviously, who his source was and if he wanted to cooperate
9 to get to that source.

10 Q So, you were asking questions at that point.

11 A I was.

12 Q Okay. And he was in custody at that point.

13 A He was.

14 Q Okay. In fact, he was in custody basically from the
15 beginning?

16 A Yes.

17 Q Okay. On the assault and battery warrant?

18 A Yes.

19 Q But your initial conversation where stated it's
20 her-on, you already knowed. You didn't ask any questions
21 prior to that?

22 A I did not.

23 Q Okay. Also, had you looked up Mr. Miller's criminal
24 history?

25 A I had.

Derek Vassar (In-camera)
Cross-examination by Mr. MacDonald

1 Q Okay. Was he federally allowed to possess a weapon?

2 A He was not.

3 Q Okay. Was he even allowed in the State of South
4 Carolina to possess a weapon?

5 A He was not.

6 Q Okay. Do you know how long after the canine was
7 requested that it showed up?

8 A I don't recall.

9 Q Twenty-two minutes sound about right?

10 A Probably.

11 Q So, again, you had Investigator Russell stop the car
12 based on what Investigator Brunson told you?

13 A Yes.

14 Q As well as the traffic stop or traffic violation that
15 he observed?

16 A Yes.

17 Q Okay. You asked, or consent was asked of Ms. Miller.
18 He immediately told no consent, correct?

19 A Yes.

20 Q And because of that the canine was called out?

21 A That's correct.

22 Q Based on the canine alert, a search of the car was
23 conducted?

24 A Yes.

25 Q And that yellow backpack, State's Exhibit 5 -- 3 was

Derek Vassar (In-camera)
Cross-examination by Mr. MacDonald

1 located?

2 A Yes. It was.

3 Q Okay. with heroin, a gun and other items?

4 A Yes.

5 Q And Mr. Miller claimed the heroin?

6 A Yes.

7 Q Please answer any questions Mr. MacDonald may have.

8 MR. MACDONALD: Your Honor, may I approach the
9 witness?

10 CROSS-EXAMINATION

11 BY MR. MACDONALD

12 Q I hand you what's been marked as Defense Exhibit

13 No. 3. Could you tell me what that is?

14 A That is a -- my narrative from the incident report.

15 Q Did you write that on your own?

16 A I did.

17 Q And did you write that after this took place, this
18 incident took place?

19 A I did.

20 Q Okay. So, while today we're about three years past
21 that, when you wrote that, that was just after it happened.
22 So, it was still fresh in your memory, is that correct?

23 A Yes.

24 Q Okay. So, is this accurate as it could be since it
25 happened right after? You wrote it right after it

Derek Vassar (In-camera)
Cross-examination by Mr. MacDonald

1 happened.

2 A Yeah. within the -- probably the -- within 24 hours.

3 Q Okay. So, you instructed Cody Russell to stop the
4 vehicle, is that correct?

5 A Yes.

6 Q Okay. And you arrived on scene pretty much
7 immediately after the stop?

8 A Pretty short.

9 Q Okay. In your report you -- you explained that the
10 reasons why you called for -- or, so, that you called for
11 the canine to come were for three reasons. Based on his
12 behavior, is that correct?

13 A Yes.

14 Q Based on previous investigations.

15 A Yes.

16 Q And based on the history, his history, of drug-related
17 crimes.

18 A Yes.

19 Q And the behavior you're referring to is when Miller
20 immediately told you you're not searching my car when you
21 arrived on scene unprompted, is that correct?

22 A No.

23 Q Okay. What behavior are you referring to? Because
24 that's the only behavior you mentioned in your report.

25 A So, no. When you're looking and talking about

Derek Vassar (In-camera)
Cross-examination by Mr. MacDonald

1 behavior, you talk about the totality of the circumstance
2 with behaviors. It could be unusual nervousness by being
3 pulled over by the police. It could be answers to
4 questions on common traffic-stop questions. There's a
5 combination of behaviors that cause you to do that.

6 Q Okay. Did you put in your report that he was
7 displaying nervous behavior?

8 A I did not.

9 Q Okay. Are you testifying today that he did exhibit
10 nervous behavior?

11 A He did.

12 Q Okay. So, you left that out of your initial report,
13 is that correct?

14 A Yes.

15 Q Okay. Is there any other behaviors that you left out
16 of your report that you believe now was appropriate?

17 A Not -- not directly, just his overall behavior with
18 the nervousness, and stating you're not searching my car,
19 immediately before we even got to that point.

20 Q So, the nerve -- the only omission that really stands
21 out to you is that, the nervousness part that you didn't
22 put in the report, is that correct?

23 A Correct.

24 Q Okay. So, the canine was requested, correct?

25 A Yes.

Derek Vassar (In-camera)
Cross-examination by Mr. MacDonald

1 Q And you did not go into the car before the canine
2 arrived, is that correct?

3 A I did not.

4 Q Okay. And you waited for the canine to go around the
5 car?

6 A Yes.

7 Q Okay. According to your report the canine then
8 alerted to drugs, is that correct?

9 A That is correct.

10 Q Okay. After the canine alerted to drugs being
11 present, that's when you agreed that there's probable cause
12 to search the vehicle, is that correct?

13 A Yes.

14 Q Okay. And you searched the vehicle.

15 A Yes.

16 Q And were there any other officers that assisted in
17 searching the vehicle?

18 A Yes.

19 Q Can you name those officers?

20 A I believe for sure Investigator Barton, and I believe
21 Ken Hancock at that time.

22 Q Okay.

23 A And there could have been others that I don't recall.

24 Q But those are the ones that you remember being
25 involved in the search of the vehicle.

Derek Vassar (In-camera)
Cross-examination by Mr. MacDonald

1 A Yes.

2 Q Is that correct? Okay. And then it wasn't until
3 after you searched the vehicle and located drugs in the
4 yellow backpack that you went and spoke to Mr. Miller, is
5 that correct?

6 A So, I don't recall exactly the sequence. At some
7 point during the search they found something. I don't
8 believe I had observed it myself at that time. And that's
9 when Deputy Russell asked me to talk to Mr. Miller on his
10 -- he'd asked Deputy Russell to ask me to talk to him. And
11 that's, I believe, when I stated to him I don't know what
12 we'd found at that point and I'd talk to him later.

13 Q But you did not approach him before the search about
14 what was in the car, is that correct?

15 A I don't think so.

16 Q Okay. And then you testified that Miller agreed to
17 write a statement regarding the illegal items found in the
18 car?

19 A Yes.

20 Q So, that statement would have been written after the
21 contraband was located in the car?

22 A That is correct.

23 Q Okay. And you -- you stated during your testimony
24 today that Ken Hancock, Blake Barton, Mathis, Vassar. And
25 you said your partner was also there. What was your

Derek Vassar (In-camera)
Cross-examination by Mr. MacDonald

1 partner's name?

2 A Lauren Pennington.

3 Q Pennington. Is there anyone else that you can recall
4 that was present at the scene?

5 A I believe First Sergeant Mike Walsh was present.

6 Q Mike Walsh. Is he with the narcotics unit as well, or
7 no?

8 A No. He was a uniform patrol sergeant.

9 Q Uniform patrol. So, him and Deputy Russell were both
10 with the uniform patrol?

11 A Yeah. And I believe Deputy Russell had a trainee, but
12 I don't recall her name.

13 Q Okay. So, you probably had three uniform patrol
14 officers there?

15 A Maybe.

16 Q Okay. Now, in your report you never mention reading
17 any Miranda rights, is that correct?

18 A That's correct.

19 Q And you never did.

20 A Did not.

21 Q Your stance today is that you never even questioned
22 him.

23 A That is not my stance completely. We did talk about
24 his cooperation, and that's when the questions came in
25 to --

1 Q So, once he started talking about cooperating, that's
2 when you started asking?

3 A Yes. Previous to that, I did not question him.

4 MR. MACDONALD: Your Honor, may I approach the
5 witness?

6 Q I'm handing you what's been marked as Defense Exhibit
7 5. Could you just tell me what that exhibit is?

8 A It's a voluntary statement from Mr. Miller.

9 Q And -- and did you witness him fill that out?

10 A I did.

11 Q Okay. Did he ever fill out a voluntary Miranda waiver
12 or anything along those lines?

13 A He did not.

14 Q Okay.

15 (Pause.)

16 MR. MACDONALD: May I approach the witness again?

17 (Pause.)

18 MR. MACDONALD: I have no further questions, Judge.

19 THE COURT: Step down.

20 MR. MACDONALD: Your Honor, may we approach?

21 THE COURT: Yes.

22 (Bench conference held off the record.)

23 MR. MACDONALD: Your Honor, the defense moves to admit
24 Defense Exhibit No. 4 into the evidence for this pretrial
25 hearing, which is the incident report for the canine

1 handler Powell.

2 MR. HUNTER: Without objection.

3 THE COURT: Who is the witness -- Sarah Powell?

4 MR. MACDONALD: Yes, sir. Sarah Powell. .

5 THE COURT: All right. It's admitted.

6 (Incident report marked Defendant's Suppression Exhibit
7 No. 4.)

8 MR. HUNTER: And, Your Honor, just as we discussed in
9 the back, should this trial continue forward, Ms. Powell
10 will be here this afternoon. She just has a daughter that
11 has the flu. So, I'm trying to save us and her from having
12 continued contact with her.

13 THE COURT: Okay.

14 MR. MACDONALD: And, Your Honor, Officer Powell, the
15 canine handler, also had a body-worn camera that I would
16 like to admit for pretrial purposes as well.

17 THE COURT: Okay.

18 MR. HUNTER: No objection.

19 THE COURT: Okay. No. 6?

20 MR. MACDONALD: It's No. 7, Judge. I didn't admit No.
21 6.

22 (Canine Powell body cam marked Defendant's Suppression
23 Exhibit No. 7.)

24 MR. HUNTER: My six and his six are the same.

25 THE COURT: Is that all of the testimony and other

1 evidence to be offered in the pretrial motion hearing?

2 MR. HUNTER: From the state, yes.

3 MR. MACDONALD: Yes, Your Honor.

4 THE COURT: Any testimony you want to provide from the
5 defendant?

6 MR. MACDONALD: No, Your Honor.

7 THE COURT: All right. Let's take about ten minutes
8 before y'all argue. We'll take ten minutes.

9 (Whereupon, a recess was taken.)

10 THE COURT: All right. Mr. MacDonald.

11 MR. MACDONALD: Thank you, Judge.

12 I had made an objection earlier on in the hearing
13 about testimony from the officer from Richland County. I
14 was arguing that my client's Fifth or Sixth Amendment right
15 to cross-examine was violated under Crawford vs.
16 Washington.

17 Crawford vs. Washington states that testimony or
18 statements of a witness who have since become unavailable
19 may not be admitted without cross-examination.

20 A lot of the information involving the buy and
21 anything leading up to the stop in Spartanburg County was
22 relying on the statements made by the C.I. in the buy video
23 that was done by the C.I. in this case.

24 Statements made by informants to police for use in a
25 criminal investigation are testimonial, as are statements

1 by an informant to a defendant when an informant knows the
2 government is recording.

3 Informants' statements during a recorded undercover
4 buy identifying the defendant and asking for drugs are
5 testimonial because they are statements implicating the
6 defendant. And the informant knew since it's a -- since it
7 is a buy that the purpose of the meeting was to create an
8 evidentiary record.

9 Judge, that's State vs. Williams. It's a -- it's a
10 nonbinding case. It's 392 P.3d 1267, a Kansas District
11 Court, 2017. I'm going to pass that case up.

12 Further, Judge, U.S. vs. Walker, which is 673 F.3d
13 649. This the Seventh Circuit Court of Appeals opinion,
14 which states that to admit tapes of an informant talking to
15 the defendant where informant didn't testify would violate
16 the confrontation clause, as well as statements made to
17 officers by the informant. I'm going to hand that case up
18 as well.

19 And the last case I'm going to be citing is Curry vs.
20 State. And, Judge, that's the case I want to rely on most
21 extensively. That's 228 S.W.3d 292. Texas Court of
22 Appeals, 2007.

23 That court held that the confrontation clause extends
24 to pretrial suppression hearings. The Texas Court of
25 Appeals held that admitting testimonial statements violates

1 the Sixth Amendment right to confrontation.

2 Even in a suppression hearing in drug possession
3 cases, specifically, the outcome of the suppression hearing
4 often determines the outcome of the trial itself.

5 So, to deny the defendant the protection afforded by
6 the confrontation clause at this critical stage of the
7 proceeding essentially denies him his only opportunity to
8 ensure the evidence presented against him is reliable.

9 So, Judge, those -- those are the cases I'm relying
10 on. I think that my client's right to confront this
11 confidential informant that's being used and that the
12 state's heavily relying on to establish probable cause to
13 search the vehicle in question in this case, I believe that
14 his rights were violated.

15 Judge, so, that's the arguments I'm going to be making
16 regarding the confrontation clause.

17 My next argument, Judge, is going to be pretext, that
18 this was a pretextual stop. A pretextual occurs when a
19 police officer stops -- oh, actually did you want to argue?

20 MR. HUNTER: No. You can keep going.

21 MR. MACDONALD: Okay. Judge, a pretextual stop occurs
22 when a police officer stops a vehicle in order to conduct a
23 speculative criminal investigation unrelated to the
24 motorist driving and not for the purpose of enforcing the
25 traffic code.

1 In this case we have a written report by Deputy
2 Russell who states that his reason for the stop was a
3 traffic violation of not staying in his lane.

4 And the case I'm going to be presenting to you, Your
5 Honor, is United States vs. Smith. That's 799 F.2d 704.
6 That's the Eleventh Circuit, 1986.

7 And that court held in determining whether or not an
8 investigative stop is unreasonably pretextual the proper
9 inquiry is not whether the officer could have validly made
10 the stop but whether under the same circumstances a
11 reasonable officer would have made the stop in the absence
12 of an invalid purpose.

13 In that case the officer decided to follow an
14 automobile based on an inadequate drug courier profile and
15 pulled the car over for slight weaving.

16 The state argued that the stop of the search was valid
17 because they stopped the car to investigate whether the
18 driver was intoxicated.

19 This United State Court of Appeals Eleventh Circuit
20 court ruled that the traffic stop rationale must be
21 rejected as pretextual and the stop suppressed.

22 And the other case I'll be citing is District of
23 Columbia vs. Wesby, and that's 138 S.Ct. 577, 2018. There
24 is a concurring opinion by Justice Ginsburg where she
25 stated that she would like to leave open for reexamination

1 in a future case whether a police officer's reason for
2 acting should factor into a Fourth Amendment inquiry with
3 regards to pretextual stops.

4 Judge, in this case we have a claim that a stop was
5 made by a deputy for a traffic violation when clearly this
6 was more for investigating a drug offense in this case,
7 Judge, and so that makes this stop completely pretextual.

8 Your Honor, I'm going to hand those cases up to you as
9 well.

10 Judge, my next argument is about the initial stop that
11 was made by the -- by Deputy Russell in this case. He
12 testified today that it's for improper lane use, which is
13 statute 56-5-1900.

14 And when probable cause exists to believe a traffic
15 violation has occurred the decision to stop the automobile
16 and seize the occupants is reasonable.

17 If neither the persons driving nor this vehicle
18 transgress any traffic law, the traffic stop becomes
19 unreasonable.

20 And the driving infraction in question on the warning
21 ticket is for improper lane use, which is statute
22 56-5-1900, which states, "A vehicle shall be driven as
23 nearly as practicable entirely within a single lane and
24 shall not be moved from the lane until the driver has first
25 ascertained that such movement can be made with safety."

1 That same statute was referenced in State vs. Alston,
2 which is a South Carolina case, 811 S.E.2d 747, S.C. 2018.
3 They examined the same driving statute we're here for
4 today.

5 The South Carolina Supreme Court held that although
6 the legislator -- legislature prefaced that -- this section
7 with the word shall, thus making it mandatory, the phrase,
8 "As nearly as practicable," eliminates a finding that this
9 is a strict liability traffic offense.

10 So, a motorist's breach of the dividing line does not
11 necessarily equate to a violation of the statute. The
12 implementation of the statute requires a balance between
13 the motorist's rights and an officer's discretion to assess
14 traffic violations to ensure public safety.

15 An individual's constitutional rights against
16 unreasonable seizures must be balanced against the public
17 interest of police officers enforcing traffic statutes
18 designed to ensure safety for the motoring public.

19 While minor traffic infractions may lead to the
20 commendable discovery of an intoxicated motorist, we're
21 cognizant that there are many distractions in today's
22 environment that might -- that may divert a sober
23 motorist's attention and cause him to momentarily
24 inadvertently leave her lane of travel. Allowing police to
25 stop motorists for insignificant driving anomalies creates

1 a stop that will -- environment which is at odds with the
2 Fourth Amendment.

3 In that case, Judge, basically, it's very similar in
4 this case where the driver was stopped because of the
5 driving-line infraction, which is the same reason that my
6 client was stopped in this case we are here for today.

7 The report from the officer states that -- it doesn't
8 say that he did it numerous times. It just states that he
9 crossed over the yellow line.

10 So, I think it's safe to assume from that statement
11 since it was a single time, and that would not give cause
12 to create a stop there, Judge. And I'm going to hand that
13 case up. Apparently, that's your case, Judge.

14 THE COURT: Must be a good one then.

15 MR. MACDONALD: And, Judge, there's four other
16 jurisdictions that I'm going to be citing today that have
17 had similar opinions.

18 The first one is United States vs. Delgado-Hernandez,
19 which is 283 F.App'x 493. That's the Ninth Circuit, 2008.

20 The United States Court of Appeals for the Ninth
21 Circuit found that a similar statute regarding crossing
22 over a fog line briefly, crossing over that line does not
23 violate the statute and that a stop of the vehicle violated
24 the Fourth Amendment. And the drugs were suppressed in a
25 subsequent search.

1 And then in Rowe vs. State, which is 363 Md. 424, 769
2 A2d. 879, 2001, Court of Appeals in Maryland held that a
3 momentarily crossing an edge line of a roadway and later
4 touching of that line did not amount to an unsafe lane
5 change or an unsafe entry onto the roadway in violation of
6 a Maryland statute.

7 In United States vs. Freeman, which is 209 F.3d, 464,
8 the Sixth Circuit, 2000, the United States Court of
9 Appeals, Sixth Circuit, found no probable cause on a single
10 incident of a motor home crossing the fog line for a few
11 feet.

12 And then, lastly, United States vs. Gregory, which is
13 79 F.3d 973, the Tenth Circuit, 1996. The United States
14 Court of Appeals in the Tenth Circuit found a single
15 instance of weaving on a winding mountain road on a windy
16 day did not violate the Utah statute requiring that a
17 vehicle be operated as nearly as practically entirely
18 within a single lane.

19 And, so, Judge I think all of those cases support that
20 this stop was improper under the Fourth Amendment.

21 And that will conclude my argument for the traffic
22 violation not -- or for my client not being in violation of
23 a traffic violation to give reasonable suspension of
24 probable cause for a stop in this case.

25 Judge, my next argument is that there was no objective

1 showing that a traffic violation occurred in this case. A
2 traffic stop is a seizure. Under the Fourth Amendment there
3 must exist reasonable suspicion that a traffic violation has
4 occurred in order for the stop and seizure to comply with
5 the Fourth Amendment. That's Terry vs. Ohio.

6 The individualized suspicion for a traffic stop must be
7 both legally and factually reasonable. The defendant was
8 seized when the officer initiated a traffic stop in this
9 case.

10 In order to comply with the Fourth Amendment there must
11 exist a reasonable basis for concluding that a violation of
12 the motor vehicle laws occurred.

13 The officer had a body-worn camera on and also had a
14 patrol car. The officer had a body-worn camera on in this
15 case that could have recorded the traffic infraction.

16 The issue therefore is whether the body-worn camera
17 shows a reasonable basis to conclude that the traffic
18 violation of failure to maintain lane justifies a traffic
19 stop in this case.

20 Deputy Russell conducted a traffic stop that Mr. Miller
21 was the passenger in. The basis for his traffic stop was --
22 and I quote -- "I observed a black Chevy Tahoe failing to
23 maintain lane by crossing the yellow line."

24 Mr. Russell does not observe any other traffic
25 violations in this report and only provided a warning ticket

1 to the driver for failure to maintain lane.

2 So, Judge, my argument here is that there was no
3 showing of a traffic violation in this case, and therefore
4 it can be argued that there should have been no initial
5 traffic stop.

6 You heard testimony that they were waiting for
7 Mr. Miller's vehicle to come into Spartanburg County so that
8 they could conduct a traffic stop. So, they had every
9 opportunity to make sure that they recorded the traffic stop
10 for the basis for the stop and they didn't.

11 I beg the Court's indulgence.

12 (Pause.)

13 MR. MACDONALD: Your Honor, in State vs. Maryland the
14 state's inconsistent and contradictory versions as to why
15 the defendant was approached in the first instance
16 precluded the state from sustaining its burden of proving
17 the constitutional validity of the stop.

18 The facts in this case presented by the state reveal
19 internal conflicts and contradictory information in their
20 reports versus their in-court testimony here today.

21 Officers testified today at the suppression hearing
22 that they had received word from Richland County of a buy
23 and that was the basis for probable cause for the stop,
24 because they believed he had drugs in his vehicle.

25 However, when you read all the incident reports

1 provided by Spartanburg County officers, there's no mention
2 of a Richland County buy at all in any point, at any point
3 in time.

4 In fact, the only basis for the stop according to the
5 Spartanburg officers involved in this courtroom today are
6 that there was a traffic violation that occurred. And
7 there's no mention of anything happening in Richland
8 County.

9 So, the contradictory versions as to why the defendant
10 was stopped according to State vs. Maryland should preclude
11 the state from sustaining its burden of proving the
12 constitutional validity of the stop in this case, Judge.

13 And, lastly, Judge, I just want to cite you one last
14 case. It's United States vs. Sivilla, which is 714, F.3d
15 1168. That's a Ninth Circuit case from 2013. And that
16 court held that the destruction of evidence can violate due
17 process.

18 In this case the government deliberately failed to
19 provide any video footage of this supposed traffic
20 violation. They deliberately failed to provide any footage
21 of the stop or the extension of the stop or the search of
22 the vehicle in this case.

23 The government cuts off their only body cam four
24 minutes into the stop so that their behavior and actions
25 could not be monitored.

1 The details were intentionally omitted from police
2 reports as well that have been provided to the defense in
3 this case. There had been no mention in the Spartanburg
4 police reports of any buy that occurred in Richland County
5 as the basis for why they were waiting to stop Mr. Miller
6 on the interstate.

7 All of this is a deliberate violation of due process
8 occurring in United States vs. Sivilla and should result in
9 suppression of the evidence in this case.

10 So, Judge, my final argument for the initial stop
11 being unjustified is that the state has kind of gone with
12 two different stories for why there was a stop.

13 The first story that we had through testimony, through
14 incident reports was that there's a traffic violation that
15 occurred and that there may have been a bench warrant or
16 there may have been a warrant for assault and battery third
17 warrant that existed.

18 However, there's also testimony today that's not been
19 provided in any of the Spartanburg reports for the officer
20 that conducted the stop of any information regarding to a
21 confidential informant or a confidential buy that occurred
22 in Richland County for this case.

23 This is unfair to Mr. Miller on a fundamental level.
24 We have law enforcement -- we have law enforcement turning
25 off their body cameras, withholding information in their

1 incident reports and changing information from what they
2 had written in their incident reports at the suppression
3 hearing today.

4 The Court needs to adopt the same reasoning that the
5 Supreme Court in New Jersey used and find that the
6 testimony of the officers to not be credible and suppress
7 the stop and all fruit obtained from the stop.

8 And, Judge, I've got just one more case attacking the
9 stop. That's Broadnax vs. State. That's 485 S.W.3d 432.
10 Texas Criminal Appeals, 2016.

11 That court held that the officer must have more than
12 an articulable hunch or good-faith suspicion to believe
13 that a crime is in progress in deciding whether an officer
14 has a reasonable suspension.

15 The court examines only the facts that were available
16 to the officer at the time of the stop. Evidence to
17 determine if it's not a reasonable suspicion for the stop,
18 the stop violates the Fourth Amendment.

19 Here you can read the incident reports that were
20 admitted into the evidence that there's no mention of
21 anything involving Richland County as a justification for a
22 stop in this case.

23 That's been omitted from all the Spartanburg officers'
24 reports, and so for that reason it should not be considered
25 as a factor for reason for the stop.

1 Deputy Russell had no more than a hunch or good faith
2 suspicion for such an unsubstantiated conclusion. In his
3 report he never once mentioned where Mr. Miller was coming
4 from as a basis for the stop.

5 He even testified here today that he didn't even know
6 if Mr. Miller was actually in the car until he got his
7 license after the stop.

8 The Court must view this -- the Court must view with
9 that -- what knowledge the officer had at the time he made
10 the stop and according -- and according to what's in his
11 written incident report, not what happen -- not what's
12 testified differently at a suppression hearing later that
13 contradicts all of those incident reports that were made.

14 And that's my last argument for attacking the initial
15 stop, Judge.

16 THE COURT: All right. Before Mr. Hunter responds,
17 for the convenience of the jury who's been waiting for
18 about an hour, I propose to bring them in, select a jury.

19 I will hear from Mr. Hunter. The jury will be excused
20 for lunch. I'll read the cases, and then we'll -- I will
21 make a decision during -- after the lunch recess.

22 Okay. Are y'all ready to select the jury now?

23 MR. MACDONALD: I've got a couple of more suppression
24 arguments --

25 THE COURT: Oh, I'm sorry.

Jury qualification

1 MR. MACDONALD: -- before I -- that was my last one
2 for the initial stop.

3 THE COURT: Oh, okay.

4 MR. MACDONALD: I wasn't sure if you wanted me to get
5 through them all.

6 THE COURT: Well, let's do this. How much longer have
7 you got?

8 MR. MACDONALD: I've got just the duration of the stop
9 that I'm attacking and then the dog sniff where -- I guess
10 we are going to do that --

11 THE COURT: Well, let's do the -- let's get the jury
12 so they can be excused.

13 MR. MACDONALD: Yes, sir.

14 THE COURT: And then we'll finish.

15 I thought this suppression hearing was going take an
16 hour this morning. That's why I had the jury come in at
17 10:30. It's taken a lot longer than I anticipated. So,
18 for the convenience of the jury, we'll pick them, and then
19 we'll continue with your argument.

20 (Pause.)

21 THE COURT: All right. Are we ready for the jury?

22 MR. HUNTER: The state is ready, Your Honor.

23 MR. MACDONALD: Yes, Your Honor.

24 (The following takes place in the presence of the jury
25 venire.)

1 You can't even talk about it with your mellow jurors.

2 You're only permitted to talk about the case when the
3 time comes for deliberations in the case, and that's not
4 until the end after all of the evidence has been received
5 and I've instructed you on the law that's applicable and
6 then you've been asked to begin deliberations.

7 So, no discussions about the case at any time until
8 you begin with the deliberations.

9 Also, you can't be exposed to any information about
10 the case. No television, radio or newspaper. I don't
11 expect any, but if there is some, you avoid it.

12 And you can't do any research or do your own
13 investigation into any issue. So, no internet research
14 about this case or anything similar to it.

15 You have to base your decision upon what you see and
16 hear during the trial, and under your oath you're not
17 permitted to be influenced by any outside or extraneous
18 information. You have to base your decision upon what
19 comes in during the trial.

20 Okay. So, with that caution, have a good lunch. I'll
21 see you this afternoon at 3:00 o'clock -- 3:00 o'clock this
22 afternoon.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: All right. Mr. Hunter, do you want to

1 respond to Mr. MacDonald's argument?

2 MR. MACDONALD: I had two more, Judge.

3 THE COURT: I'm sorry. You weren't finished. That's
4 right.

5 MR. MACDONALD: And I do have a third one that's
6 involving the dog sniff. I'm assuming you're going to do
7 that in the afternoon.

8 THE COURT: Okay.

9 MR. HUNTER: Maybe tomorrow.

10 MR. MACDONALD: Or tomorrow.

11 Okay. So, Judge, the next argument I'm making is
12 regards to the detention. Florida vs. Royer states that --
13 which is 460 US 491, 1983 -- a seizure during an
14 investigative stop may last no longer than is necessary to
15 effectuate the purpose of the stop.

16 The purpose of the stop in this case, according to the
17 incident report of Deputy Russell, was for a line violation
18 that we've already -- that we've already discussed.

19 That occurred at 3:10 according to the body camera of
20 Deputy Russell.

21 At 3:11 he received the driver's license. According
22 to the body camera, he received the driver's license of the
23 driver of the vehicle, as well as the passenger.

24 At 3:12 he detains Mr. Miller.

25 At 3:13 he advises Mr. Miller he has a warrant for an

1 assault and battery third degree.

2 At 3:14 Miller is placed in handcuffs and put in a
3 patrol car.

4 At 3:15 a canine is requested.

5 At 3:30 a voluntary statement is provided.

6 At 3:33 a canine arrives to the scene.

7 At 3:37 the canine starts a sniff.

8 And at 3:39 the canine gives its final indication
9 according to the report of the dog -- canine handler.

10 At some point after that the vehicle is searched.

11 There is, according to the incident report, there's no
12 time given.

13 But at some time after 3:39 the vehicle is searched.

14 What started as just a stop for a traffic violation
15 extended well beyond the time it took for an officer to
16 write a warning. And the officer testified that he was
17 seven years experience at the time and was very familiar
18 with writing warning tickets. And, so, the amount of time
19 it would have taken to write that warning definitely
20 extended the duration of the stop.

21 And, so, for that reason, judge, we would argue that
22 the seizure is unreasonable and a violation of the Fourth
23 Amendment.

24 The other case to back that up I'm citing is U.S. vs.
25 Sharpe, 470, U.S. 675, 1985. And that Court argued that or

1 found that what begins as a reasonable seizure is
2 transformed into an unreasonable one if it extends the stop
3 beyond the time necessary to fulfill the purpose of the
4 stop.

5 Questioning can transform a reasonable seizure into an
6 unreasonable one if it extends the stop beyond the time
7 necessary to fulfill the purpose of the stop. And so
8 that's -- our argument is that the stop was longer than
9 what its initial purpose was for, Judge, and so everything
10 recovered after that should be suppressed.

11 However, the -- the duration of the stop can be
12 expanded if there is reasonable suspicion of criminal
13 activity. And this is in -- this is the Rodriguez Supreme
14 Court case.

15 But, Your Honor, the government has provided
16 incomplete and contradictory discovery. In regards to the
17 Rodriguez issue of extending the stop.

18 In the Rodriguez case the Court has held that during
19 unlawful -- during an otherwise lawful traffic stop, asking
20 a driver to exit a vehicle conducting a drug sniff with a
21 trained canine or asking a few off the top in questions
22 are -- are de minimis intrusions that do not require
23 reasonable suspicion of criminal activity.

24 A traffic stop that is reasonable at its inception
25 becomes unreasonable if it extends beyond the period of

1 time necessary to carry out the purposes of the stop.

2 In Rodriguez the officer issued a warning and returned
3 the driver's documents prior to the dog sniff.

4 Similarly here, the dash cam video, the four minutes
5 that we have before it get cut off, shows Deputy Russell
6 obtain the driver's license from the driver and also placed
7 Mr. Miller in the back of a squad car for a [sic] assault
8 and battery warrant within four minutes of the stop.

9 The dog sniff doesn't occur for over 20 minutes later
10 after the stop begins. Rodriguez case makes it clear that
11 the question is not whether the dog sniff occurs before or
12 after the officer issues a warning but rather whether
13 conducting the sniff added time to the stop.

14 A police stop extending the time needed to handle the
15 matter for which the stop was made for violates the Fourth
16 Amendment, even under the most expansive interpretation of
17 how much time an officer needs to complete the mission of
18 the traffic stop.

19 Certainly, the time needed to handle the matter for
20 which the traffic stop was initiated would have ended
21 before the canine arrived in this case.

22 Judge, discovery shows in the incident reports that
23 Deputy Powell was called for a five -- at 1515, which is
24 3:15, five minutes into the stop, and it wasn't until
25 3:33 that the canine unit arrived. And it wasn't until

1 3:39 until we got indications in this case.

2 And, so, it's a very -- it's very clearly that this
3 stop was extended beyond the scope of the stop and without
4 reasonable suspicion existing.

5 Judge, I did -- I'm also providing a couple of cases
6 from other jurisdictions to also support this. The first
7 one is United States vs. Cheatham, which 577 Fed A. P.P.X.
8 500. That's a Sixth Circuit in 2014.

9 Officers conducted a traffic stop which the driver was
10 arrested and put in the back of a police car. The officers
11 then ordered the passenger out of the vehicle and told him
12 to put his hands on his head and conduct a pat-down search
13 finding a pistol and had hashish.

14 Officers arrested the passenger. The Court held that
15 the traffic stop had been completed upon the arrest of the
16 driver and there's no reasonable suspicion to extend the
17 stop further.

18 And then the other case is United States v. Gordon.
19 That's 2018 W.L. 2843277. That's the Eastern District of
20 Michigan, 2018.

21 Officers stopped a motorist for following too closely,
22 completed the paperwork and a background check but
23 proceeded to call for backup.

24 Twenty-nine minutes into the stop a firearm was found
25 in the passenger's purse and then a dog -- and then a

1 drug -- and then they conducted a drug sniff.

2 The Court held that a 30-minute gap between the
3 officer obtaining and continuing to issue a ticket and
4 discovery of evidence for giving the intent for the
5 officers to discover other crimes despite the absence of
6 reasonable suspicion. without

7 Lastly, Judge, the -- what was referenced today but
8 not in the incident reports for a reason for extending the
9 stop that Investigator Vassar referenced was nervous
10 demeanor of the defendant in this case.

11 There's two cases that cite that. The first one is
12 United States v. Rodriguez-Escalera. That's 2018, W.L.
13 117, 8359. That's a Seventh Circuit case that was ruled
14 out in March, on March 7th of 2018.

15 This Seventh Circuit case held that the video of the
16 traffic stop is the most reliable evidence of the
17 detainee's demeanor. And in this case the body-worn camera
18 of Deputy Russell shows that there is no nervous demeanor
19 that Mr. Miller has in this case. And so that should not
20 be applied for -- a factor to apply for extending the stop.

21 The Court need not credit the officer's testimony that
22 Mr. Miller was nervous. It is apparent from the body-worn
23 camera that he was calm and complied with Deputy Russell's
24 orders and went to the patrol car without issue according
25 to his incident report.

1 The other case is United States v. Bowman, 884 F. 3d
2 200. That's a Fourth Circuit case, 2018. The Fourth
3 Circuit held that nervousness is not -- is an unreliable
4 indicator, especially in the context of a traffic stop. A
5 driver's nervousness is not a good indicator of criminal
6 activity because most everyone is nervous when interacting
7 with police.

8 The Bowman court distinguished the basic behavior from
9 nervous behavior where basic behavior is more likely to
10 create reasonable suspicion.

11 And, Judge, the other two factors that were cited by
12 Investigator Vassar for the reason to extend the stop was
13 previous investigations and a history of drug-related
14 crimes. However, that was not expanded upon in his
15 incident report, and so there really has been no reason to
16 extend the stop that's been provided before the Court
17 today.

18 Judge, so for that reason the duration -- the stop was
19 unlawfully extended and should be suppressed.

20 Judge, thank you. And I'm going to hand up these last
21 cases.

22 Lastly, Judge, in regards to the statements that were
23 made, we're asking the statements be suppressed. There's
24 been no showing that any statements were voluntarily given.
25 There's been no showing that Miranda was ever given.

1 In fact, testimony here from the investigator was that
2 he never issued Miranda warnings to my client, and even
3 though he did approach him and tried to speak with him.

4 So, and he was in the back of a patrol car. He was
5 handcuffed already, so he was clearly in police custody.
6 He was not free to leave. And so the statements that he
7 made were not voluntary and should be suppressed for
8 Miranda purposes, Judge. He was not -- and he did not sign
9 a voluntary waiver either.

10 So, we would ask that all verbal and written
11 statements be suppressed in this case. Thank you.

12 MR. HUNTER: Your Honor, I'll first start with the
13 statements.

14 I agree that he was in custody in this case. I don't
15 think that's an issue that we had a question with. The
16 question is whether the written statement is different from
17 the verbal statement.

18 And as I told Mr. MacDonald as he was -- earlier, our
19 argument is the state is not going to present that written
20 statement. I do believe that it was given while in custody
21 and while being questioned by officers without giving
22 Miranda. So the state will not be attempting to enter the
23 written statement.

24 However, I believe the verbal statement is different.
25 That is a statement that was given by, according to

1 Investigator Vassar, given by Mr. Miller.

2 Mr. -- Investigator Vassar didn't ask him any
3 questions. Mr. Miller actually asked to speak to Mr.
4 Vassar. Mr. Vassar approached, and Mr. Miller in an
5 excited utterance and also without prompting from
6 Investigator Vassar allegedly said that statement.

7 I understand they're going to argue whether he said
8 that statement or not, but it was not done under custodial
9 interrogation while he was in custody. There was no
10 interrogation. That statement was freely given by the
11 defendant to the officer without any questioning and
12 without any prodding.

13 So, again, the state will not be attempting to
14 introduce the written statement. However, we will ask the
15 Court to rule that the verbal statement was given outside
16 of custodial interrogation. There was no interrogation
17 that is -- will be properly admitted at the time.

18 He went through a litany of motions, Your Honor, all
19 doing with the stop except for one, I think, at the
20 beginning. Our argument for most of that is all going to
21 be the same.

22 I understand the defense's theory about the extended
23 traffic stop that Mr. Russell made. If the D.E.A. had not
24 given the tip to Investigator Vassar, I do agree that the
25 stop was probably extended more.

1 However, our main argument is that P.C. existed at the
2 moment that the undercover buy happened in Richland County.
3 The D.N.A. could have stopped that car at any time based on
4 that undercover buy through the common-knowledge doctrine
5 imparted to investigators Vassar and Russell.

6 They had P.C. to stop and search that car at the time
7 the stop was made. They can continue to attempt to get
8 more P.C., more reasonable suspension to continue to -- to
9 build their case, but I would -- our first argument is that
10 at the time that Investigator Brunson called Investigator
11 Vassar, relayed that information of the buy, as well as the
12 fact that he has a gun, that cash was used, that
13 information with Investigator Vassar and Investigator
14 Deputy Russell would have been probable cause at the time
15 of the stop to stop the car and search it.

16 Notwithstanding that part of the argument during these
17 motions was that the traffic violation was not shown, that
18 there was no traffic violation.

19 He also argued that the initial stop, there was no
20 probable cause in the traffic violation. We have Deputy
21 Russell who gave his testimony. In his testimony he stated
22 he observed at least twice, multiple times that the car
23 hitting the yellow line.

24 Based on the statement of -- his testimony --
25 Investigator Russell. Excuse me. I keep saying

1 investigator. Deputy Russell. Seeing the act of swerving
2 and hitting the line multiple times was reasonable or was
3 probable cause of the traffic violation of the statute.

4 So, the stop was permitted under that traffic statute,
5 notwithstanding that I believe that the stop would have
6 been fine even if he didn't have a traffic violation based
7 on the probable cause given by Investigator Brunson out of
8 Richland County.

9 So, he stated he had done it multiple times. The
10 State vs. Alston is the case that he cited. That was a
11 case actually in front of Your Honor. I was the
12 prosecutor. Andy Johnston was the defense attorney. I
13 believe Chief Justice Beatty actually wrote that opinion.

14 But in that case, again, one stop, hitting the line,
15 the Court did not like. However, in this testimony we have
16 hitting the line at least twice. So, we believe that is
17 probable cause of a traffic violation, therefore, a good
18 stop.

19 Further, from the information from Investigator
20 Brunson, they also believe that Ronald Miller was in the
21 vehicle, the vehicle driven by Laura Miller, registered to
22 Laura Miller, and that he had an active warrant.

23 So, information from D.E.A., the traffic violation,
24 knowing that he had a warrant all would have risen to
25 probable cause, first, to stop the car. Also, then to

1 search it.

2 However they didn't even stop there. They wanted to
3 go ahead and make sure that they had everything, so they
4 called the dog.

5 Ultimately, we're going to hear, hopefully hear,
6 testimony from Investigator Powell about that.

7 But to go back to the second to last motion, the
8 extension of the stop, again, it's the same argument. We
9 believe that P.C. existed at the time that the drug buy in
10 Richland County that lasted up into Spartanburg County
11 based on the common-knowledge doctrine for the officers.
12 But, in any case, the traffic stop was not extended.

13 They heard evidence -- Investigator Vassar -- that
14 there was a gun in the car. Mr. Phillip Smith is federally
15 and state prohibited from possessing a weapon,

16 They knew that he had an arrest warrant. That warrant
17 was in hand at the sheriff's office. So, at that point
18 calling the dog is just an extra step. They don't have to
19 search the car when, immediately when, they get probable
20 cause. They can continue building it.

21 The stop was not extended. The purpose of the stop
22 was not over based on the fact that they knew he had a
23 warrant, based on the fact that they knew he had previous
24 indictments, currently under indictment for drugs and the
25 D.E.A. investigation in Richland County.

1 He also argued that this was a pretextual stop under
2 United States vs. Whren, pretextual stops are allowed as
3 long as there's probable cause of a traffic violation or
4 reasonable suspicion of a crime. We believe that the
5 testimony from these officers has shown that that is the
6 case here today.

7 I have a few cases -- not as many as Mr. MacDonald --
8 specifically dealing with the common-knowledge doctrine.
9 One is United States vs. Bernard. It's a 2012 case out of
10 the Third Circuit, as well as United States vs. Williams.
11 It's a Seventh Circuit Court of Appeals opinion, Your
12 Honor.

13 And, Your Honor, these cases deal with what
14 information can be imparted from one officer to another, a
15 very similar situation where, I believe, D.E.A. and F.B.I.
16 had information that's then given to local law enforcement.

17 In this case we actually have the D.E.A. task force
18 officer here presenting testimony. Based on his knowledge,
19 he has done uniform or U.C.I. buys before, undercover buys.

20 He met with the informant. He searched the
21 informant's car and person, found no contraband, no money,
22 no extra thing that could stop the deal.

23 He gave \$1,900 to that informant. That informant was
24 given a recording device which was turned on by the
25 officers, was then watched and listened to by the officers

1 in real time.

2 They followed that informant to a gas station, then
3 onto the [REDACTED] Sumter Street residence where, based on his
4 training and experience, he heard and observed a drug deal,
5 heard talk from Mr. Miller possessing a weapon that could
6 hold 20 rounds.

7 Again, Mr. Miller is federally and state prohibited
8 from possessing a weapon.

9 They then met back with the informant where heroin was
10 turned over that ultimately tested to be heroin at the
11 Richland County Sheriff's Department.

12 \$100 from the buy was given back. There was a post
13 search, post-buy search, where nothing was located --
14 contraband or any other extra money.

15 They then followed Mr. Miller from Richland County to
16 Spartanburg where ultimately, again, based on that
17 information, as well as the fact that he had a warrant, the
18 car was stopped.

19 So, we believe that the car stop, initial car stop, is
20 valid based on what Investigator Brunson gave to
21 Investigator Vassar and on return to Russell.

22 We believe that the car stop was not extended because
23 the P.C. for the stop actually also is probable cause to
24 search.

25 As you are familiar in multiple cases, a [sic]

1 undercover buy when done properly gives you probable cause
2 to search a house when taken before a magistrate for a
3 search warrant.

4 . We believe the automobile exception applies here and
5 that the information given by Investigator Brunson gave
6 them probable cause to search that vehicle absent anything
7 else. Nothing else happened in this case. We still
8 believe that probable cause existed from that alone.

9 He also argued that there was no traffic violation
10 shown. Just because the officer does not have an in-car
11 camera and was not caught on body camera does not mean that
12 the violation didn't occur. Just because something is not
13 caught on camera does not mean it didn't happen. It'd be
14 nice to have that, but in multiple -- in most cases we
15 don't.

16 The body camera is not going to catch what happens on
17 the road.

18 He also argued destruction of evidence. I didn't hear
19 any testimony that any evidence was actually destroyed,
20 more that he wishes there was evidence present. But we
21 have turned over everything that we have. I don't believe
22 there has been any testimony that any evidence was actually
23 destroyed.

24 And then, finally, Your Honor, his first argument was
25 that Investigator Brunson's testimony violated the

1 confrontation clause, specifically, that he was testifying
2 as to what the C.I. told him. And some of the testimony,
3 as we argued before, was going to be what the C.I. told
4 him.

5 However, even if you take that out, what Investigator
6 Brunson observed on that video in real time that he started
7 and stopped, what he heard from Mr. Miller, even if you
8 believe that the statements from the informant in this case
9 do violate either hearsay or confrontation clause, that
10 alone would still have been enough for a probable cause
11 stop and search of the vehicle, just like it would have
12 been if he had gone to a magistrate with that information
13 to search a house or anywhere that location where that buy
14 had occurred.

15 Further, in the case that he actually cited in the
16 State vs. Curry case, turning to the end of it and their
17 decision in that case that the confrontation clause applies
18 in pretrial hearings, they even state that that is in
19 direct violation of one of the previous cases that they had
20 decided. I believe it was either in a concurring opinion
21 or descending opinion on that. There was a direct
22 violation of another one that they had previously decided.

23 That is not controlling here in this state. I believe
24 this state in pretrial hearings, the rules of evidence,
25 specifically the hearsay, the confrontation clause for

1 pretrial, obviously, at trial is going to be a lot
2 different. I cannot talk about what the informant told
3 him. That is hearsay. He's not going to be able to
4 confront him on that.

5 However, for the purposes of pretrial suppression
6 motion, I believe it was valid and that the testimony today
7 from all of the officers and the video that's shown today
8 leads the P.C. for the stop, P.C. for the search and that
9 the search was -- and stop were valid.

10 MR. MACDONALD: Your Honor, I will now briefly reply.
11 I will not be as long as last, as earlier.

12 Judge, just to reply to what Mr. Hunter stated, first
13 one is where he stated that the testimony here today from
14 Deputy Russell was that he observed multiple times that the
15 vehicle was hitting the dotted line, again, this goes
16 against everything that they wrote down in their incident
17 reports that they wrote just after this happened.

18 He wrote in his incident report that they crossed the
19 dotted line. He didn't say they crossed multiple times.
20 In fact, he only issue a warning citation. He put nothing
21 in his report that the driver of the vehicle appeared to be
22 intoxicated or dizzy or was showing any signs that she was
23 impaired at all.

24 Next, Mr. Hunter keeps referencing this buy as
25 probable cause and that's -- that's the big issue in this

1 case because there's incident reports that have been
2 provided that were written by Spartanburg County that
3 justified their stop, their extension of the stop. They're
4 reaching out to a drug dog because that's what they had
5 available to them at the time. That's the information that
6 was available to them at the time.

7 If they knew about this information, then why would
8 they omit that from their incident report that shows that
9 they had probable cause to search the vehicle? It doesn't
10 make any sense when they're supposed to be honest when they
11 write their incident reports. They're not supposed to omit
12 information. They're not supposed to leave any information
13 out.

14 But, clearly, if we're going to follow the argument
15 that the solicitor is putting forward today, then all
16 officers can just lie on their incident reports and then
17 retroactively, once the time comes for a suppression
18 hearing, they can amend and adjust as much as they want so
19 that they can fit within the perimeters of the law.

20 I think that Your Honor needs to look at what the
21 officers knew at the time that this offense occurred. And
22 what they knew at the time would be what they put in their
23 incident reports.

24 Nothing is mentioned about Richland County in their
25 incident reports, or Lexington County.

1 And then lastly, Judge, in my argument -- I wasn't
2 accusing the destruction of evidence per se. What my
3 argument before the Court was that turning off your body
4 cam mid stop is in my opinion equivalent to destroying
5 evidence, because we have no way to oversee the conduct of
6 those law enforcement officers to make sure that they
7 stayed within the confines of the Fourth Amendment, that
8 they were following the law properly.

9 We don't get to know that because four minutes into
10 the stop the only visual information we've been provided to
11 got cut off, and so we can't evaluate and see if any rights
12 of my client were violated. And so that's what we're
13 arguing today. Thank you, Judge.

14 THE COURT: All right. I'll review it during the
15 lunch recess and issue an order after or a ruling
16 afterwards. Right now we're in recess until 3:00 o'clock.

17 (Whereupon, a recess was taken.)

18 (Gun and ammunition marked State's Exhibit No. 1 for
19 Identification; drugs marked State's Exhibit No. 2 for
20 Identification; backpack marked State's Exhibit No. 3 for
21 Identification; plastic bags marked State's Exhibit No. 4
22 for Identification; scales marked State's Exhibit No. 5 for
23 Identification; Officer Russell's body-worn camera video
24 marked State's Exhibit No. 6 for Identification; Officer
25 Powell's body-worn camera video marked State's Exhibit No. 7

1 for Identification; canine training marked State's Exhibit
2 No. 8 for Identification; copy of warrant marked State's
3 Exhibit No. 9 for Identification.)

4 THE COURT: All right. Regarding the motion to
5 suppress, in this particular case, as I understand it, the
6 state is contending that the stop and the search and the
7 seizure and the arrest of the defendant was based upon
8 three theories.

9 One is a valid traffic stop and a search incident, and
10 an arrest thereto; secondly, an arrest by the defendant on
11 a valid warrant after determining he was in the vehicle and
12 therefore stopped; and, thirdly, a stop, a search and a
13 seizure based upon the existence of probable cause.

14 In the criminal-law context probable cause refers to
15 the existence of facts and circumstances founded upon
16 reasonably trustworthy information that would cause a
17 reasonably objective person to believe that the defendant
18 has committed or is committing a crime.

19 And that information may be derived from hearsay if it
20 is shown that that hearsay is reasonably trustworthy. And
21 for the purpose of establishing to the satisfaction of the
22 court, probable cause to search or to arrest the person
23 from whom the evidence is received need not testify so long
24 as it is shown that the information is reasonably reliable
25 and the officer testifying reasonably relied upon that

1 information.

2 In this case I do find there was a valid traffic stop,
3 but I'm understanding that that's the state's weakest
4 position, or at least that's not the position they're
5 asserting strongest.

6 But I do find based upon the testimony there was a
7 valid traffic stop.

8 The defendant contends that the purpose of the stop
9 was exceeded, and the law provides that once the purpose of
10 a stop has been fulfilled the continued detention of a
11 vehicle and its occupants amounts to a second detention.

12 Any second detention would have to be based upon
13 probable cause, or at least reasonable suspicion; and
14 therefore once the underlying basis for the traffic stop
15 has concluded, in this case, according to Deputy Russell,
16 it was based upon a lane violation.

17 It does not however automatically follow that any
18 further detention is unconstitutional. Lengthening the
19 detention is acceptable where the officer has an
20 objectively reasonable and articulable suspicion that
21 illegal activity has occurred or is occurring.

22 In this case I find exactly that fact. The evidence
23 supports the fact that the officer, or at least the common
24 knowledge of the officers involved in this particular case,
25 had objectively reasonable and articulable suspicion that

1 the defendant was involved in illegal activity, had been
2 involved in illegal activity and was continuing to be
3 involved in illegal activity.

4 So, probable cause is based upon reasonably
5 trustworthy information shared between law enforcement
6 agencies that the defendant has freshly committed a crime
7 and is continuing to commit a crime by the unlawful drug
8 possession and unlawful gun possession, as well as in this
9 case the possession of evidence of a crime, being the money
10 provided by law enforcement to a confidential source used
11 to purchase drugs from the defendant in an
12 officer-supervised transaction.

13 The information received from the confidential source
14 as it relates to the defendant's possession of drugs has
15 been established as reliable for the purposes of probable
16 cause as it results from a controlled drug purchase
17 orchestrated and supervised by an officer who has testified
18 in this case.

19 The information relating to the defendant's unlawful
20 possession of a firearm results from recorded statements
21 made by the defendant himself during the drug transaction
22 that reasonably establishes his possession of a firearm and
23 the officer's knowledge that the defendant is prohibited
24 from possessing a firearm due to his criminal history.

25 And the information relating to the defendant's

1 possession of evidence of a crime, being the purchase money
2 used in the controlled drug purchase, results from the
3 officer's providing of that purchase money to the
4 confidential source to purchase drugs from the defendant.

5 And therefore the stop and the search and the seizure
6 and the arrest of the defendant is constitutionally valid
7 and sound, and therefore the motion to suppress is denied.

8 As it relates to the defendant's statements, I
9 understand there are two.

10 One is a written statement which the state says they
11 do not intend to offer. Therefore, I don't need to address
12 it. But I think both sides are in agreement it's not to be
13 offered because he was in custody and Miranda was not
14 provided.

15 But the oral statement is admissible because it was
16 not made in response to any in-custodial interrogation but
17 instead was made by the defendant spontaneously of his own
18 volition without questioning by or prodding of law
19 enforcement officers.

20 Does that address each of the motions?

21 MR. MACDONALD: I'm not sure if you addressed my first
22 motion regarding the confrontation-clause objection.

23 THE COURT: Well, I addressed that by staying that
24 hearsay testimony, so long as it's proven to be reliable
25 and trustworthy, is admissible in a probable cause hearing.

1 MR. MACDONALD: Yes, sir.

2 THE COURT: So, that addresses the
3 confrontation-clause issue.

4 MR. MACDONALD: Thank you, Judge.

5 And I don't think I necessarily did so in my
6 arguments, but I just would like to move that all the cases
7 I provided into evidence for appellate purposes.

8 THE COURT: Well, they're in evidence, but if you want
9 to, we can mark those cases for court's exhibits if you
10 would like.

11 MR. MACDONALD: Yes, sir. Thank you.

12 (Printout of cases marked Court's Exhibits 1, 3 and 3.)

13 THE COURT: Okay. All right. Anything else to
14 address before the jury is brought in?

15 MR. HUNTER: Just briefly, Your Honor. May we
16 approach?

17 THE COURT: Yes.

18 (Bench conference held off the record.)

19 THE COURT: All right. Are we ready for the jury?
20 Bring the jury in, and ask Juror 170, Mr. Whitaker, to
21 take the foreperson's seat.

22 (The following takes place in the presence of the
23 jury.)

24 THE COURT: Good afternoon, ladies and gentlemen.
25 We are ready to begin with the trial of the case for

Zachary Brunson
Direct examination by Mr. Hunter

1 call Task Force Officer Brunson.

2 ZACHARY BRUNSON, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. HUNTER

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

6 A Zachary Brunson.

7 Q And how are you currently employed?

8 A I'm currently employed at the Richland County
9 Sheriff's Department.

10 Q How long have you been there?

11 A Almost 14 years.

12 Q And that's, basically, Columbia?

13 A Yes.

14 Q Okay. Columbia, Irmo, surrounding areas within
15 Richland County just like this is Spartanburg County?

16 A That's correct.

17 Q And what -- how long have you been a narcotics officer
18 in Richland County?

19 A Approximately eight years.

20 Q So, since 2016?

21 A Yes.

22 Q What are your duties as a narcotics officer?

23 A Investigate drug traffickers, write reports, conduct
24 search warrants, interview informants, confidential
25 sources, things of that nature, or to find drug sources of

Zachary Brunson
Direct examination by Mr. Hunter

1 supply.

2 Q And how do you utilize the confidential informants?

3 A Gain intelligence from confidential sources as to who
4 their drug suppliers are, drug suppliers in the area,
5 certain trends. We also use them to conduct control
6 purchases of drugs.

7 Q Okay. And on March 2nd of 2021, did you utilize a
8 confidential informant to make a controlled purchase?

9 A We did.

10 Q Can you describe how, generally how, a controlled
11 purchase works?

12 A We'll get the information from the confidential source
13 about the person that they know is selling the drugs.
14 We'll get the phone number, description of the person,
15 maybe what they drive, where they stay.

16 We'll request them to set up a purchase controlled by
17 us and that they can't do it without our direct supervision.
18 And then we'll meet with them. And we supply the funds, the
19 U.S. currency, for the purchases and then prior to the
20 purchase explain to them that they'll be given a recording
21 device that we can monitor and that records audio and video
22 of the purchase.

23 Then we'll search the confidential source, search their
24 person and their vehicle if they have a vehicle, provide
25 them with the funds and then follow them to and from the

Zachary Brunson
Direct examination by Mr. Hunter

1 location where the transaction occurs.

2 And then once the transaction occurs, we'll meet back
3 up with them -- confidential source -- obtain the drugs that
4 they purchased, search their person again, as well as their
5 vehicle if they have one, recover the drugs and then submit
6 them to be tested.

7 Q And did you do that in this case?

8 A We did.

9 Q Okay. Who performed the prebuy search on this date?

10 A Myself, as well as Sergeant David Caldwell with the
11 Richland County Sheriff's Department.

12 Q And what's the purpose of a prebuy search?

13 A To make sure that the confidential source is not
14 bringing any drugs or weapons onto the buy, so that we can
15 control everything. They only have in their possession
16 money that we provide with -- provide them so they're not
17 bringing any contraband or weapons onto the buy.

18 Q And did you perform the search on this date?

19 A Yes.

20 Q Okay. Was there anything located?

21 A No.

22 Q Contraband?

23 A No.

24 Q Any extra money?

25 A No.

Zachary Brunson
Direct examination by Mr. Hunter

1 Q Any drugs?

2 A No.

3 Q Okay. And you said they're provided a recording
4 device.

5 A That's correct.

6 Q How does the recording device work?

7 A It records in live time their location. It also shows
8 video, as well as audio, in real time that we can listen to
9 during the controlled purchase.

10 Q Okay. So, they have, you know, watch-camera or
11 necklace or something that's recording video and audio?

12 A That's correct. They have a device we give them.

13 Q And you're able to watch and hear that device in real
14 time?

15 A Yes.

16 Q Okay. And did you do that in this case?

17 A I did.

18 Q Okay. At that point did an informant leave you, leave
19 your location and go to an undercover drug buy?

20 A They did.

21 Q Okay. Where did they go?

22 A They first traveled to a gas station, and then after
23 that they left and went to ■■■ Sumter Street in West
24 Columbia.

25 Q Are you following as closely as you can behind them?

Zachary Brunson
Direct examination by Mr. Hunter

1 A Yes, I was, as well as another task force officer with
2 the D.E.A., Michael Merkle.

3 Q All right. Did y'all have other officers around [REDACTED]
4 Sumter Street?

5 A We did.

6 Q Approximately how many officers are in this
7 investigation that day?

8 A During this controlled buy, we had myself and then
9 one, two -- seven other ones.

10 Q Quite a few officers on this one?

11 A Yes.

12 Q When the informant arrives at that location, are you
13 able to hear conversations and see video from that
14 location?

15 A Yes. I could hear some of the conversation, as well
16 as see some video.

17 Q Let me skip forward just a little bit. On that day
18 you were able to watch that video?

19 A Yes.

20 Q Okay. And since then you've also been able to watch
21 the recording of that video?

22 A Yes.

23 Q Were you able to identify who your informant met with
24 that day?

25 A Yes. It appeared to be Phillip Miller.

Zachary Brunson
Direct examination by Mr. Hunter

1 Q Okay. And who is that?

2 A The defendant.

3 Q Okay. And you were able to hear Mr. Miller's
4 conversation that day?

5 A Yes.

6 Q What did -- specifically, did you hear Mr. Miller
7 state?

8 MR. MACDONALD: Objection. Hearsay.

9 THE COURT: Overruled.

10 BY MR. HUNTER

11 Q what did you hear Mr. Miller state?

12 A Miller asked the confidential source once he got there
13 what are you doing. Miller -- instead I ain't got whole
14 thing of this. Miller also said, "I'll give a good deal on
15 this." And then he says he has the whole thing and
16 knows -- he mentions the word fent, which in my training
17 and experience is fentanyl.

18 Q Okay. Was money ever discussed?

19 A Yes. They agreed on --

20 Q How much money did you provide the confidential
21 informant?

22 A \$1,900.

23 Q Okay. How much did the deal go down for?

24 A \$1,800.

25 Q Did Mr. Miller state anything about a gun during this

Zachary Brunson
Direct examination by Mr. Hunter

1 conversation?

2 A Yes. He -- he mentioned a weapon, said it'll hold 20
3 rounds because I had an extended magazine.

4 Q Okay.

5 A And that he also a gun safe with several firearms
6 inside.

7 Q After this conversation does the informant leave?

8 A Yes.

9 Q Do you have a predetermined location where you're to
10 meet them?

11 A We contacted the confidential source and had them meet
12 us at a location.

13 Q Okay. At that location that you meet the informant,
14 what did you recover?

15 A Two plastic bags that contained a light colored
16 powdered substance in each bag.

17 Q Was that ultimately tested?

18 A It was.

19 Q What was it determined to be?

20 A It tested positive for heroin and fentanyl.

21 Q Okay. At this time was Mr. Miller still at that
22 Sumter Street location?

23 A He was, and then at some point there was a vehicle
24 that left.

25 Q Do you know what that vehicle was?

Zachary Brunson
Direct examination by Mr. Hunter

- 1 A It was a black in color Chevy Tahoe.
- 2 Q Do you know who it came back registered to?
- 3 A Laura Miller.
- 4 Q Were some of your agents following that vehicle?
- 5 A They were.
- 6 Q Okay. Did you attempt to also follow that vehicle?
- 7 A Yes. I attempted to catch up with them as they were
- 8 following the vehicle.
- 9 Q And, ultimately, did you catch up?
- 10 A I did.
- 11 Q Who did -- who did you call on the way to catching up?
- 12 A I called a task force officer -- Robert Cheeks.
- 13 Q Okay. And that's the -- what is a task force officer?
- 14 I don't think I ever asked that.
- 15 A A task force officer is like a local police officer
- 16 that works for a local agency that's also assigned to a
- 17 federal agency. It could be a D.E.A., F.B.I., Homeland
- 18 Security, A.T.F. that also has a federal authority.
- 19 Q So, you had federal jurisdiction?
- 20 A Yes.
- 21 Q Okay. So, basically, when you're doing
- 22 investigations, you're not just confined to Richland
- 23 County?
- 24 A That's correct.
- 25 Q Whose funds were being used in this?

Zachary Brunson
Direct examination by Mr. Hunter

- 1 A The D.E.A., the drug enforcement administration's
2 funds.
- 3 Q All right. So, again, who did you call?
- 4 A Task Force Officer Robert Cheeks.
- 5 Q And that would be the Spartanburg County counterpart
6 to you?
- 7 A Correct.
- 8 Q Who did he get you in touch with?
- 9 A Spartanburg County Deputy Vassar.
- 10 Q Okay. And is that this gentleman seated right here at
11 the table?
- 12 A Yes.
- 13 Q Okay. Did you tell him about the undercover buy?
- 14 A I did.
- 15 Q Okay. All right. Did you tell him about his
16 direction of travel?
- 17 A I did. I told him that he was traveling on I-26
18 westbound in the direction of Spartanburg County.
- 19 Q And did you also tell him about the weapon?
- 20 A Yes. I said there may be a weapon present.
- 21 MR. HUNTER: Beg the Court's indulgence.
- 22 (Pause.)
- 23 Q One last thing. We talked about pre-search buy. Did
24 you also do a post-search buy or a post-buy search?
- 25 A Yes.

Zachary Brunson
Cross-examination by Mr. MacDonald

1 Q Was any contraband or anything located there?

2 A No.

3 Q What was the only thing outside of the drugs that you
4 were able to recover in the post-buy search?

5 A We recovered the extra hundred dollar -- hundred
6 dollars that we originally gave to the C.S. or the
7 confidential source prior to the buy.

8 Q But based on your search, you didn't find any extra
9 drugs in the car.

10 A No.

11 Q Didn't find any extra currency.

12 A No.

13 Q Okay. Nothing to make you think that the buy had gone
14 any different than what you had heard and seen in real
15 time?

16 A Correct.

17 Q And, ultimately, when the traffic stop occurred here,
18 how far behind were you approximately?

19 A I was pretty close by. I don't know exactly, but I
20 was in the area.

21 Q You didn't come to the traffic stop. Were y'all just
22 waiting behind it for a while?

23 A Yeah. I just drove by it. I didn't go to it.

24 Q Okay. Please answer any questions Mr. MacDonald may
25 have for you.

Zachary Brunson
Cross-examination by Mr. MacDonald

1 CROSS-EXAMINATION

2 BY MR. MACDONALD

3 Q Investigator Brunson, is that what you said I can call
4 you?

5 A Yeah. That's fine.

6 Q Okay. Thank you.

7 You stated there's a recording device that was used, is
8 that correct?

9 A That's correct.

10 Q Okay. And the location was [REDACTED] Sumter Street?

11 A That's correct.

12 Q What county is that in?

13 A Lexington.

14 Q Okay. And you mentioned that there were seven
15 officers involved in this undercover buy.

16 A That's correct.

17 Q Okay. And do you believe you saw Phillip Miller
18 involved in this uncover buy?

19 A Correct.

20 Q Okay. And you said he left a short while later from
21 that residence in a black Tahoe?

22 A Correct.

23 Q Okay. You never -- you never charged him with this
24 crime, did you?

25 A He was not charged with the actual distribution --

Zachary Brunson
Cross-examination by Mr. MacDonald

1 Q Okay.

2 A -- for that day.

3 Q So, he was never charged?

4 A That's correct.

5 Q Okay. You talked to Investigator or Deputy Vassar?

6 A Correct.

7 Q And you said everything about what happened in -- in
8 the Richland-Lexington area?

9 A Correct.

10 Q Okay. And I saw you were looking down. You brought
11 your report with you just to look down to refresh your
12 recollection?

13 A Just for reference it was so long ago, yes, sir.

14 Q Yes. How long ago was it, like three years ago?

15 A Three years ago almost.

16 Q Yeah. But you -- when you wrote your incident report,
17 that was fresh after this happened, right?

18 A Correct.

19 Q How -- how many days typically? I mean, you don't
20 have to be precise because it's so long ago. But how
21 many -- around how many days do you think later you wrote
22 that report?

23 A I have on my report March 3rd, so the day after.

24 Q Okay. So you wrote the report the day after. So,
25 everything was still fresh in your memory?

Zachary Brunson
Redirect examination by Mr. Hunter

1 A Correct.

2 Q And you don't think you left out anything in that
3 report.

4 A It's possible I could have left something out.

5 Q Okay. But since it's -- it's so short in time that
6 you probably didn't forget anything important.

7 A Nothing I can think of.

8 Q Okay. But everything in your report, you told Deputy
9 Vassar?

10 A I don't think I told him everything in my report.

11 Q Okay. But you told him --

12 A Just that we'd done a buy and we believed there was a
13 weapon in the car and that he was traveling this direction.

14 Q Did you instruct him to do a traffic stop?

15 A I don't think I instructed him. I just notified him
16 of what was going on, and then I left it up to them.

17 Q Okay. But you are confident that you spoke with
18 Deputy Vassar?

19 A Yes.

20 Q Okay. And you told Deputy Vassar that he might be
21 armed?

22 A Yes, and that there was a gun being talked about
23 during the buy.

24 Q Okay.

25 MR. MACDONALD: One moment, Your Honor.

Cody Russell
Direct examination by Mr. Hunter

1 (Pause.)

2 MR. MACDONALD: No further questions, judge.

3 MR. HUNTER: Just briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. HUNTER

6 Q Is it against federal law for a person who has been
7 convicted of a violent felony to have possession of a
8 weapon?

9 A Yes.

10 Q Is it also against state law?

11 A Yes.

12 Q Did you make the decision not to charge him for this
13 distribution?

14 A Yes.

15 Q Okay. Do you know why?

16 A We knew that he had been arrested after the buy and
17 that he was looking at considerable time. So, we just
18 decided not to make a charge for the actual distribution.

19 Q Thank you.

20 MR. MACDONALD: No redirect.

21 THE COURT: You may step down.

22 MR. HUNTER: Your Honor, since he lives in Columbia,
23 may he be excused?

24 MR. MACDONALD: No objection.

25 THE COURT: He may be. Thank you.

Cody Russell
Direct examination by Mr. Hunter

1 (Whereupon, the witness was excused.)

2 MR. HUNTER: The state would call Deputy Russell.

3 CODY RUSSELL, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. HUNTER

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

7 A Cody Russell.

8 Q And how are you employed?

9 A By Spartanburg County Sheriff's Office.

10 Q And what division you are in?

11 A Uniform patrol.

12 Q How long have you been in that position?

13 A About ten years.

14 Q Okay. What are the duties of a uniform patrol
15 officer?

16 A Answer calls of service, traffic stops, serving
17 warrants, things of that nature.

18 Q So you're basically -- you're the officer that
19 everybody sees on the street all of the time?

20 A Yes, sir.

21 Q Were you working March 2nd of 2021?

22 A Yes, sir.

23 Q Did you have your body camera on you that day?

24 A I did.

25 Q Okay. Who did you receive a call from that day?

Cody Russell
Direct examination by Mr. Hunter

1 A I received a call from Investigator Vassar and
2 Investigator Pennington.

3 Q Okay. Is that his partner?

4 A Yes, sir.

5 Q Since he's going to testify, what did he tell you?

6 A He informed me that there was a vehicle coming
7 through, into Spartanburg County from Lexington, a guy in
8 there named Phillip Miller had a warrant, arrest warrant.

9 Q Did he tell you anything else?

10 A He told me that Phillip Miller possibly had a firearm
11 inside the vehicle.

12 Q Based on that evidence were you going to stop them
13 whether you saw a traffic violation or not?

14 A Yes, sir.

15 Q That's based on the fact that he had a warrant for his
16 arrest?

17 A Yes, sir.

18 Q Did you observe a traffic violation?

19 A I did.

20 Q What do you observe?

21 A I observed the vehicle crossing the yellow line -- the
22 yellow line on 26 westbound approximately at mile marker
23 36.

24 Q What county is that in?

25 A Spartanburg County.

Cody Russell
Direct examination by Mr. Hunter

1 Q What state?

2 A South Carolina.

3 Q So, again, you were going to stop this vehicle no
4 matter because of the warrant, but you did observe a
5 traffic violation?

6 A Correct.

7 Q I -- I know that this disc, you already have it up,
8 but, again, you had body camera on you?

9 A Yes, sir.

10 Q State's Exhibit 6. Do you recognize that?

11 A Yes, sir.

12 Q Okay. What does it appear to be?

13 A My body-cam footage.

14 Q Does it fairly and accurately depict the scene as you
15 remember it that day?

16 A Yes, sir.

17 MR. HUNTER: Your Honor, at this time the state would
18 offer State's Exhibit 6 into evidence.

19 MR. MACDONALD: No objection.

20 THE COURT: It's admitted.

21 (Cody Russell's body-worn-camera video marked State's
22 Exhibit No. 6.)

23 MR. HUNTER: Permission to publish.

24 THE COURT: You may.

25 MR. HUNTER: I'm just going to go ahead and just play

Cody Russell
Direct examination by Mr. Hunter

1 the whole thing and then ask you questions about it
2 afterwards.

3 (Whereupon, the video was played for the jury.)

4 Q Okay. And that's your full video from the traffic
5 stop?

6 A Yes, sir.

7 Q I'd like to address something first which was brought
8 out in opening statements.

9 why did you turn your body camera off?

10 A I was told by Investigator Vassar, but it's also by
11 the sheriff's office policy. Any time we're around any
12 kind of narcotics units or anything we have to deactivate
13 our body cameras.

14 Q So, you didn't just do it just because.

15 A Correct.

16 Q That is your sheriff's office policy.

17 A Correct.

18 Q Okay. Go back to the beginning of the stop.

19 You first mentioned -- well, first, who is with you in
20 your car?

21 A What's that? A trainee.

22 Q Okay. She still with the sheriff's office?

23 A I'm not sure. I can't remember what her name is.

24 Q In fact, she was in the court division, is that
25 correct?

Cody Russell
Direct examination by Mr. Hunter

- 1 A I believe so.
- 2 Q You mentioned a 15-A. What is that?
- 3 A A 15-A is a ten code for a gun.
- 4 Q It's a what code?
- 5 A Ten code signal.
- 6 Q What is that?
- 7 A It's a code we use -- police codes.
- 8 Q So, it's like when you dispatch? Someone has a 15-A,
- 9 that means someone has a gun?
- 10 A Correct.
- 11 Q So, once you -- first of all, when did you first
- 12 observe the traffic violation?
- 13 A As I was getting behind the vehicle.
- 14 MR. MACDONALD: Your Honor, I renew my objections from
- 15 pretrial at this time.
- 16 THE COURT: All right.
- 17 BY MR. HUNTER
- 18 Q So, when did you first observe the traffic violation?
- 19 A As I was getting behind the vehicle.
- 20 Q Does your car have in-car camera?
- 21 A It does not.
- 22 Q Doesn't have a dash cam?
- 23 A No, sir.
- 24 Q Okay. You're not a traffic unit.
- 25 A No, sir.

Cody Russell
Direct examination by Mr. Hunter

- 1 Q Are those the only ones that have dash cams?
- 2 A For the most part.
- 3 Q Okay. But you do have the B.W.C.
- 4 A Yes, sir.
- 5 Q Are the B.W.C.s on your chest, where you have it?
- 6 A Yes, sir.
- 7 Q Is that going to catch any traffic violations?
- 8 A No, sir.
- 9 Q So, you observed the traffic violation.
- 10 A Yes, sir.
- 11 Q What do you do then?
- 12 A I turn my blue lights on.
- 13 Q Okay. Do you call the traffic violation in?
- 14 A I called traffic stop, yes, sir.
- 15 Q Is that kind of what we hear the dispatch talking
- 16 about when we turn the body camera on?
- 17 A I believe so.
- 18 Q So, as you're pulling over, your blue lights are on.
- 19 Is that when you turn your body-worn camera on?
- 20 A Yeah. I turn my -- right before I turn my blue lights
- 21 on.
- 22 Q Okay. What do you do when you get out of the car?
- 23 A I go around to the back.
- 24 Q I know we've seen it but --
- 25 A I tell my trainee it's a possible 15-A in the car or

Cody Russell
Direct examination by Mr. Hunter

- 1 possible gun. And I go around the vehicle to make a
2 passenger-side approach.
- 3 Q And who are you greeting at that door?
- 4 A I greet Phillip Miller that was in the passenger seat
5 and then Laura Miller who was in the driver's seat.
- 6 Q What do you ask Ms. Miller for?
- 7 A Her license and registration and proof of insurance.
- 8 Q Is some of that given to you?
- 9 A Yes, sir.
- 10 Q And then do you ask Mr. Miller for something?
- 11 A Ask for his I.D.
- 12 Q Okay. And why are you asking for his I.D.?
- 13 A Just to verify his I.D. and make sure that was the
14 person I was seeing that had a warrant.
- 15 Q And just so everybody's aware, you didn't know Mr.
16 Miller before this, correct?
- 17 A Correct.
- 18 Q So, you ask him for his I.D. And it is Mr. Miller.
19 What do you do next?
- 20 A I have him exit the vehicle.
- 21 Q To do what?
- 22 A Put handcuffs on and detain him.
- 23 Q Did he have anything in his left hand?
- 24 A He had a glove.
- 25 Q Glove in his left hand.

Cody Russell
Direct examination by Mr. Hunter

- 1 A Left hand. A cigarette.
- 2 Q So, he's smoking?
- 3 A Yes, sir.
- 4 Q What was in his right hand?
- 5 A The glove.
- 6 Q Okay. Did he have one on his left hand?
- 7 A No. He did not.
- 8 Q So, he's just wearing one singular glove on his right
- 9 hand?
- 10 A Yes, sir.
- 11 Q Okay. Was Ms. Miller wearing a glove?
- 12 A No.
- 13 Q At that time were either one of them wearing a mask?
- 14 A No.
- 15 Q Okay. I'm not going to place this into place, but
- 16 look at State's Exhibit 9. Do you recognize that?
- 17 A That is the arrest warrant for Mr. Miller.
- 18 Q And that has nothing to do with this case, correct?
- 19 A Correct.
- 20 Q Okay. But nothing to do with the drug case.
- 21 A Correct.
- 22 Q Now, is this the warrant that you arrested him on that
- 23 day?
- 24 A Yes, sir.
- 25 Q What was the number?

Cody Russell
Direct examination by Mr. Hunter

- 1 A The number was 2021A4210200537.
- 2 Q Okay. And that's the warrant that you arrested him on
- 3 that day and took him to jail for.
- 4 A Yes, sir.
- 5 Q After you placed him in cuffs and bring him back to
- 6 your car, what do you do with Mr. Miller?
- 7 A I search his person.
- 8 Q Okay. Did you locate anything on his person?
- 9 A I located a sum of money.
- 10 Q Do you know how much money it was?
- 11 A I do not.
- 12 Q Was it a small amount or a large amount?
- 13 A It was a -- it was a wad. And as soon as I found it,
- 14 I handed it directly to Investigator Vassar.
- 15 Q Is that when you asked, say Investigator Vassar -- we
- 16 don't see him on camera, but is that when you handed it to
- 17 him?
- 18 A Yes, sir.
- 19 Q Did you participate in the search of the vehicle at
- 20 all?
- 21 A I did not.
- 22 Q Outside of Investigator Vassar asking you to call for
- 23 the canine, did you do anything with the canine?
- 24 A I did not.
- 25 Q Did you just kinda stay with your car and Mr. Miller?

Cody Russell
Cross-examination by Mr. MacDonald

1 A Yes, sir.

2 Q Ultimately, did you give Ms. Miller a warning?

3 A I did.

4 Q Okay. And after this she was released?

5 A Yes, sir.

6 Q And you took Mr. Miller to jail for that previous
7 warrant that wasn't connected to this case?

8 A Correct.

9 Q Did you put the details of the call from Investigator
10 Vassar to you in your report?

11 A I -- I put some in there as far as, like, him letting
12 me know that he has a warrant for his arrest.

13 Q Is this the first time you'd stopped a car for
14 narcotics officers?

15 A No, sir.

16 Q And why did you stop the car instead of narcotics
17 officers?

18 A They like to have a marked patrol unit do it so
19 there's no discrepancy as far as I didn't know that a
20 police officer's trying to pull me over.

21 Q Okay. And so your car is a marked. What kind of car
22 is it?

23 A It was an Explorer.

24 Q Okay. So, a marked black-and-white Explorer, whereas,
25 they're in unmarked trucks?

Cody Russell
Cross-examination by Mr. MacDonald

1 A Correct.

2 Q Please answer any questions that Mr. MacDonald may
3 have for you.

4 CROSS-EXAMINATION

5 BY MR. MACDONALD

6 Q Deputy Russell, the moment you noticed the traffic
7 violation, you activated your body camera, is that correct?

8 A Correct.

9 Q And that's because it's Spartanburg County Sheriff's
10 office policy to, when you initiate a traffic stop to,
11 activate your body camera.

12 A Correct.

13 Q And it's also policy that you keep it activated during
14 the duration of the stop, correct?

15 A Correct.

16 Q Okay. And the reason why is so that not only does it
17 protect you, but it also protects the public because
18 everything is viewed -- visible on body camera.

19 A That's one of the reasons, correct.

20 Q So, you can go back and review what was observed on
21 body camera to confirm whether what you write in the
22 report, for example, is true or not.

23 A That's some of it, yes, sir.

24 Q Because video doesn't lie.

25 A Yes.

Cody Russell
Cross-examination by Mr. MacDonald

1 Q And, so, that's -- that's part of the reason why you
2 are equipped with a body camera, is that correct?

3 A Correct.

4 Q So, it helps you with -- with investigating cases and
5 prosecuting cases even.

6 Okay. You said you gave money to Investigator Vassar?

7 A I did.

8 Q Okay. Did you get any pictures of it?

9 A I did not.

10 Q Okay. You notice that there's a dog in the back of
11 the vehicle, is that correct?

12 A Yes.

13 Q Okay. Do you know how big the dog was?

14 A I do not recall.

15 Q But it was -- it was back there.

16 A Yes.

17 Q Okay. You said in your report that you placed Miller
18 in your patrol car without issue, is that correct?

19 A Yes.

20 Q And then you transported him because of the warrant
21 that he had?

22 A Correct.

23 Q Okay. Vassar is the one that told you to stop the
24 car, is that correct?

25 A He contacted me to let me know about the -- about the

Cody Russell
Cross-examination by Mr. MacDonald

1 person with the warrant.

2 Q Okay. You wrote a report. You wrote an incident
3 report documenting this -- this day, this list of events
4 that transpired, is that correct?

5 A Correct.

6 Q You didn't include in your report that there's any
7 mention of a gun, is that -- why didn't you?

8 A Because I didn't -- I was not there when a gun was
9 found or anything was found.

10 Q Okay. But you testified today that Vassar told you
11 that there was a gun?

12 A Possibly a gun, yes.

13 Q Okay. But you never -- you never saw a gun.

14 A No. I didn't search the vehicle.

15 Q You didn't search the vehicle, but when you were
16 looking into the vehicle from the side you never saw a gun.

17 A Correct.

18 Q Okay. And when you -- and there's no gun found on
19 Mr. Miller's person --

20 A I did not find a gun, no, sir.

21 Q -- that you found.

22 A No, sir.

23 Q There was no drugs that you found on Mr. Miller's
24 person.

25 A Not on his person.

Cody Russell
Redirect examination by Mr. Hunter

1 Q So, when -- when you took him to the patrol car, at
2 that point to your knowledge he had no firearm on his
3 person or any drugs or anything illegal on his person.

4 A On his person, correct.

5 Q Okay. You -- the only reason you cut off your body
6 camera was because Vassar walked up to you and went to-oo,
7 right?

8 A No. That's also part of the sheriff's office policy,
9 that any time a narcotics officer is around us, we've got
10 to deactivate our cameras.

11 Q But you -- you didn't turn off your body camera until
12 he approached you.

13 A Until he was coming towards me, yes, sir.

14 Q Yeah. And he told you to cut it off. "

15 A Yeah.

16 Q Okay. And all -- everything that transpired after
17 that happened with your body camera off to your knowledge.

18 A Correct.

19 Q You never turned it back on.

20 A No, sir.

21 Q There's no more documenting anything on video that --
22 that you were involved in.

23 A Correct. Nothing was on my body camera. Correct.

24 Q And at this point your involvement in this case is
25 pretty much done.

Derek Vassar
Direct examination by Mr. Hunter

1 A Correct.

2 Q Okay.

3 MR. MACDONALD: No further questions.

4 MR. HUNTER: Nothing, Your Honor.

5 THE COURT: You may step down.

6 THE FOREMAN: Your Honor, can I get the policy again
7 about the turning off the video, the body cam?

8 THE COURT: Do you want them to ask the question
9 again?

10 THE FOREMAN: Yeah. Could you ask the question about
11 the body cam --

12 THE COURT: Ask the question again.

13 THE FOREMAN: -- why they turned it off.

14 REDIRECT EXAMINATION

15 BY MR. HUNTER

16 Q So what is the sheriff's office policy in regards to
17 narcotics officers and body cams?

18 A According to the sheriff's office policy, any time
19 we're around narcotics officers, to try to help protect the
20 identity, we're to deactivate our body cameras.

21 THE FOREMAN: Okay. Thank you.

22 THE COURT: Anything?

23 MR. MACDONALD: No, Your Honor.

24 THE COURT: All right. You may step down.

25 MR. HUNTER: Your Honor, at this time the state would

Derek Vassar
Direct examination by Mr. Hunter

1 call Investigator Vassar -- Sergeant Vassar. Excuse me.

2 DEREK VASSAR, having been

3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. HUNTER

5 Q Make sure you speak into that microphone so we can all
6 hear you.

7 A Okay.

8 Q Please give your full name for the record.

9 A My name is Derek Vassar.

10 Q Obviously, you were here. We just had the question.
11 Do narcotics officers themselves have body-worn cameras?

12 A No. We do not.

13 Q Okay. And what is the sheriff's office's policy in
14 regards to body-worn cameras when narcotics officers are
15 around?

16 A The sheriff's office policy regarding clandestine or
17 undercover officers are to turn the body cameras off when
18 we're present.

19 Q And why is that?

20 A To protect our identity. And not only that, to
21 protect the discussions we have about confidential sources
22 when we're talking amongst other officers.

23 Q So, when you asked him to turn his body camera off,
24 you were asking him to follow department policy.

25 A Yes.

Derek Vassar
Direct examination by Mr. Hunter

1 Q Okay. Did you have any nefarious reason to do that?

2 A No. I did not.

3 Q What is your law enforcement experience?

4 A Got approximately 21 years of law enforcement
5 experience. A majority of that was in the State of
6 Oklahoma where I was a state narcotics officer for
7 approximately 10 or 11 years.

8 I moved here and began working for Spartanburg County
9 Sheriff's Office in 2019 and into the -- moved into the
10 Spartanburg County Narcotics Unit in 2020.

11 Q On this date did you receive a phone call from
12 Investigator Brunson?

13 A I did.

14 Q Can you tell me what y'all discussed?

15 A He advised that Phillip Miller who I knew through
16 previous investigations was headed back toward Spartanburg
17 County from the Richland County area and that he was
18 possibly in possession of a quantity of narcotics, a
19 firearm. And -- and he described the bookbag that he was
20 carrying and advised that they had just done a controlled
21 buy from Mr. Miller in his area.

22 Q And I know he's going to ask you that, but is any of
23 that conversation listed in your report?

24 A It is not.

25 Q Okay. And why not?

Derek Vassar
Direct examination by Mr. Hunter

1 A Due to the ongoing federal investigation I believe the
2 D.E.A. was conducting at the time. I mentioned it vaguely
3 as previous investigations, but I didn't want to go into
4 detail.

5 Once we decide to charge someone in Spartanburg County,
6 a copy of my report is attached to the warrant, and that
7 becomes public record. Due to the fact that there's an
8 ongoing D.E.A. investigation, I didn't want him to be aware
9 of that.

10 Q He being Mr. Miller?

11 A Yes.

12 Q Okay. So, after your conversation with Investigator
13 Brunson -- did that occur on March 2nd of 2021?

14 A Yes. It did.

15 Q What do you decide to do?

16 A We decide to try to intercept Mr. Miller as he comes
17 into Spartanburg County and conduct a traffic stop.

18 Q Okay. And how do you effect that?

19 A Due to the fact we were quite a way away we -- we
20 gathered a few of our investigators to start heading that
21 direction. And we contacted Deputy Russell who I was
22 advised was working that area of Spartanburg County at that
23 time.

24 Q So, that's going to be the southern part of the county
25 towards Laurens County.

Derek Vassar
Direct examination by Mr. Hunter

- 1 A Yes.
- 2 Q Near Woodruff?
- 3 A Yes.
- 4 Q Okay. And where are you located? Don't give me
5 specifics, but generally.
- 6 A We were located in the narc office, which is in the
7 northern -- northeastern part of the county.
- 8 Q Okay. So, y'all start heading down to -- on I-26 down
9 there towards Woodruff?
- 10 A Yes.
- 11 Q What do you direct Investigator Russell or Deputy
12 Russell to do?
- 13 A I advised him that Phillip Miller had a warrant that
14 we were able to identify that he was in the vehicle, he was
15 a passenger in the vehicle and to try to conduct a traffic
16 stop on that vehicle.
- 17 Q And you would agree that whether he was able to get a
18 traffic violation or not that y'all were going to stop that
19 vehicle?
- 20 A Yes. And I can't remember if I told him so, but
21 there's a chance I told him to stop the vehicle, look for a
22 violation, if you don't find one, stop the vehicle.
- 23 Q And, again, Mr. Miller had an active warrant that was
24 in hand at the sheriff's office --
- 25 A Yes.

Derek Vassar
Direct examination by Mr. Hunter

1 Q -- for his arrest.

2 A Yes.

3 Q Okay. When did you arrive at the traffic stop?

4 A Shortly after it was made.

5 Q How quickly?

6 A Within minutes.

7 Q Okay. In fact, when Deputy Russell turned around back
8 towards the car, we see some trucks behind his -- his
9 vehicle. Is that one of yours?

10 A Initially, that was -- that was Investigator Hancock's
11 truck -- initially. The second time he turns around, you
12 could see my silver truck behind Investigator Hancock's
13 truck.

14 Q So, you were there very quickly.

15 A Very quickly.

16 Q Okay. Did you happen to have a conversation with
17 Mr. Miller there?

18 A I did.

19 Q The first conversation that we saw on video, how did
20 that go?

21 A He was asking questions of what was going on. I just
22 told him to hold on, we're trying to figure things out and
23 we'd come and talk to him later.

24 Q All right. You didn't read him any Miranda rights at
25 that point.

Derek Vassar
Direct examination by Mr. Hunter

1 A I did not.

2 Q Okay. But was he asking you questions, or were you
3 asking him questions?

4 A He was asking me questions.

5 Q Okay. Why did you have Deputy Russell call for a
6 canine?

7 A Based on the information I had from D.E.A. as far as
8 the control buy and the -- the information they provided me
9 that they'd done the controlled buy and possibly had drugs
10 in the car. Also, his behavior and his history of
11 drug-related crimes.

12 Q So, that's why you called the canine?

13 A Yes.

14 Q And, ultimately, a canine came out to the scene?

15 A That's correct.

16 Q That was Investigator Powell?

17 A Yes. It was.

18 Q And based on what she told y'all, y'all decided to
19 search the vehicle?

20 A Yes.

21 MR. MACDONALD: I'm going to renew my objection at
22 this time, Judge, from pretrial.

23 THE COURT: All right.

24 BY MR. HUNTER

25 Q When y'all were searching the vehicle, did Mr. Miller

Derek Vassar
Direct examination by Mr. Hunter

1 want to speak to you again?

2 A He did.

3 Q Okay. What did he tell you?

4 MR. MACDONALD: I'm going to renew my objection again,
5 Judge, from pretrial.

6 A After --

7 THE COURT: Overruled.

8 BY MR. HUNTER

9 A After that --

10 Q What -- what did he tell you?

11 A He told me that the -- let me refer to my report so I
12 don't get it wrong. That whatever we found in the car
13 belonged to him and his wife didn't know anything about it.
14 And I advised Mr. Miller that we would talk about it later,
15 and he advised, "It's her-on. You already know."

16 Q Okay. So, again, you didn't question him.

17 A No.

18 Q He advised this to you on your own.

19 A Yes.

20 Q When he told you this, had you even found anything in
21 the vehicle?

22 A No.

23 Q And, again, what was his statement?

24 A "It's her-on. You already know."

25 Q And that his wife didn't know anything about it.

Derek Vassar
Direct examination by Mr. Hunter

- 1 A That's correct.
- 2 Q Ultimately, did another officer find a gun and drugs?
- 3 A Yes.
- 4 Q And who was that at that time?
- 5 A That was Investigator Blake Barton.
- 6 Q And we see him on that video as well?
- 7 A Yes. We do.
- 8 Q Obviously, before this stop, you knew that Mr. Miller
- 9 had a violent felony conviction?
- 10 A Yes. I did.
- 11 Q Is that why you were worried about a gun being
- 12 present?
- 13 A Yes. That was part of the reason.
- 14 Q And, again, what is 15-A? Since you're a police
- 15 officer, what is it?
- 16 A 15-A is a code we use in Spartanburg County or
- 17 throughout the county with dispatch to describe a firearm.
- 18 Q Now, before y'all called the canine, did y'all attempt
- 19 to get consent to search the vehicle?
- 20 A We never -- I don't think we ever got a chance.
- 21 They -- they advised -- she advised that she wouldn't give
- 22 consent, and he made the comment you're not searching my
- 23 car before we ever asked.
- 24 Q I think you made it a little bit more, but that's what
- 25 we heard in the video?

Derek Vassar
Cross-examination by Mr. MacDonald

- 1 A Yes.
- 2 Q A little more emphatic?
- 3 A Yes.
- 4 Q So, y'all did attempt to get consent, at least from
- 5 her, but it was denied.
- 6 A Correct.
- 7 Q And that's why y'all brought a canine out?
- 8 A Correct.
- 9 Q And, again, what was his statement as to the items
- 10 that were going to be located in the vehicle?
- 11 A "It's her-on.. You already know."
- 12 Q Now, why do you say her-on?
- 13 A Her-on is a commonly-used term on the streets to
- 14 describe heroin.
- 15 Q And, again, how long have you been a narcotics
- 16 officer?
- 17 A Approximately 16 or 17 years.
- 18 Q And through your training and experience have you come
- 19 across fentanyl?
- 20 A Yes. I have.
- 21 Q Okay. When you, specifically, come across fentanyl,
- 22 what do you have to do?
- 23 A We have to use protective gear.
- 24 Q When you say protective gear, like what?
- 25 A Gloves, specifically.

Derek Vassar
Cross-examination by Mr. MacDonald

1 Q Okay. Please answer any questions Mr. MacDonald may
2 have for you.

3 CROSS-EXAMINATION

4 BY MR. MACDONALD

5 Q You were the lead investigator in this operation that
6 was happening in Spartanburg, is that correct?

7 A Yes. I was.

8 Q Okay. So, I mean, you were the one that instructed he
9 be pulled over?

10 A Yes. I was.

11 Q You were the one making all the decisions?

12 A I wouldn't say I'm making all the decisions. We -- we
13 did discuss things as a group, but I -- I definitely had
14 some say-so in what was going to take place.

15 Q Okay. And it was your decision to tell Deputy Russell
16 to turn off his body camera?

17 A Yeah. I'm not sure if I actually told him to turn it
18 off or if I asked him if it was off, but yes.

19 Q Part of your job as an investigator is to collect
20 evidence such as when you collect evidence from a search,
21 is that correct?

22 A That is correct.

23 Q Okay. One thing you can do to document the crime
24 scene is to take pictures, is that correct?

25 A Yes. It is.

Derek Vassar
Cross-examination by Mr. MacDonald

1 Q There's no pictures taken in this case, is that
2 correct?

3 A Not to my knowledge.

4 Q Okay. So, no pictures to document anything. You
5 already made sure that all body cameras were off before the
6 search occurred, is that correct?

7 A That is correct.

8 Q Okay. Were any of the items collected tested for
9 D.N.A.?

10 A No.

11 Q Okay. And the statements were not -- the statements
12 that you claimed that Mr. Miller made, none of those were
13 recorded or -- or taken down so that they could be replayed
14 today.

15 A Not to my knowledge.

16 Q Okay. And they weren't captured on video. So, they
17 weren't captured on video or audio device.

18 A Not to my knowledge.

19 Q Okay. You said in a previous hearing that there were
20 three standard patrol there on the scene.

21 A I'm sorry?

22 Q In a previous hearing you testified that there were
23 three standard patrol on scene there.

24 A Yes. I believe so.

25 Q And then you also said there were six investigators on

Derek Vassar
Cross-examination by Mr. MacDonald

1 scene?

2 A Yes. I believe so.

3 Q And not one of them has provided any sort of
4 documentation of the items that were collected in this
5 case.

6 MR. HUNTER: Objection, Your Honor. May we approach?

7 (Bench conference held off the record in the presence
8 of the jury but out of the hearing of the jury.)

9 BY MR. MACDONALD

10 Q I'm going to rephrase that question for you. It's a
11 little bit convoluted.

12 A Sure.

13 Q I'm not saying that there's no claims that evidence
14 was collected, but I'm saying that there's no documentation
15 such as by photos, video or anything that can document
16 items being collected.

17 A There's a chain of custody, a written document form.

18 Q Okay. You wrote an incident report reflecting what
19 transpired this day, is that correct?

20 A I wrote a narrative as part of an incident report,
21 yes.

22 Q And like you -- and the point of writing a police
23 report is to memor -- memorize or memorialize the important
24 facts regarding the incident --

25 A Yes.

Derek Vassar
Redirect examination by Mr. Hunter

1 Q -- for potential future prosecution.

2 A Yes.

3 Q Okay. So, you want to do a good job writing an
4 accurate report, is that correct?

5 A That's correct.

6 Q In fact, were you trained to write your reports as
7 truth -- as honest -- as honestly and truthfully as
8 possible?

9 A Yes. I was.

10 Q As thorough as possible?

11 A Yes. I was.

12 Q And as complete as possible.

13 A Yes. I was.

14 Q And yet in your report you don't mention anything
15 regarding anything that happened in Lexington County in
16 regards to any sort of buys involving Mr. Miller that was
17 not mentioned at all in your report.

18 A Right. And I explained that, the reason behind that
19 being that there's an ongoing federal investigation that I
20 didn't want to become public knowledge at that time.

21 Q Okay. But Mr. Miller -- you heard earlier Mr. Miller
22 was never charged with anything.

23 A I did hear that.

24 Q Okay. Did someone tell you to omit that from the
25 report or did you make that choice consciously yourself?

Derek Vassar
Redirect examination by Mr. Hunter

1 A After 16 or 17 years of narcotics experience working
2 with federal agencies and other agencies, it's etiquette
3 not to ruin their cases by adding stuff to your
4 cases that's -- that's going to reveal the resources of the
5 investigations that they're conducting.

6 MR. MACDONALD: No further questions, Judge.

7 MR. HUNTER: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. HUNTER

10 Q What is a chain of custody?

11 A A chain of custody -- a chain of custody is a document
12 we use when we collect evidence on the scene. We document
13 what we've collected. And then when we turn it into
14 evidence, it documents where that evidence goes and who
15 had -- who maintains possession of the evidence from the
16 time of recovery all the way to the time of court.

17 Q Did you recover any evidence?

18 A I did not.

19 Q So, you're not going to be in the chain of custody,
20 correct?

21 A I am not.

22 Q Who recovered the evidence if you remember?

23 A I believe it was Investigator Barton with the
24 assistance of Investigator Hancock.

25 Q Okay. So, they would be on the chain of custody?

1 A Yes.

2 Q Okay. And on items not such as drugs, the chain of
3 custody's going to be on the outside of an evidence bag?

4 A That is correct.

5 Q Okay. And also I believe we heard -- what was
6 recovered from his person?

7 A Cash, U.S. currency.

8 Q How much?

9 A I think it was \$2,080.

10 Q Okay. Do you remember how much the buy was for
11 earlier?

12 A \$1,800.

13 MR. MACDONALD: No redirect, Judge.

14 THE COURT: You may step down.

15 MR. HUNTER: Your Honor, may Deputy Russell be
16 excused?

17 MR. MACDONALD: I have no objection.

18 THE COURT: He may be.

19 (Whereupon, the witness was excused.)

20 THE COURT: We're going to recess for the afternoon.
21 Keep in mind the caution given earlier. No
22 discussions; no research; no investigation.

23 Have a good evening. Please report to your jury room
24 at 9:30 in the morning.

25 Check with the bailiff. They'll tell you where you

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 are to report, but that's where you are to report. So, be
2 sure you get that information before you leave. Have a
3 good evening. I'll see you at 9:30 in the morning.

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: Who else have you got, Mr. Hunter?

7 MR. HUNTER: I believe we'll have Powell first thing
8 in the morning with the canine. And then after that it's
9 going to be Blake, Ken, Rosenberg, Beth real quick. Those
10 four will be quick. Powell will be the only one. I think
11 he wants to do an in-camera hearing first and then...

12 MR. MACDONALD: That's correct, Judge, to challenge
13 the sniff.

14 THE COURT: Okay. Court is in recess until 9:30 in
15 the morning.

16 END OF PROCEEDINGS FEBRUARY 27, 2024
17
18
19
20
21
22
23
24
25

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 (Proceedings February 28, 2024)

2 (Canine certification marked State's Exhibit No. 10 for
3 Identification; stipulation marked State's Exhibit No. 11
4 for Identification.)

5 (The following takes place outside the presence of the
6 jury.)

7 THE COURT: All right. Motion regarding next witness?

8 MR. MACDONALD: Yes, Your Honor.

9 We want to suppress on the grounds the dog -- the dog
10 and the alert itself were not reliable enough to establish
11 probable cause to search the vehicle, and that the
12 documents provided by the government in this case do not
13 meet the standards for testing the reliability of a drug
14 dog.

15 MR. HUNTER: Your Honor, at this time the state would
16 call Deputy Sarah Powell.

17 THE COURT: Okay.

18 SARAH POWELL, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. HUNTER

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

22 A Sarah Powell.

23 Q And are you a canine handler for the Spartanburg
24 County Sheriff's Office?

25 A Yes, sir.

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

- 1 Q How long have you been a canine handler?
- 2 A Over nine years. It would be ten in August.
- 3 Q And how many of that was with the city?
- 4 A Two.
- 5 Q Okay. And then eight years at the sheriff's office.
- 6 A Yes.
- 7 Q Okay. At the sheriff's office, how many dogs have you
- 8 had?
- 9 A One.
- 10 Q Okay. Who was that dog?
- 11 A Baro.
- 12 Q Okay. When did you first get Baro?
- 13 A December-January of 2015 going into 2016.
- 14 Q Who actually picked out Baro for you?
- 15 A He's currently Captain Steve Henderson.
- 16 Q Okay. What do -- what do y'all look for when you're
- 17 picking a dog?
- 18 A Whether or not the dog is social, how much he likes to
- 19 hunt or find toys, mainly toys and if the dog is social.
- 20 Q Okay. You're looking for a dog that -- that wants
- 21 something.
- 22 A Right. Wants a toy.
- 23 Q Okay. Because you can train a dog based on that.
- 24 A Yes.
- 25 Q Okay. Where was Baro picked out from, do you know?

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 A I believe he came from Alabama, a company in Alabama,
2 that bought him over from Europe.

3 Q Okay. What kind of dog is he?

4 A He's a Malinois-German Shepherd mix.

5 Q Did you provide us with your canine training records?

6 A I did.

7 Q Let me show you what's been marked State's Exhibit 8.
8 Is that your canine training records --

9 A Yes.

10 Q -- from the years of 2019 to 2021?

11 A Yes.

12 Q Did you also provide us even longer?

13 A Yeah, to -- would be all the way through 2023.

14 Q Okay. Through -- and his beginning records as well --
15 '16, '17 and '18?

16 A Correct.

17 Q Did you have your body camera on on March 2nd of 2021?

18 A Yes. I believe I did.

19 Q Okay. Have you reviewed that video with me?

20 A Yes.

21 Q Okay. State's Exhibit 7. I know I already have it
22 lined up to play, but is that your body-worn camera?

23 A Yes, sir.

24 MR. HUNTER: Your Honor, at this time the state would
25 offer State's Exhibits 7 and 8 into evidence.

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 MR. MACDONALD: No objection.

2 THE COURT: They're admitted.

3 (Sarah Powell's body-worn-camera video marked State's
4 Exhibit No. 7; canine training marked State's Exhibit No.
5 8.)

6 Q Can you -- what are the first three months like when
7 you first got Baro? Who did you train with?

8 A Some with Captain Henderson who at the time was
9 Sergeant Henderson and some with Douglas Wanamaker and a
10 canine school that he was going -- kinda running through
11 Greenville County Sheriff's Office.

12 Q What was -- I know you said Sergeant Henderson,
13 Lieutenant Henderson, Captain Henderson. What was his job
14 title at the time?

15 A At the time he was a sergeant over the canine unit for
16 Spartanburg County Sheriff's Office.

17 Q Okay. Describe the training that you started doing
18 with him. Is that first, basically three months, that you
19 had Baro?

20 A Right, yes.

21 Q Okay. How often would -- what did he do?

22 A Every -- at that time, because we're kind of
23 considered in school -- we work through Monday through
24 Friday. Usually we'd start pretty earlier in the morning.
25 We would do, you know, processes for teaching the dog to

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 track, all parts of patrol work that he does. And then we
2 would also work on his narcotics detection, playing little
3 games, teaching him the odors and what -- you know, what we
4 wanted from him when he smelled the odor, that sort of
5 thing.

6 Q Is Baro a singular-purpose dog or multipurpose dog?

7 A He's a dual-purpose dog.

8 Q Okay. What are his purposes that y'all have trained
9 him for?

10 A He does tracking, article search, area search,
11 building search, aggression control, which is basically
12 like apprehension, and narcotics detection.

13 Q Okay. And we're going to talk about training, but I
14 want you to specifically focus on the narcotics training
15 when this is concerned.

16 A Uh-huh.

17 Q But, obviously, when you do your training, you're not
18 just doing narcotics training.

19 A Right. It's all aspects of the different jobs that he
20 has.

21 Q Okay. So the -- for the first three months, it's you,
22 Baro and Mr. Henderson.

23 A Right, and also Douglas Wanamaker. And then he had a
24 school doing on at the time. So, it was myself and my dog,
25 and then there were approximately three or four other

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 handlers and their dog. we were all learning together.

2 Q And that's Monday through Friday?

3 A Yes.

4 Q 9:00 to 5:00?

5 A Yeah. Sometimes it'll be Monday to Thursday. And
6 that would be in the event that we had a really long day
7 and we were working 10-or-12-hour days. And that would
8 give us Friday off as well.

9 Q How do you start a dog on learning how to detect the
10 odors of narcotics?

11 A You start him by letting him chase a toy that you've
12 put in a box with an odor. And when we're -- we let it sit
13 for weeks at a time, and then we'll throw the toy. Brings
14 back the toy.

15 Then it'll progress to -- we have a box with a hole in
16 it. It's literally made out of plywood, as well as a wall
17 with several, a lot, of holes in it where we can literally
18 put the odor in the box so that when the dog puts his nose
19 in the box we can give him a command of what we later will
20 want as a final behavior, which in Baro's case I would just
21 say sit. And when he put his nose in the box and smelled,
22 I'd say sit. And then I would give him his toy.

23 We do tons and tons of repetitions to that until he
24 gets to the point where he goes to the box, smells the odor.
25 He sits on his own and he gets the toy.

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 Q So, you're basically teaching him that when he smells
2 the smell, you want him to sit.

3 A Correct.

4 Q Okay. How many times have you used that smell?

5 A A lot. I mean, in the beginning of his training it
6 was used multiple times a day every day, and it's continued
7 throughout his career.

8 Q Okay. Can you guesstimate in the hundreds, thousands?

9 A It'd be hundreds. It'd easily be hundreds.

10 Q Hundreds. Okay. When you say the smell, he actually
11 had access to actual narcotics?

12 A Yes.

13 Q And that had been tested and you know what they are?

14 A They come from the lab at the sheriff's office, yes.

15 Q Okay. What -- what odors? What narcotics has he been
16 trained to smell?

17 A Meth, marijuana, heroine, cocaine and crack cocaine.

18 Q So, four different -- cocaine, meth?

19 A Yeah. We consider the crack cocaine and cocaine one.
20 It's considered four others, yes.

21 Q Okay. So, again, heroine is one of those others.

22 A Yes.

23 Q Okay. And, again, what is the school like with

24 Mr. Wanamaker? First of all, who is Mr. Wanamaker?

25 A He's a master trainer. He previously worked as a

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 sergeant or lieutenant -- I'm not sure which one -- for
2 Greenville County Sheriff's Office. He has since retired,
3 but he's a master trainer for the North American Police
4 Work Dog Association, which is the agency that we use to
5 certify the dogs each year.

6 Q I was about to ask. What is that?

7 A Yeah.

8 Q So, it's the agency that you use to certify your dogs.

9 A Yeah.

10 Q How much training goes in before you even try to
11 certify a dog?

12 A I mean, it's definitely a 40-or-50-hour work weeks for
13 several months, at least two to three months. So, hundreds
14 of hours there.

15 Q What is a hide?

16 A A hide?

17 Q A hide, yes, in regards to training.

18 A That's -- yeah. So, we -- the -- the drugs that we
19 have signed out to us, like I have my box that's signed out
20 in my name that has all the odors in it, different sizes
21 and amounts and that sort of thing, it would be when we
22 take one of those little packets of drugs and put it
23 somewhere. We hide it, basically, from the dogs and the
24 handler. So, may come in to work a room or a vehicle or
25 some area outside. The hide is the location that we put

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 the drugs.

2 Q Okay. And is that used in your training?

3 A Yes.

4 Q What is it used for?

5 A To continue further on his and to validate his
6 behavior on other narcotics.

7 Q Okay. Obviously, you've been certified since when?
8 You and Baro have been certified in narcotics since when?

9 A 2016, spring of 2016.

10 Q And that's through the national --

11 A North American Police Work Dog Association.

12 Q Okay. Do you have to take a test in order to be
13 certified under that?

14 A Every year.

15 Q Okay. Describe what that test is like.

16 A It's a big test. The narcotics portion is -- consists
17 of vehicle hides, which in that portion of the test there's
18 six vehicles in -- in the test. Two of them would be blank
19 vehicles. They wouldn't have any hides on them at all.
20 And four of them would have hides on the exterior, as well
21 as a hide on the interior.

22 Q Okay. So, there's six vehicles.

23 A Yes.

24 Q Two have nothing.

25 A Two have nothing.

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 Q So, you're testing whether the dog will try to alert
2 something even though nothing's there.

3 A Correct. And there -- those are chosen at random. I
4 don't know which ones are blank and which ones would have a
5 hide on them.

6 Q So you -- you don't put the drugs there.

7 A No. Absolutely not. That's blind to the handlers.

8 Q So, you're blind to where the drugs are. And the dog
9 is blind to where the drugs are, obviously.

10 A Correct. Yeah.

11 Q And that's just for vehicles.

12 A Right. So, in that, like I said, I don't know which
13 ones are blank and which ones aren't. If I call it a
14 blank, and it's blank, then that's fine. I move on to the
15 next car.

16 If I call blank and there's a hide on it or if I call
17 it hide and there was not one there, that would be a miss.
18 So, you have that through six vehicles, and you also have
19 six rooms set up very similar.

20 Two rooms are blank. Four have hides in them. Have to
21 call the room where the hide is before I leave it. And then
22 also there would be, depending on the location of the test
23 and what the proctor of the test wants to do, you can either
24 do areas or lockers. I have done both over the years. An
25 area would just literally be -- it could be this courtroom.

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 And I have to come in the courtroom and find the four hides.
2 In the case of lockers, you would work sections of lockers,
3 and I have to find and call the correct locker for four
4 hides.

5 Q And, so, obviously, with lockers there's going to be
6 lockers that don't have anything in them.

7 A Correct.

8 Q An open area. Those are mainly -- there's four
9 hides you need to find.

10 A You've got to find four hides, right.

11 Q Okay. How many times can you miss a hide or miss --
12 misrepresent an alert and still pass the test?

13 A One.

14 Q All right. So, again, there's six vehicles.

15 A Uh-huh.

16 Q And then within four of those vehicles there's --

17 A So, there's eight hides in the vehicles.

18 Q Okay. And two vehicles with nothing.

19 A Correct.

20 Q And the same with rooms. There's four rooms with --

21 A Yeah. So, that's 12 -- 16 -- there's 16 total.

22 Q And then another -- another four of the open area or
23 lockers that you have to find.

24 A Yes.

25 Q And if you miss more than one --

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 A You fail.

2 Q -- you fail. Okay. Have you ever failed a test with
3 Baro for narcotics?

4 A No.

5 Q Okay. And, again, we talked about hides, but the
6 drugs are different types of drugs. So, in the four
7 vehicles, you're testing the four for each of those?

8 A For each of -- each of the different odors, yes.

9 Q And the same with the building search?

10 A Yeah.

11 Q Okay. And the same with an open-area search.

12 A Yes.

13 Q And, so, you've been certified since 2016.

14 A With Baro.

15 Q With Baro, specifically.

16 Let me show you what's been premarked State's
17 Exhibit 10. Do you recognize this? Look at all of them.

18 A These are copies of my certifications and a copy of
19 the -- performed my test, which is --

20 Q That's your test and certification from '18?

21 A Yes.

22 THE COURT: Let me ask you to get closer to that
23 microphone. I think the court reporter is having a hard
24 time hearing you.

25 THE WITNESS: Sure.

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 Q Yeah. It's copies of my certification papers, as well
2 as a copy of one of the test certifications.

3 MR. HUNTER: Your Honor, at this time the state would
4 offer State's Exhibit 10 into evidence.

5 MR. MACDONALD: No objection.

6 THE COURT: It's admitted.

7 (Canine certification marked State's Exhibit No. 10.)

8 Q what are the two types of alerts you can have?

9 A A passive and aggressive.

10 Q Okay. Describe the difference between the two.

11 A A passive alert is, like, what Baro does. It would
12 just be a sit or a down, something that doesn't involve
13 contact with where he thinks the odor is coming from.
14 Aggressive would be barking, scratching, that sort of
15 thing.

16 Q And how is he taught to do that?

17 A You mean, how is he taught which alert to give?

18 Q Correct.

19 A All the way back to when we very first get him and we
20 have him on the boxes. And he actually puts his nose in a
21 box that we know has an odor in it, and then we tell him
22 the command. We do that so many times that eventually when
23 he goes to the box and smells the odor, he offers a
24 behavior himself and he gets a toy reward.

25 Q Much like if I have a treat, my dog knows to come and

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 sit in order to get the treat.

2 A It's exactly the same thing.

3 Q Okay. But, again, when you're doing -- how many times
4 do you train outside of the test for these certifications?

5 A Every Wednesday.

6 Q So, weekly since 2016?

7 A Yes.

8 Q Obviously, there are times when you miss the weekly
9 test for?

10 A Sick kid.

11 Q Sick right. Right. I think you had a child during
12 one of the years.

13 A Yeah. I did. I had a -- I had a daughter in 2018, in
14 the spring of 2018.

15 Q But the goal is weekly you're testing the dog.

16 A Correct.

17 Q With who?

18 A Basically, the other members of our unit and our
19 supervisors.

20 Q Okay. And you go kinda through the same test that you
21 go through for your certification.

22 A It's not always just like the test, but yes.

23 Q And there's still hides.

24 A Right. There's hides that I don't know where they are
25 that someone sets up for me and I go and find them.

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 Q There's areas where nothing is being hidden --

2 A Correct.

3 Q -- and you're making sure that the dog doesn't alert
4 to those.

5 A Yes.

6 Q Okay. I want to get to March 2nd of 2021. Were you
7 working as a canine handler that day?

8 A Yes.

9 Q All right. Were you called out to I-26?

10 A Yes.

11 Q And why were you called out to I-26?

12 A I was just told that there was a refusal on the
13 vehicle and they would need a sniff, what they call a
14 sniff, on the radio.

15 Q When you first get to the vehicle and you get Baro out
16 of the car, what do you do? Out of your vehicle.

17 A Out of my vehicle, usually I let him try and go to the
18 bathroom real quick, and then I take him to the front of
19 the vehicle that we're going to work and put him in a sit
20 and switch him from his prone collar to a flat collar.

21 Q Why do you switch the collar?

22 A Because to him in all of our training the prong collar
23 is when he has to listen to me. When he's on the flat
24 collar, that's basically his cue for he's about to his part
25 of the job and I'm going to -- I'm going to listen to him

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 basically.

2 Q Okay. And that's about the time that your body-worn
3 camera has been turned on?

4 A Yes.

5 Q Okay. And that's what we see in your video when
6 you're switching the collars.

7 A Right.

8 Q Okay. Where do you start your open-air sniff of the
9 vehicle?

10 A It's not a hundred percent always the same, but most
11 of the time I start on the front bumper and work towards
12 the driver's side of the vehicle if that makes --

13 Q So counterclockwise?

14 A Counterclockwise, yeah.

15 Q Okay.

16 A From the front counterclockwise.

17 Q How many times do you generally go around the vehicle?

18 A Again, that depends on what the dog is doing and,
19 like, this situation, for example, this we're on I-26. And
20 if I remember correctly, there was a vehicle trying to hold
21 a lane of traffic to keep cars off of me and stuff. I like
22 to run a car three times. Sometimes it's just two.

23 Q Can you tell me what happened when you were in the car
24 that day?

25 A Yeah. We ran counterclockwise and then came back

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 clockwise. When we came back clockwise Baro showed a
2 behavior change on, I think, the passenger-side front door
3 and then indicated on the passenger side of the vehicle.

4 I told him -- I think I said good boy. Usually I'll
5 offer some sort of verbal praise if I'm going to plan on
6 continuing working. I work back around the back of the
7 vehicle, and he gave another final on the driver's side of
8 the vehicle.

9 Q When you say behavior change, is that the alert that
10 you're looking for?

11 A It's not the final alert but it's -- it's a type of
12 alert to me because he's doing, offering behaviors that I
13 know are things I've seen through training that would
14 indicate he smells the odor of narcotics.

15 Q Okay. And, again, you don't know what -- which odor
16 he's smelling.

17 A No. I have no idea.

18 Q You just know it's one of the four that he's --

19 A It's one of the four.

20 Q Okay. And in your video you note that he's made three
21 behavior changes.

22 A Yes.

23 Q Okay. Two of them were final alerts in your opinion?

24 A Correct.

25 Q And what were -- what were his actions?

Sarah Powell (In-camera)
Direct examination by Mr. Hunter

1 A He sat.

2 Q Okay. On two of them.

3 A On two of them.

4 Q And the third one was a change of behavior but not
5 sit.

6 A Yeah. Usually, he'll close his -- he'll close his
7 mouth and do what we call like a typewriter sniff, which is
8 where he sniffs really fast, really like short and fast.
9 And a lot of times when you see him and he's walking around
10 the vehicle his tail may be kind of sweeping. It'll slow
11 down and start -- or excuse me. It'll speed up and start
12 going shorter and faster.

13 Q And so notice --

14 A And he'll -- he'll stop his motion from moving so fast
15 forward and backward. He'll stay in an area longer.

16 Q Okay. So, where were the two final alerts on this
17 vehicle?

18 A One on the passenger side and one on the driver's side
19 of the doors, I believe.

20 Q And you noted those on your body camera at the time of
21 the alerts.

22 A Yes.

23 Q All right. And then you also informed who?

24 A I don't remember exactly but it was probably the
25 deputy that pulled the car over or -- or Deputy Vassar.

Sarah Powell (In-camera)
Cross-examination by Mr. MacDonald

1 Q But you -- do you inform deputies on your video?

2 A Yeah, that they -- it was that I had had an indication
3 that -- yeah. It was that they could search the vehicle
4 based on the canine alert.

5 Q Do you remember if you stayed on scene after that?

6 A I don't think I did very long. Honestly, I don't
7 remember. I don't recall.

8 Q So, you didn't participate in the search at all or
9 anything like that.

10 A No.

11 Q Okay. Just the two alerts that you saw.

12 A Right.

13 Q One other alert that you thought was a behavior
14 change.

15 A Right.

16 Q Okay. And, again, y'all train weekly every Wednesday?

17 A Yes.

18 Q And other than normal people missing work, is that
19 where you have to go out to a call?

20 A If I'm not out of town or have an illness, I'm
21 generally in training, yeah.

22 Q And that's since 2016?

23 A Yeah.

24 Q Minus the, what, three or four months? How long --

25 A Actually, that I -- I kept going to training just

Sarah Powell (In-camera)
Cross-examination by Mr. MacDonald

1 because Baro was a little bit younger then. And, so, I was
2 at work on Friday and had my daughter the following Monday,
3 and I was out for nine weeks. And during that nine weeks I
4 met with the canine lieutenant at the time and worked Baro
5 just to make sure he didn't get too rusty then.

6 Q Okay. Please answer any questions Mr. MacDonald may
7 have for you.

8 CROSS-EXAMINATION

9 BY MR. MACDONALD

10 Q Do you keep a record of Baro's performance in the
11 field as well?

12 A Yes.

13 Q And how do you do that? Could you describe that
14 process?

15 A Of how we keep records of his performance in the
16 field?

17 Q Yes.

18 A Any time -- if I get Baro out of the car while I'm at
19 work and give him a command to do something, there's a
20 report generated.

21 Q Okay.

22 A So, I would put a report in the -- Spillman is our
23 system -- in that system.

24 Q Okay. When you bring Baro out to -- to detect drugs,
25 does he ever give -- has he ever given a false positive

Sarah Powell (In-camera)
Cross-examination by Mr. MacDonald

1 before?

2 A Not that I'm aware of. Any time he's given an
3 indication, there hadn't been drugs in the vehicle but
4 there's been paraphernalia or something other than that
5 that would indicate that there could have been an odor
6 there.

7 Q Okay. But if there -- there's -- so, for example, if
8 there were no drugs in the car and-but Baro alerted, could
9 he still alert because the odor was still there even though
10 the presence of narcotics wasn't?

11 A Potentially, sir.

12 Q Okay. How do you verify cases where your dog alerts
13 but no drugs are found?

14 A Like I said, that -- I haven't really had that happen
15 other than in the case of, like, say, there was one that I
16 can recall. There were several glass pipes that had
17 residue in them, that sort of thing.

18 The occupants of the vehicle admitted that they used
19 narcotics in the vehicle. So, it would be feasible that the
20 odor was still there.

21 Q So, you would count that as a correct identification?

22 A Yeah.

23 Q So, if you -- if -- if Baro indicated and you found
24 things that could be used for contraband, you'd count that
25 as a success? Such as pipes.

Sarah Powell (In-camera)
Cross-examination by Mr. MacDonald

- 1 A In -- in conjunction with the occupant of the vehicle
2 admitting, yeah, I used drugs in this vehicle.
- 3 Q Okay. But if the occupant --
- 4 A Not as a standalone, no.
- 5 Q If the occupant doesn't admit it but you find pipes,
6 you would not count that as a success?
- 7 A No, no.
- 8 Q Okay. Would you ask the occupants if there were drugs
9 in the vehicle previously if there weren't any at the time
10 that you searched, or no?
- 11 A I may.
- 12 Q Okay. I want to talk to you about those certification
13 tests that you went in with Mr. Hunter. You said that to
14 fail you have to get more than one miss, is that correct?
- 15 A Correct.
- 16 Q And that would fail you. If you ever -- if you fail a
17 certification test, does that mean that's it, you can never
18 go back?
- 19 A You can repeat the test.
- 20 Q Okay.
- 21 A But it would -- I'm not a hundred percent certain to
22 this, it's my understanding -- again, I never failed one,
23 so I don't know for certain, but I think you have to wait
24 15 days. So, either you would have to come off the road.
25 You would practice, practice, practice and then reattempt

Sarah Powell (In-camera)
Cross-examination by Mr. MacDonald

1 the test.

2 Q But you're not -- you're not certain of that?

3 A I'm not certain of that, no, sir.

4 Q But you would -- but you are certain that you would at
5 some point be allowed to retake it?

6 A Yes.

7 Q Okay. What's the pass/fail rate for the certification
8 exam that you take? Not for your dog, but just in general.

9 A I don't know that.

10 Q You don't know.

11 A No.

12 Q Okay. You talked about a flat collar. That's kind of
13 like his work collar, like he knows he's -- he's got a job
14 to do?

15 A Right.

16 Q And you -- you stated that once he's got the flat
17 collar on, that's when he knows to start?

18 A He -- he starts once I give him the command, but
19 that's one of the cues that we use of, hey, you don't have
20 to sit right by my side and behave, you can go do the job
21 I've asked you to do.

22 Q Okay. What command do you give?

23 A Go find.

24 Q Go find --

25 A -- for narcotics. Go find.

1 Q Okay. And so that's when he knows to look for
2 narcotics?

3 A Correct.

4 Q Okay. Did you give a verbal to him in this case?

5 A I believe I did, yes.

6 Q Okay.

7 MR. MACDONALD: No further questions, Judge.

8 THE COURT: You may step down. Thank you.

9 THE WITNESS: Thank you.

10 MR. MACDONALD: All right. Thank you, Judge.

11 My first argument is to suppress the canine sniff on
12 the grounds that the dog and the alert itself were not
13 reliable enough to establish probable cause to search the
14 vehicle.

15 In the United States vs. Mason, which is a Fourth
16 Circuit case, 628 F3d. 123, Fourth Circuit, 2010, whether a
17 dog alerts or not is a question of fact for the court to
18 decide.

19 The U.S. vs. Diaz, which is a District of South
20 Carolina case from April 6th of 2018, and that case states
21 that a change in behavior is insufficient to constitute an
22 alert. The dog must perform the full indication that it is
23 trained to do before it constitutes an alert and
24 establishes -- in establishing probable cause.

25 In Diaz -- the case I'll be handing up -- the Court

1 found that upon review of the video of the sniff the video
2 reveals that the dog jumped up and down while the handler
3 tried to restrain it.

4 The Court was provided no information by which it can
5 determine that this was how the canine was trained to
6 alert. And so the Court did not show that his -- he did
7 not show he's trained to indicate behavior on the video.

8 In that case the government had argued that the Court
9 should accept the handler's testimony as conclusive that
10 the canine alerted. What concerned the Court in Diaz was
11 that it only had law enforcement's test -- testimony to
12 consider in evaluating whether or not the dog alerted.

13 The Court was presented with no records that explained
14 how the canine was trained to indicate.

15 And my argument here, Judge, is that in the motion for
16 discovery that was provided for us and was also admitted to
17 the Court, there's nothing in the motion of discovery that
18 explains how or what trained behavior that Baro was trained
19 to make to have an indication.

20 And so we're only going off of what the testimony of
21 the handler is, and what Diaz argues is that's not enough.
22 We need to be provided the official documentation of what
23 the trained behavior is, and we don't have that in this
24 case.

25 Judge, the Diaz case also cited United States vs.

1 wilson, which is 995, F. Supp. 2d, which a western District
2 of North Carolina 2014 case.

3 And in that case the Court in wilson found that the
4 drug dog's indication was to sit and stare when it detected
5 narcotics.

6 The Court in wilson reviewed the video and found that
7 the dog did not clearly show an alert or sit and stare.
8 The government argued that the Court should accept the
9 handler's testimony that the video -- that although the
10 video did not pick up the dog's alert, he had observed
11 other behavior that he interpreted to mean the dog alerted.

12 The wilson court refused to accept the testler --
13 testimony of the handler and argued that when law
14 enforcement sees the detection dogs, the dog becomes the
15 functional equivalent of the magistrate, and so there must
16 be an objective basis informing the Court the probable
17 cause.

18 A subjective determination by the handler is not
19 tenable due to it being essentially immune from review.

20 The Court in wilson found that the dog's behavior did
21 not constitute an alert. To allow a search predicated on
22 an officer's interpretation is utterly amenable as lesser
23 showing exhibited by the dog in this case, would be
24 tantamount to permitting law enforcement officers to issue
25 their own search warrants based on their own subjective

1 analysis.

2 Judge, what I'm trying to argue here is that there's
3 no objective showing of an -- of an alert indication of
4 drugs being present by a view of the video, and there's --
5 there's multiple timestamps where the dog is exhibiting
6 multiple behaviors.

7 For example, at 1:46 -- at 1:46 in the video you see
8 the dog walking up to the door. At 1:51 in the video you
9 see the dog sit. At one -- at two minutes you see the dog
10 jumping up again. And at 2:05 you see the dog sitting
11 again.

12 You see multiple conflicting and contrasting behaviors
13 from the dog that would show that it's not an indication
14 that a probable -- from a probable-cause perspective that
15 the dog indicated on an objective basis.

16 There's two other cases from outside of the
17 jurisdiction that also I just wanted to bring forth for the
18 Court.

19 The first one is United States vs. Heald, 165 F. Supp.
20 3d 765, the Western District of Arkansas, 2016. That Court
21 held that canine behavior inconsistent with its trained
22 alert -- that canine -- the Court found that the canine
23 behavior was inconsistent with his trained alert. The
24 canine was trained to signal the presence of narcotics with
25 a passive alert, which was sit and lie down. Instead of

1 questioning in that case the canine would jump onto the car
2 it was inspecting. The Court found that because the dog
3 was exhibiting untrained behavior it was not a shining
4 example of reliability.

5 In this case when you watch the body camera you can
6 see the dog at times jumping up and down onto the vehicle.
7 You can see the dog jumping up and down onto the vehicle at
8 times, and then other times it's exhibiting a sit behavior,
9 Judge. And, so, because it's exhibiting conflicting and
10 opposing behaviors, that's not going to be a shining
11 example of reliability on the dog.

12 The other case I wanted to cite was United States vs.
13 Heir -- H-E-I-R -- and that's 107 F. Supp. 1088. That's
14 District of Nebraska in 2000.

15 That court found -- found that -- made a finding that
16 a dog change -- changing its sniffing pattern did not
17 indicate by scratching as he was trained to do and thus did
18 not establish probable cause.

19 Again, Judge, all I'm trying to say is that the dog is
20 showing multiple different behaviors and so an alert was
21 not established in this -- on this case on reviewing of the
22 body camera.

23 So, for those reasons, Judge, we find that the Court
24 made the determination that the government in this case did
25 not meet the standards for -- for probable cause to search

1 the vehicle based off the dog's sniff pattern. And so,
2 Judge, we move to suppress on the grounds that the dog's
3 alert itself was not reliable enough to establish probable
4 cause to search the car based on its actions.

5 The other motion that I have regarding the dog is the
6 documents provided by the government in this case do not
7 meet the standards for testing the reliability of a drug
8 dog.

9 In Florida vs. Harris the Court found that an alert by
10 a drug dog can establish probable cause to search. The
11 probable-cause standard for a drug dog is based on the
12 totality of the circumstances.

13 The question is whether all the facts surrounding a
14 dog's alert viewed in the lens of common sense would make a
15 reasonably prudent person think that a search would reveal
16 contraband or evidence of a crime.

17 In Harris the Court held that access to reliability of
18 the drug dog is part of the balancing test. The question
19 is whether all of the facts surrounding a dog's alert
20 viewed in the lens of common sense would make a reasonably
21 prudent person think that a search would reveal contraband
22 or evidence of a crime.

23 In Harris the Court held that access to reliability of
24 a drug dog is part of the balancing test. Evidence of the
25 dog's satisfactory performance in a certification or

1 training program can provide sufficient reasons to trust
2 his alerts. But the government must disclose the handler's
3 log, training records, score sheets, certification records
4 and training standards and manuals.

5 The government must establish the reliability of the
6 drug dog detection team, both the canine and the handler.
7 Only a reliable alert can establish probable cause. Absent
8 that, there's no probable cause to search the vehicle.

9 In the case I had already handed up to you, United
10 States vs. Diaz case, the Court was presented with no
11 records of how the canine was trained to indicate. The
12 handler had testified that an alert is simply behavior
13 perceived by the handler of that canine.

14 The Court held that the drug dog was not found to be
15 reliable due in part to no disclosure by the government of
16 what constituted an alert for the drug dog.

17 In Diaz, citing you United States vs. Cedano-Arellano,
18 which is 332 F.3d 568, and that's the Ninth Circuit in
19 2003, the Ninth Circuit held that the federal rules of
20 criminal procedure compels the government to disclose the
21 handler's log, training records, score sheets,
22 certification records and training standards and manuals
23 pertaining to the dog because these materials are crucial
24 to the defendant's ability to accept -- to assess the dog's
25 reliability and to conduct effective cross-examination at a

1 suppression hearing.

2 In Diaz there is simply no test -- there's simply
3 nothing provided about the certification that would show
4 what the dog's indication would be, and, so, because of
5 that we don't know how reliable the hue is of a
6 disclosure -- or I'll -- I'll withdraw the last argument,
7 Judge, but essentially because we weren't provided from the
8 training programs what constituted an alert, we would argue
9 that there's no reliability here for the dog. Thank you.

10 THE COURT: You're to have to tell me that again.

11 what -- I understood from the outset that there was
12 not an objection based on certification. Are you saying
13 there is, or there's not?

14 MR. MACDONALD: Judge, originally we were going to
15 object to the certification, but I think that that got
16 covered through the testimony, and so at this point the
17 only objection we have was that regarding the
18 certification, was that there's nothing provided in the
19 certification for how the dog was trained to alert.

20 THE COURT: You're talking about it wasn't provided --
21 that documentation was not provided to you in discovery?

22 MR. MACDONALD: That's correct.

23 THE COURT: Did you request it?

24 MR. MACDONALD: I did not request it, Judge, but I --
25 I think that that's something that would need to be

1 provided.

2 THE COURT: Well, I understand. Did you and the
3 solicitor talk about that? I mean, was there -- there
4 was -- was there some discussion about providing that
5 information?

6 MR. MACDONALD: No, Your Honor.

7 The solicitor provided all of the records that they
8 had for the canine and the canine handler in this case.
9 So, I assumed that that was everything.

10 THE COURT: So, they did provide information about the
11 canine training?

12 MR. MACDONALD: They did.

13 THE COURT: And certification.

14 MR. MACDONALD: They did.

15 THE COURT: But you're saying that information is not
16 sufficient to establish the reliability of what the dog
17 alerts to?

18 MR. MACDONALD: It doesn't establish what its alert
19 behavior is.

20 THE COURT: That's what I meant to say.

21 MR. MACDONALD: Yes, sir.

22 THE COURT: Doesn't establish what -- what is the
23 manner in which the dog shows a positive alert.

24 MR. MACDONALD: That's correct, Judge.

25 THE COURT: Okay. All right.

1 MR. HUNTER: Thank you, Your Honor.

2 THE COURT: Mr. Hunter.

3 MR. HUNTER: Your Honor, we believe that Florida vs.
4 Harris is the controlling Supreme Court case. He's already
5 handed you a copy, so I don't think I need to. It's a
6 Supreme Court case. Just reading some of the --

7 THE COURT: Which one is it?

8 MR. HUNTER: Florida vs. Harris.

9 THE COURT: Okay.

10 MR. HUNTER: That's a United States Supreme Court
11 case.

12 To establish that a drug-detection dog is reliable,
13 the state need not in every case present exhaustive set of
14 records, including a log of dog performance on the field,
15 and that that approach would be inconsistent with flexible
16 common-sense standard of probable cause. And evidence of a
17 drug dog's satisfactory performance and certification of
18 training programs can itself provide sufficient reason to
19 trust his alert.

20 Your Honor, she testified as to how she trained him to
21 alert, that in the beginning they would have the drug
22 hides. They condition the dog, as I stated when you
23 condition a dog, when you have a treat they want -- you
24 want it to sit in front of you.

25 She conditioned the dog that when that dog smelled the

1 odor, one of the four odors, it was trained to sit.

2 We actually heard in the argument Mr. MacDonald made
3 that he even cited timestamps on the video where the dog
4 sat. That's why I made -- made her go through what a final
5 alert was versus the behavior change. But she stated there
6 were at least three alerts in her mind, but two of them
7 were final that were the way the dog was trained by her and
8 her trainers, Mr. Wanamaker and Mr. Henderson, to alert on
9 the vehicle.

10 Through the training records provided, the video that
11 has been submitted to the Court and her testimony, we
12 believe that she showed how the dog was to alert. The dog
13 alerted, and it is viewed on video from the timestamps Mr.
14 MacDonald gave and that the drug dog alert was reliable and
15 P.C. existed to search. And, obviously, we didn't argue
16 P.C., but we also note that probable cause existed before
17 the dog even showed up to search the vehicle.

18 But by that reason we'd argue that we have met our
19 burden to show question of fact to the jury whether they
20 believe the drug dog's reliable and that it should go in
21 front of the jury. Thank you.

22 MR. MACDONALD: No further argument.

23 THE COURT: Well, y'all correct me if I misstate
24 anything. But, as I understood it, Officer Powell
25 testified that she trained the dog, that the dog was

1 trained to discover heroin and other things and that the
2 dog was trained in order to show an alert to heroin or
3 something else, that the dog was to sit and that was the
4 dog's indication of the presence of the substance that the
5 dog was being asked to locate.

6 Are y'all in agreement that the video, the body cam
7 video, of Officer Powell that was introduced -- she
8 testified that there were three behavior differences, I
9 think. I've forgotten the exact term but three behavioral
10 differences.

11 Two of those, she testified, were alerts, meaning the
12 dog sat in response to locating the heroin or whatever the
13 dog was looking for that it'd been trained to locate. In
14 this case it was heroin.

15 Are y'all not in agreement that the video shows the
16 dog sniffing the vehicle and twice sits, which was the
17 response the dog was trained to give when the dog found a
18 substance that he was asked to locate?

19 MR. MACDONALD: Judge, my argument is that the dog was
20 exhibiting multiple different sets of behavior both
21 including jumping up on the car but/and also sitting, and
22 combined with the fact that there's nothing in the records
23 that explains what constitutes, actually constitutes, an
24 alert, those two in compilation with each other, in
25 combination with each other, makes the argument that

Sarah Powell
Direct examination by Mr. Hunter

1 there's no probable cause on the reliability of the sniff
2 in this case.

3 THE COURT: All right. So, you're saying that the
4 testimony of the officer is not sufficient to establish
5 what constitutes an alert?

6 MR. MACDONALD: I -- Judge, I think the training
7 records would be the appropriate avenue to explain how the
8 dog was trained to alert, not what the officer's testimony
9 would be.

10 THE COURT: All right. And you -- you say -- of
11 course you've looked at the video. You're saying that it
12 shows the dog doing a lot of things, but you agree that the
13 dog twice did alert, according to -- to the testimony of
14 Officer Powell as to how the dog indicates the presence of
15 a substance. The dog sits. You're saying that the video
16 does show that?

17 MR. MACDONALD: Yes, Judge.

18 THE COURT: Okay. All right. I think the basis and
19 the foundation for the admission of the evidence has been
20 sufficiently established to indicate reliability.

21 The weight to be given to it will be for the jury to
22 decide, but the evidence supports the admission of the
23 testimony and the evidence. And, so, your motion for
24 suppression is denied.

25 All right. Anything else to address before the jury

Sarah Powell
Direct examination by Mr. Hunter

1 is brought in?

2 MR. MACDONALD: Nothing from us, Your Honor.

3 THE COURT: All right. Bring them in, please.

4 (The following takes place in the presence of the
5 jury.)

6 THE COURT: Good morning, ladies and gentlemen.

7 I apologize for the delay, but something unforeseen
8 arose that required my attention, and, so, I had to attend
9 to that. But that's been accomplished. So, we're now
10 going to continue with the state's presentation of evidence
11 in this case.

12 MR. HUNTER: Your Honor, the state would call Deputy
13 Sarah Powell.

14 SARAH POWELL, having been
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. HUNTER

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

18 A Sarah Powell.

19 Q And how are you employed?

20 A With the Spartanburg County Sheriff's Office.

21 Q And what position?

22 A canine handler.

23 Q Okay. How long have you been a canine handler?

24 A Over nine years now.

25 Q Is some of that with the City of Spartanburg?

Sarah Powell
Direct examination by Mr. Hunter

- 1 A Yes. About two years.
- 2 Q And, so, seven or eight years here at the county?
- 3 A Eight years. Eight at the end of or the beginning of
- 4 this year.
- 5 Q Okay. How many dogs have you had with the county?
- 6 A One.
- 7 Q And what's that dog's name?
- 8 A Baro.
- 9 Q When did you first receive Baro?
- 10 A December of 2015. Jan -- really early January of
- 11 2016, around Christmas/New Year's.
- 12 Q All right. Who picked out Baro?
- 13 A Captain Steve Henderson.
- 14 Q Okay. What was he at the time?
- 15 A At the time he was the canine sergeant.
- 16 Q So, he was over canines at the time.
- 17 A He was over canines, yeah.
- 18 Q When you're picking out a dog for a canine unit for
- 19 the sheriff's office, what are you looking for?
- 20 A How much he likes to play with a toy. And then an
- 21 extension of that, like, how long he'll look for a toy if
- 22 you throw it in, say, like, tall grass and he can't find
- 23 it, how intense he is about stuff like that, how social he
- 24 is, that sort of thing.
- 25 Q And why are you looking for those things?

Sarah Powell
Direct examination by Mr. Hunter

1 A Because it's an extension of how well he'll be at his
2 job later in -- in his training.

3 Q Okay -- how -- what is a multipurpose dog or dual
4 purpose dog?

5 A For us a dual purpose dog means he does all the
6 aspects of patrol, and that's one of his purposes. The
7 other purpose would be to look for some sort of odor
8 detection. In mine and Baro's case, it's narcotics.

9 Q Okay. But are you certified as a dual purpose dog?

10 A Yes.

11 Q Okay. So, you can track suspects?

12 A Tracks, articles, areas, buildings for people and
13 narcotics or apprehension.

14 Q All right. And as we go forward, I want you to kinda
15 just focus on the narcotics part of it since there's no --

16 A Right.

17 Q -- people that we're searching for in this case.

18 How do you start training a canine?

19 A In the very, very beginning for narcotics, we put
20 their favorite toy and close it up in a box with the odor
21 of narcotics that we want them to learn to find later. And
22 once that toy is sitting there, kinda what we call bate,
23 we'll throw the toy and let them play with it. And that
24 way they know. We throw toys a lot in tall grass because
25 we can watch them sort of look for the toy. And at some

Sarah Powell
Direct examination by Mr. Hunter

1 points we don't even care if they find it. We just want to
2 see that they'll spend a long time looking for it. And
3 then once they find it, we play and play and play with that
4 toy like as if it's the biggest party you've ever seen or
5 being excited about the toy.

6 Q So, at the beginning you're basically just getting him
7 used to the odors?

8 A Yes.

9 Q And when you say odors, what do you mean? Do you
10 actually have the drugs?

11 A Yes.

12 Q Okay. Well, let's skip a little forward. What four
13 odors is he certified to look for?

14 A Marijuana, heroin, meth, crack, crack cocaine.

15 Q Okay. So, the cocaine --

16 A Cocaine, yeah.

17 Q -- whether it's crack --

18 A Yeah.

19 Q -- or meth, marijuana and heroin.

20 A Correct.

21 Q Okay. And, so, you actually have those drugs. Does
22 each handler have a set of drugs?

23 A Each -- each handler has a set of drugs that are
24 signed out to them from the lab at the Spartanburg County
25 Sheriff's Office.

Sarah Powell
Direct examination by Mr. Hunter

- 1 Q The lab being Dr. Stuart's lab?
- 2 A Yes.
- 3 Q Okay. And you're able to at the beginning put toys in
- 4 those odors to get them used to that.
- 5 A Right.
- 6 Q Where's -- first of all, how -- how long are you
- 7 training when you first get the dog?
- 8 A It's a few months, two to three months usually.
- 9 Q Okay. Are you on the road at this time?
- 10 A No.
- 11 Q Okay. You're just doing training with the dog.
- 12 A Monday through Friday for a 40-to-50-hour workweek
- 13 you're -- you're with the dog training all day.
- 14 Q Okay. For how long at first?
- 15 A How -- how long, like, how long are we in canine
- 16 school?
- 17 Q Well, before you begin canine school, how long are you
- 18 with the dog?
- 19 A Probably, we did about a month here, just myself and
- 20 Captain Henderson, who's Sergeant Henderson then. And then
- 21 once we got so far along in the process, I spent another
- 22 couple of months with the school in Greenville County. We
- 23 kinda teamed up together.
- 24 Q Describe what the canine school is.
- 25 A It's all day Monday through Friday. Sometimes it'd be

Sarah Powell
Direct examination by Mr. Hunter

1 Monday through Thursday if we had really long days on
2 certain parts of the week. And throughout the day we would
3 take turns putting out drugs for the dogs to learn and
4 hide, go find on.

5 We would work on their other aspects of -- we'd even go
6 so far as to ride around Greenville and Spartanburg County,
7 and we'd get out at, like, a Q.T. and work on obedience
8 because it was a random, crowded place that we could get the
9 dogs accustomed to having to work in crowds and that sort of
10 thing.

11 All of the different aspects of their patrol work, we
12 would work on. We'd go to buildings. We'd go to car lots
13 where there were cars that we knew we could hide narcotics
14 on and we could -- we could work the dogs on stuff like
15 that. Really, everything. But it was repeated processes of
16 the different tasks that they're asked to do day to day, all
17 weekend, school.

18 Q How were they trained to alert on odors?

19 A We use a -- a box and then progress to a wall.

20 Q Start with the box.

21 A The box is just a -- it's probably approximately 12
22 inches by 12 inches box, and it has a hole in the top of
23 it. That way we can put narcotics in the box. But the
24 hole's not large enough for the dog to get their whole head
25 in there, so they can't eat or anything like that.

Sarah Powell
Direct examination by Mr. Hunter

1 They just put their nose in the hole, and we know that
2 they sniffed it. So, they sniff the odor of narcotics.
3 I'll say sit. And as soon as the dog offers the behavior of
4 sit after he's smelled the box, I give him a toy. And then
5 we do that over and over and over again until eventually
6 he'll come to the box, put his nose in it and smell it and
7 he'll -- he'll sit.

8 Q Without you having to give the command.

9 A Right. Without me having to tell him to do it. As
10 soon as he does that, boom, I throw his little toy at him.
11 In Baro's case it's like a black hose pipe, and he placed
12 on the pipe.

13 Q Okay. When you move on from the box, where do you go
14 from there?

15 A Usually the wall, which is the same sort of idea. But
16 it's the plywood that's vertical and it has holes up and
17 down.

18 Ours is three panels. It has several holes on each
19 panel from high to low to medium, all different spots. And
20 they have tubes on the end of them. We can put the
21 narcotics in the tubes so that the dog can walk and smell
22 all the different holes. When he smells the correct hole,
23 usually there's someone standing behind the wall. They can,
24 boom, send his toy outta the hole, and then he gets to play
25 with it.

Sarah Powell
Direct examination by Mr. Hunter

1 Sometimes just to mix it up, I'll throw the toy from
2 behind him. So, it'll come over his head while he's staring
3 at the hole that has the odor in it. We do that over and
4 over and over and over again. He still does that sometimes.

5 Q So, in that way you're teaching him that there are
6 places where there might not be odors?

7 A Sure, yeah, because there's obviously -- there's -- is
8 more than a dozen holes in this, this wall. I don't know
9 how many exactly, but only one of them will have an odor at
10 a time. And he has to check them all and decide which one.

11 Q Okay. And, again, are you giving him at that time
12 commands to sit?

13 A No.

14 Q What -- what is an aggressive alert?

15 A Aggressive alert would be like biting or scratching
16 where they think the odor is coming from.

17 Q And what did you train Baro to do?

18 A Baro's a passive alert, so he sits.

19 Q Okay. So, when you're looking for an alert, you're
20 looking for that sit.

21 A Correct.

22 Q Much like when a person has a treat with their dog.
23 They're looking at having them sit before they give them
24 the treat.

25 A It's just like that.

Sarah Powell
Direct examination by Mr. Hunter

1 Q Okay. How many times would you say Baro has gone
2 through the wall exercise?

3 A Hundreds.

4 Q Okay. When you move them from the wall exercise,
5 where do you start continuing his training?

6 A We go to places like schools that aren't being used
7 any more. How Spartanburg's been growing, we've been
8 building new schools. The old schools that aren't in use,
9 we'll go to those and hide -- hide drugs in those schools
10 and run the rooms, the lockers and that sort of thing.

11 We'll also go to car lots or our impound lot at the
12 county. We'll hide -- hide narcotics on vehicles and let
13 him basically practice, do practice runs.

14 We even occasionally will get a car from one of the car
15 dealerships around here and they'll let us put it on the
16 road so we can have him practice while there's traffic on
17 the lot and stuff like that.

18 Q And this is what you did also before being certified
19 with Baro?

20 A Right, yes.

21 Q Approximately how many times?

22 A Before or now?

23 Q Well, before and now.

24 A Before he got on the road, it's probably in the
25 hundreds because it was something that we did several times

Sarah Powell
Direct examination by Mr. Hunter

1 a day every day. He -- we still practice weekly.

2 Q Who teaches the canine school?

3 A That would be Douglas Wanamaker.

4 Q And where is he from?

5 A He's from Greenville County. He worked for the
6 Greenville County Sheriff's Office. I think he's retired
7 now.

8 Q Okay. Is that run through an organization?

9 A Yes, the North American Police Work Association.

10 Q What is that organization?

11 A It's basically an national nationwide agency that has
12 put out a standardized test that can be used to validate
13 working dogs in law enforcement.

14 Q And after you've gone through all of your training
15 with Mr. -- what -- what certification does he hold -- Mr.
16 Wanamaker?

17 A He's A master trainer for North American Police Work
18 Dog Association.

19 Q So, he's the one that actually give you the test for
20 you certification?

21 A Correct.

22 Q What does the test for certification -- what is it
23 like?

24 A It is for -- for just the narcotics part, we do
25 vehicles, rooms and either areas or lockers. Each of like

Sarah Powell
Direct examination by Mr. Hunter

1 the vehicle portion is six vehicles. Four of those
2 vehicles would have narcotics sitting on them. Two of them
3 do not. And they're random. You don't -- it's blind to
4 the handlers. So, I don't know which one is blank and
5 which one has narcotics sitting on it.

6 They just say have your dog run this red Honda Accord
7 or whatever it may be. The dog goes around the car. I
8 either have to be able to say yes, there's narcotics hidden
9 in the wheel well or wherever it's at or there's nothing on
10 this car.

11 I have to call the car where the hide is, or if it's
12 not -- if it's blank, I have to call that before I can move
13 on to the next car if there's a hide on the outside of the
14 vehicle, also a hide on the inside of the vehicle.

15 So, once the test partner would say, yes, you're
16 correct, the hide's right there where you said it was, I
17 will put the dog in the car, and then you would work around
18 the car. And I'd say, hey, the -- there's drugs in the
19 glove box. And they would tell if that's correct or not.
20 And then once I did that, move on to the next car for six
21 vehicles. It is essentially --

22 Q That's a double blind --

23 A Correct.

24 Q -- you or the dog know where the car has --

25 A No.

Sarah Powell
Direct examination by Mr. Hunter

1 Q -- narcotics or not.

2 A No. Only the test probably knows.

3 Q There's four cars with narcotics --

4 A And two without.

5 Q All right. Each of those cars have a separate and
6 different narcotic in it?

7 A Yes. The one -- each -- there's four cars. One has
8 each.

9 Q One has marijuana.

10 A Right.

11 Q One has cocaine; one has meth.

12 A Yes.

13 Q And you've taken that test every year since 2016?

14 A And then -- yes. With Baro every year since 2016.

15 Q All right. And what's the second part of that test?

16 A So, the second part is you do rooms basically the same
17 way. There's six rooms. Four of them have hides in them.
18 Two of them do not. And they're random, and I don't know
19 what order they're in.

20 So, they say go into room 106, for example. I go in
21 106, and I may say, hey, there's a hide in the desk drawer.
22 Either the test partner will say, yes, that's correct, and
23 we move on to the next room, or he'll say, no, you're wrong.
24 If I'm wrong, that's a miss.

25 I do that for the six rooms, and then, depending on the

Sarah Powell
Direct examination by Mr. Hunter

1 location and what the tester feels like giving me, you can
2 either run lockers or an open area.

3 An open area could be something like this courtroom.
4 And, literally, I have to come in the courtroom and find
5 four hides, one of each other. Or in the case of lockers,
6 they'll have us run. Like, when we use old high schools,
7 they'll have us run a bank of lockers, and I'll say, hey,
8 locker 103 has a hide in it.

9 Yes. Keep moving. Working the next bank of lockers,
10 locker 210 or whatever it may be. I have to find four hides
11 in cell lockers basically.

12 Q And, again, so you're supposed to find the drugs and
13 also -- also find where there aren't drugs.

14 A Correct.

15 Q And if you miss one, how many can you miss on a test?

16 A One.

17 Q If you miss more than one --

18 A You fail.

19 Q -- are you certified?

20 A You fail.

21 Q Okay. Since 2016 has he ever missed one --

22 A No.

23 Q -- in the test?

24 A No.

25 Q Okay. And have you received certification from the

Sarah Powell
Direct examination by Mr. Hunter

1 National -- North American Police Work Dog Association
2 since 2016?

3 A Yes.

4 Q Who is Rusty or R. Jones?

5 A He's -- that's Rusty Jones. He's a master trainer in
6 North Carolina. He did our first narcotic certification
7 because I had already -- I'd been training with Doug.

8 Q Because you'd already been training with Doug --

9 A Right. So, he --

10 Q -- so he came down --

11 A He came down and did our full class.

12 Q Now, I note this was the test, but the same thing that
13 you're doing with the test, are you also doing that prior
14 to the test?

15 A Yes.

16 Q Practice?

17 A Yes. We practice.

18 Q So, you're doing these hides?

19 A Every day multiple times a day.

20 Q Prior to -- so, let's just say prior to 2016. How
21 many times have you searched the vehicle in the training?

22 A Dozens.

23 Q Okay. Same with the room?

24 A Yes.

25 Q And now since -- now since you've been training, how

Sarah Powell
Direct examination by Mr. Hunter

1 long? How many times?

2 A Every week we work on stuff like that.

3 Q Okay. Do you basically do continuing training?

4 A Yes. That's what every -- every Wednesday for six
5 hours, we do.

6 Q Explain what you do for that.

7 A It's kinda like being in canine school, but our whole
8 unit on Wednesdays, whether you're working or not, even the
9 night-shift guys, Wednesday for six hours.

10 we're all together, and we practice hiding narcotics
11 for one another. We've actually got support guys that do it
12 for us so that I don't have to be the one -- it's blind to
13 me still.

14 we'll practice tracking. All of the different aspects
15 of his job we have -- have the day set aside for to work as
16 a unit and -- and train.

17 Q And, again, you train all the purposes. Both --

18 A Yes.

19 Q -- apprehension and narcotics?

20 A Yes.

21 Q Weekly. Did you miss any training in 2018?

22 A Yeah. I did. I had a -- I had a little girl in 2018
23 in April. But not very much, honestly. I was at work on
24 Friday, had her on Monday. And then while I was out -- I
25 think I was out nine weeks. It might have been only been

Sarah Powell
Direct examination by Mr. Hunter

1 eight, but I think it was nine. I would meet with the
2 lieutenant and continue to work Baro just so that he didn't
3 get too rusty while I was out.

4 Q I'm going to show you what's been marked State's
5 Exhibit 10. Do you recognize that item?

6 A Yes, sir.

7 Q How do you recognize that item?

8 A Got my name on it. They're my certifications with
9 Baro.

10 Q And that's what you provided me as your
11 certifications?

12 A Yes, sir.

13 Q Is that also your certification test from 2018 --

14 A Yes.

15 Q -- showing the results from that test?

16 A Yeah. Sure is.

17 Q Okay.

18 MR. HUNTER: Your Honor, at this time the state would
19 offer State's Exhibit 10 into evidence.

20 MR. MACDONALD: No objection.

21 THE COURT: It's admitted.

22 (Exhibit previously introduced into evidence.)

23 MR. HUNTER: Permission to publish to the jury.

24 THE COURT: You may.

25 BY MR. HUNTER

Sarah Powell
Direct examination by Mr. Hunter

1 Q Again, you said you continued doing training every day
2 or every week with the sheriff's office?

3 A Correct.

4 Q And y'all keep a log of those trainings?

5 A That's correct.

6 Q Whether you were present or not --

7 A Correct.

8 Q -- and what y'all did that day?

9 A Yeah. If I'm not present, I'll do a log that
10 literally in the first block says I was on vacation at the
11 beach or Disney world.

12 Q Disney Lane. I think one of them you were at Disney
13 world.

14 A Yeah. We went to Disney world.

15 Q And you provided those to our office?

16 A Yes, sir.

17 Q Show you State's Exhibit 8. Do you recognize it?

18 A Yes.

19 Q Okay. Is that the records that you gave to us?

20 A Yes.

21 Q And they fairly and accurately depict the training
22 that you continue to go through since 2019?

23 A Yes.

24 MR. HUNTER: Your Honor, at this time the state would
25 offer State's Exhibit 8 into evidence.

Sarah Powell
Direct examination by Mr. Hunter

1 MR. MACDONALD: No objection.

2 THE COURT: It's admitted.

3 (Canine training marked State's Exhibit No. 8
4 previously.)

5 Q Since the D.V.D. is already in there, do you recognize
6 that video?

7 A Yes.

8 Q All right. Is that your body-worn camera that you
9 activated on March 2nd of 2021?

10 A Yes.

11 Q And where you?

12 A That looks like I'm leaving the back of my patrol
13 vehicle.

14 Q Okay. What road? I'm sorry.

15 A Oh, that's on I-26.

16 Q Okay. In what county?

17 A Spartanburg.

18 Q Okay. And that is your body-worn camera?

19 A Yes.

20 Q And fairly and accurately depicts the events as you
21 remember that day?

22 A Yes.

23 MR. HUNTER: Your Honor, at this time the state would
24 offer State's Exhibit 7 into evidence.

25 MR. MACDONALD: No objection.

Sarah Powell
Direct examination by Mr. Hunter

1 THE COURT: Admitted.

2 (Sarah Powell's body-worn-camera video marked State's
3 Exhibit No. 7 previously.)

4 Q And why do we have a few seconds of no noise?

5 A Because I haven't pressed the button to record yet.
6 I'm still walking up to the vehicle.

7 Q So, we're likely to see you press the button and
8 that's when the video really starts?

9 A Yeah. That's when -- yeah.

10 Q Okay.

11 A Normally, I let him take a little break before I press
12 the button and try not to get that on camera.

13 (Whereupon, the video was played for the jury.)

14 Q All right. When you get out of the car, what do you
15 do?

16 A I walk to the front of the vehicle, the Tahoe, I think
17 it was.

18 Q Again, you said you like to give him a break when he
19 first gets out.

20 A Yeah. I let him go to the bathroom.

21 Q Okay.

22 A Basically.

23 Q And you approached the Tahoe?

24 A Yes.

25 Q And, again, the -- there's a little time before we

Sarah Powell
Direct examination by Mr. Hunter

- 1 hear sound. Is that how the body cameras work?
- 2 A Yes.
- 3 Q They take before --
- 4 A There's 30 seconds of a buffer there --
- 5 Q okay.
- 6 A -- before the sound picks up.
- 7 Q And, so, at the time the sound picks up, that's when
- 8 you actually hit your body camera on.
- 9 A Correct.
- 10 Q Okay. Now, what's the first thing you do?
- 11 A I put him in sit and switch from his prone collar to a
- 12 flat collar.
- 13 Q And why do you switch the collars?
- 14 A The prone collar is like a -- it's a control collar
- 15 basically. It's -- it's the collar that I walk him on
- 16 loosely. He has to heal and behave when he's on the prong
- 17 collar. When I switch him to a flat collar, it's,
- 18 basically, when I'm going to give him a task to do. And
- 19 instead of him having to listen to me, it's one of the cues
- 20 we use of, hey, it's your turn, go ahead and do what --
- 21 what you're going to do, I'll listen to you.
- 22 Q Do you then also give him a verbal cue?
- 23 A I do.
- 24 Q And what's that?
- 25 A Go find.

Sarah Powell
Direct examination by Mr. Hunter

1 Q what does that mean?

2 A It means go find the odor of narcotics.

3 Q Is that the same cue you would give if you were
4 searching for a person?

5 A No.

6 Q So, when he hears to go find it's searching --

7 A That's the narcotics.

8 Q Okay. Tell me how you determine which way you're
9 going to go around the car.

10 A Most of the time unless the wind is being crazy and
11 I'm in a random situation and I can't access all parts of
12 the vehicle -- most of the time I start on the front bumper
13 about a third to half way in the middle, and I work towards
14 the driver's side, which is counterclockwise. And then
15 around to the back and come up to the front. Usually after
16 that I reverse it. Sometimes I'll make one more, a third,
17 pass after that. Sometimes I don't. Just depends.

18 Q When you first approached the vehicle, what could you
19 smell?

20 A What could I smell?

21 Q Yeah.

22 A Not a lot. Not nothing significant that I remember --

23 Q Okay.

24 A -- unless I had notated something.

25 Q Did you smell air fresheners?

Sarah Powell
Direct examination by Mr. Hunter

1 A I don't remember. If it's in my report -- I would
2 have put it in report if I did.

3 Q Placed him on the league [sic]. Then you go to the
4 front of the car and you start counterclockwise.

5 A Right.

6 Q What are you looking for when he does his thing?

7 A For him to, basically, show a change in behavior.
8 Usually for Baro when he gets close to the odor of
9 narcotics, he starts to smell it, but he's not as close as
10 he wants to be.

11 He'll close his mouth. And instead of being, like,
12 hee-hee all over the place, he'll stiff what we call
13 typewriter sniff really short and fast. And his tail will
14 go from being, like, really kinda crazy wide sweeps to
15 usually shorter faster ones.

16 And instead of, like, you can sorta tell in parts of
17 the video moving a little bit faster, instead of moving
18 really fast pace scenario, he'll slow down and start
19 panting.

20 He moves his feet a little bit, but he'll slow down the
21 distance that he's moving. And then once he's where he
22 wants to be, he'll sit.

23 Q All right. So, with that, that's a change in
24 behavior, but to you that's not a final alert?

25 A It's not a final alert.

Sarah Powell
Direct examination by Mr. Hunter

1 Q What is a final alert for --

2 A His --

3 Q -- he's been trained to do?

4 A To sit.

5 Q Okay. And I believe we saw on this video. How many
6 times did he sit?

7 A Two.

8 Q All right. And you noted those on your video.

9 A That's correct.

10 MR. MACDONALD: Your Honor, I'm just going to renew my
11 objection from the pretrial motion.

12 THE COURT: All right.

13 BY MR. HUNTER

14 Q And he sat at the back passenger door.

15 A Yes.

16 Q First.

17 A Yeah.

18 Q And then the front driver's door.

19 A Right.

20 Q Okay. He also had that change of behavior that you
21 noted.

22 A Right.

23 Q Is that why you said you saw three alerts?

24 A Yeah.

25 Q You saw three of them?

Sarah Powell
Cross-examination by Mr. MacDonald

- 1 A Yeah.
- 2 Q But specifically as far as --
- 3 A His trained final response was presented twice.
- 4 Q All right. What do you then tell the officers?
- 5 A That I've had indications on the vehicle and it's okay
- 6 for them to search it.
- 7 Q Okay. Was there an area that he cared a lot about?
- 8 A Yeah. There's a spot off of the passenger side of the
- 9 car that he just seemed interested in. He kept sniffing
- 10 around it. And then he left it.
- 11 So, sometimes when that happens, particularly in the
- 12 street, it's because someone's dropped something outta their
- 13 pocket or they stood there or something like that.
- 14 Q But you weren't there when the officers initially
- 15 approached the vehicle, were you?
- 16 A No.
- 17 Q And you came a little -- 20 or so -- 20 or 30 minutes
- 18 afterwards.
- 19 A Right.
- 20 Q So, you don't know who had been standing there.
- 21 A No clue.
- 22 Q But he did --
- 23 A He sniffed around like --
- 24 Q -- sniff in the area.
- 25 A Right.

Sarah Powell
Cross-examination by Mr. MacDonald

1 Q why did you turn your camera off, again?

2 A Because I was done working my dog and the narcotics
3 officers were out.

4 Q Please answer any questions Mr. MacDonald may have for
5 you.

6 CROSS-EXAMINATION

7 BY MR. MACDONALD

8 Q You were requested. You weren't there at the time of
9 the stop, is that correct?

10 A That's correct.

11 Q So, you -- you weren't there for the initial stop.

12 A No.

13 Q And according to your report, you were requested at
14 3:15.

15 A If that's what the report says, yes.

16 Q Okay. And according to your report, you arrived at
17 3:33.

18 A Yes.

19 Q Okay. And so then you -- you didn't conduct -- you
20 didn't actually begin walking the dog around until 3:37, is
21 that correct, or does that sound approximately right?

22 A That sounds right if that's what was notated in my
23 report. And that's what would be correct.

24 Q Okay. Do you know if the officers were -- do you know
25 what the purpose of you going -- going there was for?

Blake Barton
Direct examination by Mr. Hunter

1 A I was asked to respond by one of the deputies over the
2 radio. When I respond to a traffic stop, when they call
3 for a kilo unit, it's usually to do a vehicle sniff like
4 the one I did today.

5 Q Okay. And the officers were waiting for you to tell
6 them if your dog indicates --

7 A To indicate.

8 Q -- for drugs.

9 A Yes.

10 Q And if you do indicate for drugs, they'll search the
11 vehicle?

12 A On a legal traffic stop, yes.

13 Q Okay. You activated your body camera. Why did you
14 activate your body camera?

15 A Because I had my dog out that was about to do a task
16 that I was going to ask him to do.

17 Q Okay. And the reason for that is that so you can
18 confirm if your dog indicates that you have video evidence
19 to support that?

20 A That and the sheriff's office policy.

21 Q The sheriff's office policy.

22 A Yeah.

23 Q So, you're documenting evidence both through your eyes
24 and also through a video as well, is that correct?

25 A That's correct.

Blake Barton
Direct examination by Mr. Hunter

1 Q So, there could be no question as to whether the dog
2 indicated or not.

3 A Correct.

4 Q Okay.

5 MR. MACDONALD: I have no further questions, Judge.

6 MR. HUNTER: Nothing, Your Honor.

7 THE COURT: Thank you. You may step down.

8 THE WITNESS: Thank you, Your Honor.

9 MR. HUNTER: May I have a brief second, Your Honor?

10 (Pause.)

11 MR. HUNTER: Your Honor, since Ms. Powell has a sick
12 kid in our office, may she be excused?

13 MR. MACDONALD: I have no objection.

14 THE COURT: She can be excused whether she has a sick
15 child or not. Thank you.

16 (Whereupon, the witness was excused.)

17 MR. HUNTER: Your Honor, at this time the state would
18 call Blake Barton.

19 BLAKE BARTON, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. HUNTER

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

23 A Blake Barton.

24 Q Mr. Barton, where are you currently employed?

25 A Mac Discount in Cowpens.

Blake Barton
Direct examination by Mr. Hunter

- 1 Q Is that the Mac we see all the commercials for?
- 2 A It is.
- 3 Q Okay. And in March 2nd of 2021, were you working as a
- 4 narcotics officer?
- 5 A Yes, sir.
- 6 Q Okay. For who?
- 7 A For Spartanburg County Sheriff's Office.
- 8 Q And did you happen to be at the scene of this
- 9 incident?
- 10 A I did.
- 11 Q Who was your partner at the time?
- 12 A Ken Hancock.
- 13 Q When you initially arrive on the scene, what are y'all
- 14 waiting on? Do you initially just go and search the car,
- 15 or are you waiting for something?
- 16 A For Officer Powell to get there with her canine
- 17 officer.
- 18 Q Okay. So, you don't search the car until after she's
- 19 done with her --
- 20 A That's correct.
- 21 Q Once she does her search, what is your job? Once she
- 22 does her open-air stuff, what is your job?
- 23 A To start a search of the vehicle.
- 24 Q Did you do that?
- 25 A I did.

Blake Barton
Direct examination by Mr. Hunter

1 Q what did you find?

2 A I found a yellow backpack in the trunk.

3 MR. MACDONALD: Judge, I'd like to renew my objection
4 to my pretrial motion.

5 THE COURT: It's noted.

6 BY MR. HUNTER

7 Q what did you find?

8 A A yellow backpack that contained a firearm, a tan
9 powder substance, a green plant material and a firearm that
10 had an extended magazine.

11 Q Did you find scales and a magazine --

12 A I did.

13 Q I'm going to show you what's been marked State's
14 Exhibit 3. Do you recognize this?

15 A I do. That's the backpack I found in the trunk area
16 of the vehicle.

17 Q Okay. And it's in the same or substantial the same
18 condition as you found it?

19 A It is.

20 MR. HUNTER: Your Honor, at this time the state would
21 offer State's Exhibit State's 3 into evidence.

22 MR. MACDONALD: Just over my pretrial objection.

23 THE COURT: It's admitted over objection.

24 (Backpack marked State's Exhibit No. 3.)

25 Q Same question for State's Exhibit 5. Do you recognize

Blake Barton
Direct examination by Mr. Hunter

1 this item?

2 A I do.

3 Q How do you recognize that item?

4 A It was found in the backpack.

5 Q Okay. Same or substantially same condition?

6 A It is.

7 MR. HUNTER: Your Honor, at this time the state would
8 offer State's Exhibit 5 into evidence.

9 MR. MACDONALD: Same objection, Judge.

10 THE COURT: It's admitted over objection.

11 (Scales marked State's Exhibit No. 5.)

12 Q Again, State's Exhibit 4. Do you recognize this?

13 A I do.

14 Q What is it?

15 A Box of plastic baggies.

16 Q Okay. Where did you find that?

17 A In the same place, in the bookbag.

18 Q Speak up a little bit.

19 A In the same place. In the bookbag.

20 Q Okay. Is it in the same or substantially same
21 condition?

22 A It is.

23 MR. HUNTER: Your Honor, at this time the state would
24 offer State's Exhibit 4 into evidence.

25 THE COURT: It's admitted over objection.

Blake Barton
Direct examination by Mr. Hunter

- 1 MR. MACDONALD: Thank you, Judge.
2 (Plastic baggies marked State's Exhibit No. 4.)
3 Q As a narcotics officer, why are baggies and scales
4 important?
5 A Because it often indicates the sale of illegal
6 controlled substances.
7 Q Okay. I'm also going to show you State's Exhibit 1.
8 Do you recognize this item?
9 A That's the firearm.
10 Q Okay. That's the -- where did you locate that?
11 A I believe that was in the bookbag as well.
12 Q In the bookbag as well. Is it in the same or
13 substantially same condition?
14 A It appears to be, yes.
15 Q Is this your handwriting on this bag?
16 A It looks to be my handwriting.
17 Q Okay. How many rounds were located in the weapon?
18 A Nineteen.
19 Q Huh?
20 A Nineteen.
21 Q Nineteen. Okay. And what is this?
22 A An extended magazine for the firearm.
23 Q Also found with the weapon?
24 A It was.
25 Q Do you know how many rounds this will hold?

Blake Barton
Direct examination by Mr. Hunter

1 A Not off the top of my head.

2 Q Can you tell me if that will hold 19 rounds? You can
3 go ahead and start putting them on if you want to. There's
4 no number on it.

5 A Do you want me to put them?

6 Q You can. Yes.

7 (Pause.)

8 Q Do you remember when you found that, were there rounds
9 inside the magazine?

10 A Yes.

11 Q So, we know these magazine rounds fit?

12 A Yeah.

13 Q Keep doing it though because I'm going to ask you
14 another question.

15 MR. HUNTER: Your Honor, at this time the state would
16 offer State's Exhibit 1, which is the gun, magazine and
17 ammunition, into evidence.

18 THE COURT: It's admitted over an objection.

19 (Gun and ammunition marked State's Exhibit No. 1.)

20 Q So, how many rounds fit in there?

21 A Nineteen.

22 Q Okay. Can you press down and tell me? Do you think,
23 would it fit another round?

24 A Feels like it would.

25 Q So, at least 20 rounds could fit into that magazine?

Blake Barton
Direct examination by Mr. Hunter

1 A Yeah.

2 Q You don't have to take them out. What is an extended
3 magazine?

4 A Just a magazine that holds more ammo than the original
5 magazine that came with it.

6 Q And why is it called extended?

7 A Because it holds more.

8 Q Okay. But why specifically extended?

9 A It's longer.

10 Q Okay. So, if you put it in, it's actually longer than
11 the weapon?

12 A Correct.

13 MR. HUNTER: Sorry. Won't point it at y'all.

14 Q What kind of weapon was it?

15 A 9mm Sig Sauer.

16 Q Okay. P365?

17 A Yes, sir.

18 Q I'm going to show you what's been marked State's
19 Exhibit 2. Do you recognize this item?

20 A That is the tan powder and green plant material that I
21 found in the bookbag.

22 Q Now, did you actually collect this evidence or was
23 that another officer's job?

24 A That was Investigator Hancock.

25 Q And who is Investigator Hancock?

Blake Barton
Direct examination by Mr. Hunter

- 1 A My partner in the narcotics unit.
- 2 Q So, when you find it, do you manipulate the evidence
- 3 at all?
- 4 A No.
- 5 Q Just locate it and see it and informed Investigator
- 6 Hancock?
- 7 A Correct.
- 8 Q And he's the one that actually will collect the
- 9 evidence and take it to the evidence room?
- 10 A That's correct.
- 11 Q Okay. Is that what you did in this situation?
- 12 A Is that?
- 13 Q Is that what you did in this situation?
- 14 A Yes.
- 15 Q Okay. Was there any currency recovered?
- 16 A There was.
- 17 Q Do you know how much?
- 18 A If I remember correctly, it was a little over two
- 19 thousand. I think it was like two thousand eighty
- 20 something.
- 21 Q \$2,080. Did Investigator Vassar count that in front
- 22 of you?
- 23 A He did.
- 24 Q And did you also count it?
- 25 A I did.

Blake Barton
Cross-examination by Mr. MacDonald

1 Q Okay. Was there any money found on Ms. Laura Miller?

2 A There was.

3 Q How much?

4 A I don't remember.

5 Q If I told you 737 on your report, would that sound
6 accurate?

7 A That sounds correct.

8 Q Okay. Once you found that money, that's also turned
9 into the sheriff's office?

10 A Her money?

11 Q The money, the \$2,080.

12 A Yes. It was.

13 Q Ultimately, put into a bank account?

14 A Yes.

15 Q All right. And is that your involvement in this case?

16 A That is.

17 Q As a narcotics officer do you have a body-worn camera?

18 A I do not.

19 Q Why not?

20 A We were not issued body cameras.

21 Q Okay. Was it the sheriff's office policy for
22 narcotics not to be in body cameras?

23 A That's correct.

24 Q And the money that was back on Ms. Miller, was that
25 given back to her?

Blake Barton
Cross-examination by Mr. MacDonald

1 A That was returned to her.

2 Q Okay. Please answer any questions Mr. MacDonald may
3 have for you.

4 MR. MACDONALD: Your Honor, may we and Mr. Hunter
5 approach briefly?

6 THE COURT: Yes.

7 (Bench conference held off the record in the presence
8 of the jury but out of the hearing of the jury.)

9 CROSS-EXAMINATION

10 BY MR. MACDONALD

11 Q You assisted with the collection of the evidence in
12 the search?

13 A Yes.

14 Q Were you present when the traffic stop occurred, or
15 did you arrive later?

16 A I arrived later.

17 Q How much later?

18 A I don't remember. It couldn't have been too long
19 afterwards.

20 Q Okay. Did you -- so you were with Investigator
21 Hancock?

22 A That's correct.

23 Q Okay. Did -- and you stated that you waited until the
24 drug sniff before you searched.

25 A Correct.

Blake Barton (In-camera)
Cross-examination by Mr. MacDonald

1 Q And no one else went to the car before you searched --
2 before the dog sniff to your knowledge?

3 A Not to my knowledge. No.

4 Q Did you ever take any pictures of the scene of the
5 car?

6 A I don't remember if I did or not.

7 Q Okay.

8 A I don't believe I did.

9 Q Well, we -- you didn't just leave -- get any put into
10 evidence today, correct, to your knowledge?

11 A Right.

12 Q Did you take any video of -- of inside the vehicle?

13 A I didn't.

14 Q Okay. But you were the first person to observe the
15 contraband in the vehicle, is that correct?

16 A That's correct.

17 Q Okay. But you did nothing to visually document that
18 crime scene, is that correct?

19 A I did not.

20 Q Okay. And you're not aware of anyone else that did?

21 A I don't know if anybody else did or not.

22 Q Okay.

23 MR. MACDONALD: I have no further questions, Judge.

24 MR. HUNTER: May we take a short break, Your Honor?

25 THE COURT: Okay. Ladies and gentlemen, let me ask

Blake Barton (In-camera)
Cross-examination by Mr. MacDonald

1 you to please go to your jury room. Don't talk about the
2 case. I'll bring you back shortly.

3 (The following takes place outside the presence of the
4 jury.)

5 THE COURT: Mr. MacDonald, do you wish to proffer
6 additional testimony?

7 MR. MACDONALD: Yes, Your Honor. May I proceed?

8 THE COURT: Yes, sir.

9 BY MR. MACDONALD

10 Q Mr. Barton, you were terminated from the sheriff's
11 office, is that correct?

12 A I resigned.

13 Q You resigned. And was there anything that caused you
14 to resign?

15 A Yes. There was.

16 Q And can I ask why you're looking at the inv --
17 Investigator Vassar when I'm asking these questions?

18 A I was looking at the -- Eddie.

19 MR. HUNTER: Your Honor, may we approach?

20 THE COURT: okay.

21 (Bench conference held off the record.)

22 THE COURT: You'll need to respond to the question.

23 THE WITNESS: okay.

24 BY MR. MACDONALD

25 A Could you please?

Blake Barton (In-camera)
Cross-examination by Mr. MacDonald

1 Q When did you resign?

2 A I couldn't hear you.

3 Q When did you resign?

4 A In, I believe it was in, March of 2022.

5 Q March 20th of 2022?

6 A Twenty -- 2023, it would have been.

7 Q 2023. Okay. Was there some -- any event that
8 prompted you resigning, or did you just decide to resign
9 one day?

10 A I was arrested for domestic violence.

11 Q Okay. Was it domestic violence in the second degree?

12 A It was.

13 Q Okay. And did you end up pleading guilty to domestic
14 violence?

15 A I did.

16 Q Okay. When did you plead guilty to domestic violence?

17 A In March of 2023.

18 Q So, while you were charged with domestic violence, you
19 were still working for the sheriff's office?

20 A I was on leave without pay.

21 Q When did you get placed on leave without pay?

22 A July 5th of 2021.

23 Q And when did you get charged with domestic violence?

24 A The same July 5th of 2021.

25 Q On the same day?

1 A Yeah.

2 Q And did you stay on leave from July 5th of 2021 until
3 you pled guilty in court?

4 A That's correct.

5 Q So, you never went back into uniform or --

6 A No.

7 Q Have you ever been suspended before or put on leave
8 without pay in the past besides for this?

9 A No.

10 Q So this was the only time?

11 A Yes.

12 Q Okay.

13 MR. MACDONALD: That's all, Your Honor.

14 MR. HUNTER: I'm not going to ask any questions.

15 THE COURT: Okay. You can step down.

16 Mr. MacDonald, am I to infer that you wanted to ask
17 him about the convictions?

18 MR. MACDONALD: That's correct, Judge.

19 THE COURT: And the conviction was domestic violence
20 third degree?

21 MR. MACDONALD: Yes, sir.

22 THE COURT: Which doesn't fit in rule 609, does it?

23 MR. MACDONALD: It does not, Judge.

24 THE COURT: Okay. What's your rationale?

25 MR. MACDONALD: Judge, my rationale is that this is

1 the officer that was specifically the one that located the
2 drugs. So, his testimony is probably the most important
3 testimony that the jury is going to hear in regards to
4 trustworthiness and reliability.

5 I think the fact that he shortly after this incident
6 was put on leave without pay for violating criminal law
7 puts into question his ability to be truthful and honest.

8 I think that's something that the jury -- a factor
9 that would be important to a jury in determining whether or
10 not his testimony that he gave in front of them is accurate
11 and complete, Judge. So, that's the argument.

12 THE COURT: Would you agree that it is not a criminal
13 offense that involves dishonesty, fraud or deceit?

14 MR. MACDONALD: That I do, Judge.

15 THE COURT: Okay.

16 MR. HUNTER: Your Honor, you took my argument. This
17 does not comply with rule 609. He -- it's not a crime of
18 dishonesty. It was domestic violence. He pled to it. It
19 carries 90 days. It carries less than a year.

20 I wouldn't be able to present this with any other
21 witness or defendant. He just wants to do this to
22 disparage the officer. There's no reason. There's no bias
23 or credibility issue here. So, we'd ask that it remain
24 that specifically and not to come on the record.

25 THE COURT: All right. I sustain the objection to it.

Kenneth Hancock
Direct examination by Mr. Hunter

1 MR. MACDONALD: Thank you, Judge.

2 MR. HUNTER: May Mr. Barton be excused?

3 THE COURT: He may be.

4 Let's take 15 minutes before we continue.

5 Who's the next witness?

6 MR. HUNTER: We have Mr. Hancock, Mr. Roesenberg and
7 Beth Stuart, and then we're done, Your Honor.

8 THE COURT: Okay.

9 (Whereupon, a recess was taken.)

10 THE COURT: All right. Are we ready for the jury?

11 MR. MACDONALD: Yes, sir.

12 THE COURT: Bring them in.

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: All right. Mr. Hunter.

16 MR. HUNTER: Your Honor, at this time the state would
17 offer State's Exhibit 11 into evidence. It's the
18 stipulation between both parties.

19 THE COURT: All right. Do you want to state it?

20 MR. MACDONALD: No objection, Judge.

21 MR. HUNTER: Your Honor, State's Exhibit 11.

22 "The defendant, Phillip Ronald Miller, has been
23 convicted of a felony that is considered a violent offense
24 under 16-1-60 of the South Carolina Code of Laws prior to
25 March 2nd of 2021."

Kenneth Hancock
Direct examination by Mr. Hunter

1 signed by myself and Mr. MacDonald.

2 so we seek to admit that into evidence, Your Honor.

3 THE COURT: What number is it?

4 MR. HUNTER: Eleven.

5 (Stipulation marked State's Exhibit No. 11.)

6 THE COURT: Ladies and gentlemen, so you'll

7 understand, a stipulation is an agreement as to a fact.

8 So, it's something that does not need any further proof of

9 in order to establish it. The parties have agreed that

10 that is a fact, and so you can accept it as such without
11 further proof.

12 MR. HUNTER: At this time the state would call Officer
13 Ken Hancock.

14 KENNETH HANCOCK, having been
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. HUNTER

17 Q Will you please give your full name and title?

18 A Kenneth Hancock, senior investigator.

19 Q Where are you employed?

20 A Spartanburg County Sheriff's Office.

21 Q How long have you been employed there?

22 A Thirty-two and a half years.

23 Q Okay. You retired and come back?

24 A Yes, sir.

25 Q Okay. What were your duties at the sheriff's office?

Kenneth Hancock
Direct examination by Mr. Hunter

1 You don't have to go over 32 years, but what were your main
2 duties at the sheriff's office?

3 A I started out in patrol. Then became a narcotics
4 investigator, then became interdiction officer. Then went
5 back to narcotics. And I'm presently as evidence
6 custodian.

7 Q So, did you -- withdraw from narcotics. And
8 interdiction, what is interdiction?

9 A Basically, just patrolling the highways in Spartanburg
10 County to try to deter criminal activity and to enforce the
11 laws of the motoring public by speeding, etc.

12 Q That's mainly on I-85 and I-26.

13 A Yes.

14 Q And then you did a second stint in narcotics?

15 A Yes, sir.

16 Q And during that second stint in narcotics were you
17 present March 2nd of 2021 during this case?

18 A Yes.

19 Q Okay. What was your job that day?

20 A Just pretty much backup officer, and I did recover
21 evidence that day.

22 Q Okay. And who was your partner at the time?

23 A Blake Barton.

24 Q Did y'all have roles that you generally filled when
25 y'all work together?

Kenneth Hancock
Direct examination by Mr. Hunter

1 A Yes, sir.

2 Q What was his role?

3 A Basically --

4 Q -- in regards to a search?

5 A Basically, when we would do a search if someone would
6 find it -- it's kinda like on a search warrant. Even when
7 searching cars and everything else, if someone found it,
8 they would leave it where it was at. And then, basically,
9 I would come and recover it from where -- from the original
10 location.

11 Q All right. That was your general rule between the two
12 of y'all?

13 A Yes.

14 Q Okay. Is that what you did on this day?

15 A Yes.

16 Q Do you remember what was recovered in this case?

17 A I think it was a backpack, some brown substance that
18 we learned it was heroin. Eventually, we learned it's
19 heroin, and then a pistol, I believe.

20 Q Okay. I hand you what's State's Exhibit 2. Do you
21 recognize that item?

22 A Yes, sir.

23 Q And how do you recognize that item?

24 A It's basically a BEST bag that I filled out and signed
25 and placed into evidence.

Kenneth Hancock
Direct examination by Mr. Hunter

1 Q The BEST bag is that blue bag within the heat-sealed
2 pouch?

3 A Yes, sir.

4 Q Okay. On this BEST bag, whose name is on it?

5 A Mine. It's says Kenneth -- it says K. Hancock, and
6 then I signed it underneath.

7 Q Okay. What date is on it?

8 A 3/2 of '21.

9 Q Okay. When you find suspected narcotics, you were the
10 person taking custody of them, what are you supposed to do?

11 A Basically, when we find it, we come back and we do
12 a -- we do a presumptive field test with usually a field
13 test kit that's purchased by the sheriff's office.

14 Then we take it back to get a presum -- get an
15 estimated weight on it and give to it the investigator.

16 Then I take and place it in this bag, seal it up and
17 put it into a Manila envelope, which is part of the BEST
18 bag.

19 Then I take it to the sheriff's office where there is
20 evidence lockers with a lock on it that you placed it. Only
21 evidence custodians have a key to it, and it's secure.

22 Q And did you do in this case?

23 A I did, sir.

24 Q And did you fill out a physical chain of custody form?

25 A I did, sir.

Kenneth Hancock
Cross-examination by Mr. MacDonald

1 Q All right. Is that your physical chain of custody
2 form?

3 A It is.

4 Q Okay. And what's the purpose of that?

5 A Basically, it's to show, like, for court purposes or
6 just to show where -- who initially took the evidence, took
7 custody of the evidence initially.

8 Then, basically, the chain goes from, like, if I take
9 it and I turn it over to Mr. Hunter, I will sign this first,
10 and then I will release it to him and he'll sign this and
11 then when he goes to take it to somebody else like the
12 officer or whatever, the evidence officer will assign --
13 will sign it also as he takes it into evidence. It's,
14 basically, a chain to show you where the evidence goes and
15 the person that keeps up with it.

16 Q Okay. And did you that in this case?

17 A I did, sir.

18 Q Where did you take State's Exhibit 2?

19 A I actually put it into the evidence locker at the
20 Spartanburg County Sheriff's Office.

21 Q And what is the evidence locker?

22 A Basically, it's a -- it's a set of lockers used for
23 evidence. It's got a lock. It's got a regular lock on it,
24 and they stay open. And then you just take the lock out.
25 You place the bag in it and you lock it up and it's secure.

Kenneth Hancock
Cross-examination by Mr. MacDonald

1 Q And the only people who have access to that are?

2 A Evidence custodian.

3 Q So, at that time did you have access to it, to that
4 lock box?

5 A Not to -- not with the key but I had -- I mean, it was
6 open.

7 Q Well, to be able to get this out.

8 A No. I couldn't get it back out once I put it in.

9 Q But in your job today you actually have one of those
10 keys.

11 A I do.

12 Q Okay. Please answer any questions Mr. MacDonald may
13 have for you.

14 CROSS-EXAMINATION

15 BY MR. MACDONALD

16 Q You said you were assisting or accompanying Blake
17 Barton that day, is that correct?

18 A Yes. He was my partner.

19 Q So, you were backing him up?

20 A Yes. I was in the truck with him.

21 Q He had previously testified -- testified that he
22 searched the vehicle. Did you also search the vehicle?

23 A No, sir. I don't think I did.

24 Q So, you didn't ever see where the drugs were located
25 in the car.

Kenneth Hancock
Cross-examination by Mr. MacDonald

1 A I know where they -- I know where they were recovered
2 from, yes.

3 Q But you didn't visually see how -- how the drugs
4 appeared when they were first discovered.

5 A Not before he -- not before he discovered them, no.

6 Q Only Barton?

7 A I mean, he -- he found them, and then I went and got
8 them afterwards.

9 Q Was there anyone else with Barton searching the
10 vehicle, or was he the only one that was searching the
11 vehicle?

12 A I'm not sure. I can't remember. I'm not sure if
13 Investigator Vassar was helping search or not. I know
14 there was a uniformed officer there, and there was a canine
15 handler. Deputy Powell was there also.

16 Q And this search occurred after the canine alert?

17 A Yes.

18 Q Okay. Were there any -- to your knowledge, were there
19 any pictures or video taken of inside the vehicle that was
20 being searched?

21 A I don't remember, sir.

22 Q Okay. So, not to your knowledge.

23 A Not to my knowledge, no, sir.

24 Q If there is any that exist, you have not seen them.

25 A No, sir.

Robert Rosenberg
Direct examination by Mr. Hunter

1 Q Okay. And I know this has been asked, but you weren't
2 wearing a body camera --

3 A No, sir.

4 Q -- during this time?

5 A No, sir.

6 MR. MACDONALD: Judge, I have no further questions.

7 REDIRECT EXAMINATION

8 BY MR. MACDONALD

9 Q Just to be clear, the sheriff does not give narcotics
10 officers body cameras.

11 A No, sir.

12 Q Okay. So, it's not something that you tried to hide.

13 A No, sir.

14 Q Okay.

15 MR. HUNTER: No further questions.

16 THE COURT: You can step down. Thank you.

17 MR. HUNTER: Your Honor, at this time the state would
18 call Robert Rosenberg.

19 May Investigator Hancock be excused?

20 (Whereupon, the witness was excused.)

21 ROBERT ROSENBERG, having been
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. HUNTER

24 Q State your full name for the record.

25 A Robert Rosenberg.

Robert Rosenberg
Direct examination by Mr. Hunter

- 1 Q Are you still with the sheriff's office?
- 2 A No. Currently, I'm retired after 39 years.
- 3 Q And how long were you an evidence custodian with the
- 4 sheriff's office?
- 5 A Approximately 20 years.
- 6 Q And what was your job as the evidence custodian?
- 7 A I was to take evidence in and secure it in a secured
- 8 area and keep it there until it's needed for court or the
- 9 investigation.
- 10 Q Okay. And did you do that in this case?
- 11 A Yes. I did.
- 12 Q Okay. Show you State's Exhibit 2. Do you recognize
- 13 that item?
- 14 A Yes. I do.
- 15 Q And how do you recognize that item?
- 16 A That is a BEST bag that came in with a chain and a
- 17 BEST bag.
- 18 Q And how can you tell that's what came in with that
- 19 chain?
- 20 A There's a control number on top -- on top of the BEST
- 21 bag and there's a control number on top of the form turned
- 22 in.
- 23 Q So, basically inventoried?
- 24 A Yes.
- 25 Q And with that control number?

Robert Rosenberg
Direct examination by Mr. Hunter

- 1 A I'm sorry?
- 2 Q Inventory with that control number?
- 3 A Yes. It's also used by -- the case number is also
- 4 used as an inventory in the computer.
- 5 Q Okay. And does that match the case number?
- 6 A As far as I know, yes.
- 7 Q 21030086?
- 8 A Yes. Also, on the label entered in, there's a control
- 9 number on the lower end of it that's attached. This number
- 10 right here. Turned in with the BEST bag and the drugs.
- 11 Q So, you can tell State's Exhibit 2 is the item you
- 12 took in on that case?
- 13 A Yes.
- 14 Q Tell me how someone can also turn into evidence and
- 15 you getting it out of the evidence locker works.
- 16 A An officer will come in. If we're closed an officer
- 17 can come in. And we have a set of lockers in a restricted
- 18 area. It's not open to the public. They can come in.
- 19 There's locks inside the lockers, and they can take the
- 20 lock out put the drugs or other evidence in and lock it up.
- 21 The only people that have keys to these lockers are
- 22 evidence custodians.
- 23 Q Okay. And is that what occurred in this case?
- 24 A Yes.
- 25 Q What did you get outta the locker?

Robert Rosenberg
Cross-examination by Mr. MacDonald

1 A What did I get out? I got a BEST bag numbered with
2 S35239 on it.

3 Q And what did you do with it?

4 A I brought it into the evidence room, entered into the
5 computer and then placed it in the drug room until it could
6 be picked up to be tested.

7 Q Okay. Are BEST bags tamper proof or tamper evident?

8 A Yes.

9 Q What does that mean?

10 A When the -- when the brown envelope, this -- this
11 inner bag with the blue rim around it has a seal on it.
12 And they put their evidence down inside the seal, and then
13 they seal the thing. And if we notice the seal's been
14 tampered with or opened or broken, we notify the officer.

15 Q Okay. In this case did you ever make note that that
16 seal was broken or tampered with?

17 A No. It was not.

18 Q Okay. So, when you received it it was in that bag,
19 and it's in the same or substantially same condition as you
20 see it today.

21 A Yes, sir.

22 Q And what did you do with that item?

23 A What did I do with the item?

24 Q Yes.

25 A I entered it in the computer and placed it in the drug

Dr. Beth Stuart
Direct examination by Mr. Hunter

1 room, which is locked, in a locked secured area, which
2 officers are not allowed to come into unless they're given
3 permission to.

4 Q Okay. And then who ultimately received the item?

5 A The drug technician.

6 Q And who is that in this case?

7 A Dr. Beth Stuart.

8 Q Again, that's in the same or substantially same
9 condition as you found it?

10 A Yes.

11 Q It had not been manipulated in any way?

12 A As far as I know, no. This -- it's been placed inside
13 this outer bag, which is done, and we receive it back.

14 Q Okay. And who does that?

15 A The lab technician.

16 Q That would be -- that's Dr. Beth Stuart?

17 A Yes.

18 Q Okay. Does not appear to be tampered with in any way?

19 A No, sir.

20 Q All right. Please answer any questions Mr. MacDonald
21 may have for you.

22 CROSS-EXAMINATION

23 BY MR. MACDONALD

24 Q You have no idea how the drugs or any evidence that
25 comes to you were collected, correct?

Dr. Beth Stuart
Direct examination by Mr. Hunter

1 A No. I do not.

2 Q You simply are the, kind of the, intermediary between
3 evidence that gets collected and evidence that gets sent
4 off to a lab to be tested.

5 A That is correct.

6 Q And you have no knowledge about the case or anything.

7 A No, no, no, sir.

8 Q Okay. Thank you.

9 MR. MACDONALD: No questions.

10 MR. HUNTER: May Mr. Rosenberg be excused?

11 THE COURT: He may be. Thank you.

12 (Whereupon, the witness was excused.)

13 MR. HUNTER: Your Honor, the state would call our
14 final witness, Dr. Beth Stuart.

15 DR. BETH STUART, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. HUNTER

18 Q Please state your full name for the record.

19 A Sure. It's Mary Stuart. My name is Beth, which is
20 what everybody calls me.

21 Q Are you a doctor?

22 A I am.

23 Q Okay. Let's go over your education first. Where did
24 you get your undergrad degree?

25 A Sure. I have a bachelor's of science in chemistry and

Dr. Beth Stuart
Direct examination by Mr. Hunter

1 a bachelor's in science in biochemistry from the College of
2 Charleston. I have a master's in chemistry from the
3 University of South Carolina. And I have a Ph.D. from
4 Oklahoma State University in forensic sciences.

5 Q Okay. What type of training, or what is your current
6 job at the sheriff's office?

7 A Sure. I'm the chief chemist over the forensics lab at
8 the sheriff's office.

9 Q What does that entail?

10 A So, not only do I do drug analysis testing. I also do
11 fire debris analysis testing. I'm also supervisory
12 position over maintenance of the instruments, ordering and
13 the other people in the lab.

14 Q So, you're the sheriff's office chemist for drug
15 analysis for this case?

16 A Yes.

17 Q Okay. What type of training do you have to go through
18 in order to become a chemist for drug analysis?

19 A I went through six months certification training
20 within the sheriff's office when I started.

21 Also, been to the D.E.A. forensic chemist school. I've
22 been to the D.E.A. clan lab school through the West Virginia
23 university, intermediate and advanced fire debris analysis
24 schools.

25 And every year we're required to have 40 hours of

Dr. Beth Stuart
Direct examination by Mr. Hunter

1 continuing education training. So, every year I've had that
2 since I started with the sheriff's office.

3 Q And how long has that been?

4 A Twenty-one years.

5 Q All right. So, for the last 21 years you've been
6 doing continuing education credits?

7 A Yes. Forty hours a year.

8 Q Forty hours a year.

9 Okay. Have you ever testified as an expert in criminal
10 cases?

11 A I have.

12 Q Specifically, as an expert in the chemical analysis of
13 controlled substances?

14 A Yes.

15 Q Approximately how many times?

16 A Forty-two.

17 Q Will this be your forty-third time?

18 A It will.

19 Q Okay. In that training, what kind of things are you
20 taught or do you have to do in order to become a chemist
21 that can test substances?

22 A So, we are trained specifically on each drug type,
23 presumptive test and confirmatory test, the instrumentation
24 we use.

25 Q Well, what is a presumptive test?

Dr. Beth Stuart
Direct examination by Mr. Hunter

1 A A presumptive test is typically a color spot test.
2 So, we use chemicals that cause the substance to change
3 colors. And that can give you an idea of what the drug
4 type is.

5 Q Okay. And then did you perform a presumptive test in
6 this case?

7 A Yes.

8 Q Okay. What's a confirmatory test?

9 A A confirmatory test is an instrument and it gives you
10 what we call a fingerprint of the substance. So, it
11 confirms what the substance is through instrumentation.

12 Q So, it confirms what the molecular structure of the
13 substance is?

14 A Yes.

15 Q Okay. And, obviously, the molecular structure of
16 heroin is different from cocaine.

17 A Yes.

18 Q And what instrument do you use for that?

19 A It's the name we call it, is a G.C.M.S. The long word
20 for it is gas chromatograph/mass spectrometer.

21 Q Okay. And what does it do?

22 A So, you can -- it's a 2-part instrument. And the
23 first part separates the drugs. So, you can kinda think of
24 it as a race. If there's a bunch of drugs in a mixture,
25 you can think of one maybe being a sedan and one being a

Dr. Beth Stuart
Direct examination by Mr. Hunter

1 Corvette, one being a transfer truck.

2 And when we eject it onto the G.C. portion, those
3 substances go through the G.C., depending on their size and
4 weight, just as if you're racing cars down the road. So,
5 they come out separately.

6 Once they come out of the separation portion, then it's
7 basically an electron gun that hits the molecule and breaks
8 it into pieces. So, let's say the cars wreck, and now you
9 have all the pieces of the cars.

10 Well, from the pieces you can tell what the original
11 was. So, from the pieces of the broken molecule, then we
12 can piece it back together and tell you what the molecule
13 is.

14 Q Did you perform that test in this case as well?

15 A I did.

16 Q Okay. How expensive is this machine?

17 A \$150,000.

18 Q Okay. Do you have to keep it -- do you test it
19 regularly?

20 A We do. Before every run that we do, we have to do
21 what's called a tune on it to make sure it's working
22 properly.

23 Then we also run a standard of known drugs that we've
24 bought from a reputable company. And then we run blanks of
25 any chemical that we will be using on the instrument, and we

Dr. Beth Stuart
Direct examination by Mr. Hunter

1 run a blank in between every sample to make sure that it's
2 clean before the next sample runs.

3 Q Okay. And you did that in this case.

4 A Yes.

5 Q Do you also use scales in your job?

6 A Analytical balances, yes.

7 Q And ask you -- I never heard you say that. And what
8 type of testing do they have to go through?

9 A So, we actually use -- I'm sure y'all have all seen
10 them -- the little weights that come in the boxes. They
11 weigh maybe a gram, ten grams. We have certified weights
12 that we use weekly to test our balances, but then also we
13 have an outside company come in once a year and test them
14 for us.

15 Q Did you do that in this case?

16 A Yes.

17 MR. HUNTER: Your Honor, at this time the state would
18 offer Dr. Beth Stuart as an expert in chemical analysis of
19 controlled substances.

20 MR. MACDONALD: No objection.

21 THE COURT: She is so qualified.

22 BY MR. HUNTER

23 Q All right. Look at State's Exhibit 2 which I placed
24 up there. Do you recognize that item?

25 A I do. It's a BEST bag. It has my initials, the date

Dr. Beth Stuart
Direct examination by Mr. Hunter

1 and the letters O.K. on it and a lab number that I
2 assigned.

3 Q Okay. And why do you put your initials and date and
4 O.K.?

5 A Whenever we take in evidence, we want to make sure
6 that it's sealed. If it's not sealed, we do not take it
7 in. So, me putting my initials, the date and the letters
8 O.K. means, okay, it was sealed, I'm good to open it. And
9 then that's the date I opened it.

10 Q Okay. And I know we're -- it's kinda hard looking at
11 it, but that's the item that came in to you on what date?

12 A It came in on the 3rd of March. I opened it on the
13 5th of March.

14 MR. HUNTER: Your Honor, at this time the state would
15 offer State's Exhibit 2 into evidence.

16 MR. MACDONALD: Over an objection.

17 THE COURT: It's admitted over objection.

18 (Drugs marked State's Exhibit No. 2.)

19 MR. HUNTER: Okay. Can I see it? Put it on the
20 screen for everybody to see it.

21 A Sure.

22 (Pause.)

23 Q We'll do it the old-fashioned way.

24 So, this, this blue bag, is what's given to you.

25 A Yes. A BEST bag.

Dr. Beth Stuart
Direct examination by Mr. Hunter

1 Q what is this bag out here?

2 A Once I open the BEST bag, I'll say it's not sealed any
3 more and I need a way to seal the drugs back up. So, we
4 use -- they're called kapak bags. Everything back down in
5 it. And then I seal it up. And you can see in the seal
6 it's actually my initials and the lab number and the date I
7 sealed it.

8 Q And that's this up here?

9 A Yes. And then that's how I know no one else has
10 opened it after me.

11 Q Okay. So, when you first received this BEST bag, what
12 did you do?

13 A It's entered into our computer and then placed into a
14 safe until I can work it. So, that would have been on
15 March 3rd.

16 Q And when you look at the substance, you kinda know
17 what -- what the test will probably show based on its
18 appearance?

19 A Well, I've been doing it 21 years and, so, I mean, I
20 have an idea.

21 Q Okay. When you get ready to actually run the test,
22 what type of gear do you wear?

23 A Gloves, maybe a lab coat if I'm in nice clothes like
24 these.

25 Q Do you wear a mask?

Dr. Beth Stuart
Direct examination by Mr. Hunter

1 A Only if it's really large quantities that I suspect
2 might be fentanyl.

3 Q Okay. Do you know if you wore a mask in this one?

4 A I can't remember.

5 Q But you definitely wear gloves?

6 A Yes.

7 Q And why do you wear gloves?

8 A I don't want any of this on my skin.

9 Q What would happen if fentanyl got on you?

10 A If it was enough fentanyl and it went through my skin,
11 then I would have a reaction to it.

12 Q Being that you stop breathing?

13 A Possibly. Who knows? Depending on how much fentanyl
14 it is, yes.

15 Q So, you definitely want to wear protective gear when
16 you're handling this.

17 A Yes. I don't want any of this on me.

18 Q Okay. You did a presumptive test.

19 A I did.

20 Q What did that show?

21 A It's a presumptive test called Marquis, and it turns
22 magenten [sic] orange, depending on heroin or fentanyl, so.

23 Q Okay. Do you remember what this one showed?

24 A I don't because we don't have worksheets.

25 Q Okay. And why don't we have the worksheets?

Dr. Beth Stuart
Cross-examination by Mr. MacDonald

1 A Because we were hacked -- our data system -- and we
2 lost everything.

3 Q Okay. You still have the final report, but the
4 worksheets were lost in the Spartanburg County hack that we
5 had.

6 A Yes.

7 Q Okay. After that test what -- do you run a
8 confirmatory test?

9 A I do, yes.

10 Q What did that test show?

11 A So, that test actually showed for Item 1, which is the
12 brown powder substance, heroin and fentanyl found.

13 Q Okay. So, it's a mixture of heroin and fentanyl?

14 A Yes.

15 Q Is that common for you to see nowadays?

16 A Yes.

17 Q And did you place it on one of your analytical -- what
18 did you call them?

19 A Analytical balances, yes.

20 Q Analytical balances. What did it show?

21 A A weight of 65.39 grams.

22 Q Okay. So, the mixture of heroin and fentanyl weighed
23 65.39 grams.

24 A Yes.

25 Q And that's in your expert opinion.

Dr. Beth Stuart
Cross-examination by Mr. MacDonald

1 A Yes.

2 Q This doesn't really matter much in this case, but was
3 there another item?

4 A Yes. There was a plastic bag of green plant material.

5 Q Okay. And what would it test to be?

6 A It tested for marijuana.

7 Q Okay. For how -- and how much?

8 A 1.78 grams.

9 Q And that was also in that BEST bag with the bag of
10 heroin and fentanyl?

11 A Yes. They were in there together.

12 Q So, it's your testimony today that in that bag was at
13 the time of testing 65.39 grams of heroin and fentanyl.

14 A Yes.

15 Q That was mixed together.

16 A Yes.

17 Q All right. Please answer any questions Mr. MacDonald
18 may have for you.

19 CROSS-EXAMINATION

20 BY MR. MACDONALD

21 Q This entire mixture, it was just one sample, is that
22 correct?

23 A Yes.

24 Q Okay. And you were to determine two different
25 narcotics, both heroin and fentanyl, in your opinion?

1 A Yes.

2 Q Okay. And you testified today that it was
3 65.39 grams.

4 A Yes.

5 Q Okay. And what percentage of that would you say was
6 heroin?

7 A I don't -- we don't work in quantitative analysis. I
8 can't tell you the percentages.

9 Q So, you can't -- you can't tell me that it could -- it
10 could potentially be tested but you -- that's not what you
11 were testing.

12 A That's right.

13 Q Okay. So, you just got a mixture of both. You don't
14 know how much of each there is. You just can confirm what
15 the substances are.

16 A Correct.

17 Q Okay. And the combined weight of both substances was
18 65.39.

19 A Correct.

20 MR. MACDONALD: No further questions, Judge.

21 THE COURT: You may step down. Thank you.

22 MR. HUNTER: Can I speak with the court reporter?

23 (Pause.)

24 MR. HUNTER: Your Honor, at this time the state would
25 rest.

1 THE COURT: All right. That is all of the testimony
2 or other evidence to be offered by the state, at least in
3 their case in chief.

4 Before we go further I've got a couple of matters I'll
5 need to address with the lawyers. So, I'll ask you to
6 please go to your jury room right now, but don't begin any
7 discussion. I'll bring you back shortly.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: Motions?

11 MR. MACDONALD: Yes, Your Honor. I have two motions.

12 The first motion, now that the state's rested, is I
13 just want to renew all of my suppression motions that were
14 made during pretrial and the one motion that was made this
15 morning regarding the dog sniff.

16 I just want to renew those motions for the same
17 arguments that were made at pretrial. I'm not adding
18 anything additional to those arguments. I stand by those
19 arguments. I just want to have those renewed before the
20 Court so that it can be addressed on appeal if it comes to
21 it.

22 THE COURT: All right. Well, my decision on those
23 previous motions made has not changed. So, those motions
24 are denied.

25 MR. MACDONALD: Thank you, Judge.

1 My next motion is going to be to find a directed
2 verdict in favor of the defendant in this case.

3 Judge, in regards to trafficking heroin, the doctor
4 just tested that there was two mixtures found. It's a
5 combination of heroin and fentanyl. And she gave a weight
6 of -- the combined weight of those two drugs to be
7 65.39 grams. But she's not able to specify how much of
8 that weight was in heroin and how much of that weight was
9 in fentanyl.

10 And, so, for that reason judge, because there was --
11 because trafficking is based off of weight and the -- and
12 there's not a weight of heroin that was provided by the
13 chemist here today, I would ask for a directed verdict for
14 that charge.

15 Further, Judge, the items of the search were found in
16 a vehicle that were not owned by Mr. Miller that was found
17 not where Mr. Miller was sitting.

18 And so for those two reasons, Judge, we would argue
19 that the state's not met their burden to be the directed
20 verdict, and, so, we're asking that you find a directed
21 verdict in favor of Mr. Miller in this case. Thank you.

22 THE COURT: Mr. Hunter.

23 MR. HUNTER: Your Honor, obviously, in the light most
24 favorable to the state, which is what this motion is looked
25 at upon, we've heard the testimony from the witnesses, as

1 well as the information presented.

2 As far as the mixture, obviously, 44-53-375 -- and I
3 believe there's another statute -- that heroin or any
4 controlled substance is both that and anything that's
5 found, any mixture thereof.

6 So, even though it is a mixture of heroin and
7 fentanyl, it could have been charged as fentanyl or charged
8 as heroin. The mixture does not matter. The fact that it
9 was found and it weighed 65 grams is -- is the issue that
10 has been presented and the testimony's been given. So, a
11 directed verdict should not be granted onto that.

12 Oh, and as far as the location of the drugs, we've
13 heard from Investigator Brunson about a D.E.A. buy
14 happening before this with the guns and drugs.

15 Also, we heard from Investigator Vassar who stated
16 that the defendant claimed the heroin -- her-on -- in a
17 verbal statement to him. I believe those alone surpass the
18 burden that we must meet to present this to the jury, Your
19 Honor. So, I think the directed motion should be denied.

20 MR. MACDONALD: No response, Judge.

21 THE COURT: There is sufficient evidence to make it a
22 jury question. So, the motion for a directed verdict is
23 denied.

24 And I think -- I think I have this correct, but
25 44-53-370(e)(3)(a)(b)(c) provides that any mixture

1 containing heroin or any other substance listed in that
2 provision is -- constitutes trafficking in heroin.

3 You're aware of that statute, Mr. MacDonald?

4 MR. MACDONALD: Yes, sir. Thank you.

5 THE COURT: All right. Have you talked to Mr. Miller
6 about his right to testify, or not?

7 MR. MACDONALD: I have, Your Honor.

8 He was going to, obviously, see how the state
9 presented its case before making a decision. So, we've
10 not -- I've not asked him for a decision on whether he's
11 going to testify, or not, judge.

12 THE COURT: All right. Well, ask him and let me know.

13 (Pause.)

14 MR. MACDONALD: Your Honor, I don't believe he wishes
15 to testify in this case.

16 THE COURT: All right. Mr. Miller, these questions
17 are directed to you.

18 Do you understand that when you're charged with a
19 crime, as you are now, you have an absolute right to remain
20 silent? Nobody can ever require that you testify, make a
21 statement or answer questions that relate to the charge.

22 During the trial you don't have to take the witness
23 stand and testify in the case. Nobody can make you
24 testify, including myself or the prosecutor, even your
25 lawyer. It's your choice as to whether or not you wish to

1 testify.

2 If you make the decision to testify in this case, when
3 you are testifying you'll have to answer all of the
4 questions posed of you to the extent that they're relevant
5 asked of you by your lawyer, as well as by the prosecutor
6 and even if the responses to those questions might tend to
7 prove you guilty of some crime they claim, the state
8 claims, you committed.

9 At the same time, if you make the decision not to
10 testify in this case, I will instruct the jury that they
11 may not consider that fact in any way during their
12 deliberations or in their determination as to whether or
13 not your guilt has been established beyond a reasonable
14 doubt.

15 Do you understand your right to testify?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand your right not to
18 testify?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that it's solely your
21 decision as to whether you will or you won't?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you and Mr. MacDonald discussed the
24 advantages and disadvantages of testifying, as well as not
25 testifying?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And do you appreciate what those
3 advantages and disadvantages are?

4 THE DEFENDANT: Yeah. I guess.

5 THE COURT: In other words, do you understand the
6 advantages and disadvantages?

7 THE DEFENDANT: I understand.

8 THE COURT: Of either decision?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. And have you had plenty of time to
11 talk to Mr. MacDonald about your decision?

12 THE DEFENDANT: I have.

13 THE COURT: And have you arrived at a decision?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And what is that decision?

16 THE DEFENDANT: Not going to, not going to testify.

17 THE COURT: All right. And is that a decision that
18 you made of your own free will and accord?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Anybody pressure you into it?

21 THE DEFENDANT: No, sir.

22 THE COURT: You made it on your own?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You satisfied with it?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You sticking to it?

2 THE DEFENDANT: I am.

3 THE COURT: All right. The defendant has made the
4 decision not to testify.

5 Do you have any other witnesses you want Mr. MacDonald
6 to call on your behalf?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. Anything else?

9 MR. MACDONALD: No, Your Honor.

10 THE COURT: And you have no other witnesses?

11 MR. MACDONALD: We have no other witnesses to call,
12 Judge.

13 THE COURT: All right. We'll break for lunch and then
14 come back.

15 MR. MACDONALD: Your Honor, may Mr. Hunter and I
16 briefly approach?

17 THE COURT: Yeah.

18 (Bench conference held off the record.)

19 THE COURT: Bring the jury back, please.

20 Mr. MacDonald, I will inquire of you if you wish to
21 present any additional evidence.

22 (The following takes place in the presence of the
23 jury.)

24 THE COURT: All right. Ladies and gentlemen, as you
25 know, the state has concluded in their presentation.

1 So, we will now proceed with any additional
2 presentation to be made by the defense.

3 Mr. MacDonald.

4 MR. MACDONALD: Your Honor, the defense rests.

5 THE COURT: All right. That's all of the testimony or
6 other evidence to be offered in the trial of the case.

7 What remains to be done are the final lawyers' final
8 summations, after which I'll provide you with the
9 instruction on the law. And then you'll go back and begin
10 deliberations. That's going to take a little while.

11 Right now it's probably lunch time. So, we're going
12 to break for lunch. We'll start back with the lawyers'
13 closing summations and then my instruction and your
14 deliberations. We'll do that beginning at 2:00 o'clock, at
15 2:00 o'clock this afternoon.

16 So, you are excused now for lunch. Please report to
17 your jury room at 2:00 o'clock this afternoon.

18 In the meantime have no discussions, no investigation,
19 no research. Have a good lunch. I'll see you at
20 2:00 o'clock.

21 (The following takes place outside the presence of the
22 jury.)

23 THE COURT: While we're waiting, let me ask y'all to
24 verify the exhibits.

25 (Pause.)

closing arguments

1 THE COURT: All right. All of the exhibits have been
2 accounted for?

3 MR. HUNTER: Yes from the state, Your Honor.

4 MR. MACDONALD: Yes, Your Honor.

5 THE COURT: Okay. Court is in recess until
6 2:00 o'clock.

7 I need to see the lawyers in chambers for a charge
8 conference.

9 MR. MACDONALD: Yes, sir. Thank you.

10 (Whereupon, a recess was taken.)

11 THE COURT: All right. Ready for the jury?

12 MR. MACDONALD: Yes, Your Honor.

13 MR. HUNTER: Yes, Your Honor.

14 THE COURT: Bring them in.

15 (The following takes place in the presence of the
16 jury.)

17 THE COURT: Good afternoon, ladies and gentlemen.

18 As you know, when we recessed for lunch the evidence
19 had been concluded; and therefore what remains to be done
20 are the lawyers' final summations, after which I'll
21 instruct you on the law. And then you can begin with your
22 deliberations.

23 So, please give the lawyers your attention now as they
24 give you their final summations.

25 Mr. Hunter.

Closing arguments

1 MR. HUNTER: May it please the Court.

2 Thank you for your time and attention in this case.
3 Y'all are actually, I believe, only the second criminal
4 jury trial here in this new courthouse. So, you are the
5 second jury to actually hear a trial, and I thank you for
6 your attention. I'll try not to keep you longer than I
7 have to, but I do need to go over this case and what we
8 presented.

9 As I told you before, my job is to come before you and
10 prove beyond a reasonable doubt that Phillip Miller, seated
11 right there, trafficked more than 28 grams of heroin, that
12 in doing so, because trafficking heroin is a violent crime
13 under the South Carolina Code of Laws, that he possessed a
14 weapon, and that he possessed that weapon unlawfully
15 because he is a convicted violent felon.

16 I'm not going to spend too much time on it because
17 it's stipulated into the facts. And just so you know, all
18 of this evidence that has been submitted to you -- the
19 videos, all of that -- that's going to go back into your
20 deliberation room. You'll have a chance to look at this.
21 Look at the evidence. Review the videos if you want.

22 Stipulation of facts. Defendant Phillip Ronald Miller
23 has been convicted of a felony that is considered a violent
24 offense under 16-1-60 of the South Carolina Code of Laws
25 prior to March 2nd of 2021. We've agreed to that. He has

closing arguments

1 that conviction.

2 So, for that charge all I have to prove is that he
3 possessed a weapon.

4 For the trafficking, he had the drugs. All I have to
5 prove is that he possessed more than 28 grams of heroin.
6 And because trafficking heroin, if you find him guilty of
7 that, is a violent crime and you find him having possessed
8 that weapon, that is an additional charge of possession of
9 a weapon during the commission of a violent crime.

10 He's also charged with unlawful carrying, which is
11 basically just unlawful possession of a weapon. He didn't
12 have it correctly in the vehicle under state law.

13 In state law, you have a gun in a vehicle as long as
14 it's within a center console, glove compartment or the
15 luggage area where this gun was found, but it has to be in
16 a closed container with an integral fastener. The gun was
17 found in the bookbag.

18 Ultimately, it's not a huge -- that's not a huge
19 charge. That's what I'm not focusing on. I just state the
20 bookbag was not a closed container with integral fastener.
21 You may find that it is. That's fine.

22 The bigger issue is he's a violent felon in possession
23 of a weapon, and he did so while trafficking heroin.

24 The first witness that y'all heard from was
25 Investigator Brunson, Zachary Brunson, from the Richland

Closing arguments

1 County Sheriff's Office.

2 And on that day he was working as a task force officer
3 for the drug enforcement administration, and he utilized a
4 confidential informant to make a drug buy at [REDACTED] Sumter
5 Street in Lexington County. Again, he's acting as a D.E.A.
6 officer, so he has federal jurisdiction throughout the
7 entire United States to purchase heroin from Phillip
8 Miller.

9 He gives that informant \$1,900 and equips him with an
10 audio/video recording device that he can watch and listen
11 to in real time. And he searches him and his vehicle.

12 They do that because if there's any drugs or money or
13 any other contraband found in the vehicle, they have to
14 stop the buy. That could be the informant could be messing
15 with them, could be trying to mess up the buy.

16 He didn't find anything. So, they continued to the
17 buy. He watches the video. He listens to their audio. Of
18 course he goes to the gas station, hopefully meeting up
19 with Mr. Miller at this location. And he listens to their
20 conversation. And in that conversation Mr. Miller talks
21 about how he has a gun with an extended clip that fits 20
22 rounds.

23 And you might thought it was interesting while I had
24 Mr. Barton put all of the rounds in here. I asked him if
25 there was room to put another round.

closing arguments

1 Right now there's 19 rounds in here. I'm pushing it
2 down. You can tell that there's enough room to put at
3 least one more round.

4 This was recovered from his car in the stop in
5 Spartanburg County just like he talked about with
6 Investigator Brunson. Possession of a weapon by a person
7 convicted of a violent crime during the commission of a
8 violent crime.

9 Let's remember. Investigator Brunson gave that
10 informant \$1,900. The deal went down for \$1,800. And when
11 the informant returned to Investigator Brunson, he got a
12 hundred dollars back.

13 So, D.E.A. knew that Phillip Miller had \$1,800 of
14 their money from a drug buy March 2nd of 2021. They could
15 have stopped him in Lexington. They could have stopped him
16 in Laurens, Newberry. Let's go. Lexington to Newberry to
17 Laurens to Spartanburg County. But they ultimately get him
18 in Spartanburg County because that's where he's going to.

19 What's recovered from his person? Over \$2,000. So,
20 we know going in that he had at least \$1,800, and over
21 \$2,000 is recovered. That's evidence that that \$1,800 was
22 that D.E.A. money. He had it on his person.

23 I don't know if you noticed, but Cody Russell stops
24 the vehicle Ms. Miller's driving. He speaks to Mr. Miller.
25 Mr. Miller is smoking a cigarette in one hand with one

Closing arguments

1 glove on in one hand.

2 Earlier in my opening statement I asked you to use
3 your common sense. You get to go back there and take your
4 life experiences, things you learned in your life through
5 your job, through your training, through your education,
6 just through general life, and you get to apply your common
7 sense to the facts as we have presented here.

8 why is a person traveling down I-26 wearing one glove,
9 not wearing a mask and two gloves, like I know some people
10 did during COVID, because this was during COVID. March of
11 2021. I think March 20th is when we -- the pandemic
12 started. So, about a year after that. But wearing one
13 glove. That's pretty explanatory, easy to explain.

14 we know he did a deal in Columbia. You heard the
15 officers. You heard the chemist. When you're dealing with
16 fentanyl, they wear gloves. They wear their protective
17 gear. They don't want to touch that stuff, because if they
18 touch that stuff, it could be bad.

19 That's not just officers everywhere. Anybody who
20 comes in contact with it needs to be wearing protective
21 gear.

22 And we just heard that he did a buy two hours earlier
23 in Columbia with heroin and fentanyl. He's still wearing
24 his gloves from that deal. He's not wearing two gloves.
25 He's still wearing his glove.

closing arguments

1 Now, you're going to hear Judge Cole give you the law,
2 the law of all of the actual statutes involved, of the
3 trafficking, the weapon statutes.

4 He's also going to talk about reasonable doubt. He's
5 going to talk about the presumption of innocence. He's
6 going to go through a multitude of laws.

7 I want you to pay attention to him, because what he
8 says the law is, he's the judge of the law. You get to
9 judge the facts. He's the judge of the law, and he will
10 tell you what the law is.

11 So, if there's a question between what I say the law
12 is and what Mr. MacDonald says the law is, he's the one to
13 listen to -- Judge Cole.

14 One of those laws you're going to hear is about
15 mixture of substances. I know when Dr. Stuart was up she
16 stated that this was just over 65 grams of heroin with
17 fentanyl.

18 You will hear that the statute for heroin says heroin
19 and any mixture thereof. That is the state statute. So,
20 it doesn't matter if I take one gram. I like to use the
21 cocaine. But in this case it's heroin. But if I take one
22 gram of cocaine and I add 100 grams of sugar, a hundred
23 sugar packs to that cocaine, and I put it in a bag mixed
24 together, that is 101 grams of cocaine under state law.

25 It does not matter that it's sugar and cocaine. It

Closing arguments

1 does not matter in this case under state law that there's
2 fentanyl in this mixture.

3 If there is heroin and any mixture of a substance, he
4 can be charged with trafficking with the possession of that
5 heroin. Does not matter.

6 You will hear him state in the statute it is a mixture
7 thereof. So, any heroin as long as it's together. In this
8 case it was found together. It is 65 grams of heroin.

9 That same argument could be made that this is 65 grams
10 of fentanyl. We only indicted him for the heroin.
11 Indicting him for the fentanyl is a little duplicitous.
12 But it is 65 grams of heroin under state law.

13 Now, Mr. MacDonald got up and asked some questions
14 specifically about the body-worn cameras. I don't like the
15 sheriff's office policy. I don't like that they turn it
16 off when narcotics officers are present.

17 But you heard every officer get up here and say that's
18 our policy. We didn't hide that from you. He didn't hide
19 that when he was actually telling you the -- asking him to
20 turn it off, or if he has it on.

21 You heard from Investigator Powell as well. That is
22 their policy. I don't like it, but we don't have to like
23 it to prove this case.

24 This was a valid traffic stop based on the drug buy,
25 based on the warrant for his arrest that was already

closing arguments

1 outstanding and the traffic violation.

2 They arrested him, brought him outta the car.
3 Obviously, you heard him state you're not searching my car.
4 So, obviously, he didn't give consent. We didn't even ask
5 for consent. He made sure they knew before anything no
6 consent was given. Obviously, Ms. Miller didn't give
7 consent either.

8 Based on that drug buy they could have searched the
9 car anyway, but instead they brought -- bring a canine, a
10 canine that's been certified to find four different
11 drugs -- meth, cocaine or crack, marijuana and heroin.

12 You watched that video. She -- the dog Baro is
13 trained to alert by sitting. The dog sits when they're
14 alerting to the presence of narcotics.

15 You heard her talk about the training from 2016 on,
16 her certification test. Even in those tests there are some
17 searches in cars and rooms where nothing is hidden.

18 So, that way you can't say, well, you -- you told your
19 dog to sit here just so you could search. They train them
20 so that they don't want them to sit if there's nothing.
21 And she has never failed that test.

22 In this case the dog sat twice, both on the passenger
23 side and the driver's side. You heard her state that in
24 the video, as well as in the testimony. Gave two alerts to
25 the car. And based on all of those factors -- the drug buy

Closing arguments

1 before, the stop, the arrest warrant, the now canine
2 alert -- officers searched the vehicle.

3 In the luggage compartment of the vehicle they find
4 this bookbag. Inside that bookbag, this sig, P-365, 9mm,
5 with at least a 20-round-clip magazine and 19 rounds of
6 ammunition. Also, in that bag, this bag right here.

7 Again, you'll get to take this back in the room with
8 you. With over 65 grams of a mixture containing heroin and
9 fentanyl and a small amount of marijuana. Two of the odors
10 the dog is trained to smell.

11 Now, Mr. MacDonald did a good job of stating that no
12 pictures were taken. They didn't video. They actually
13 turned their video off per their policy. They didn't
14 D.N.A.

15 But the heroin, apparently just leave this in his car?
16 Like the tooth fairy come to visit my 6-year-old son. Just
17 left there?

18 Please just use your common sense. D.E.A. just did a
19 buy of heroin on this defendant. He's wearing a singular
20 glove. And to top it all off, he tells Investigator Vassar
21 my wife doesn't know anything about it, you already know
22 what it is, it's her-on. Words from his mouth.

23 Now, of course I know Mr. MacDonald is going to get up
24 here and say we don't have that on video. Unfortunately,
25 in today's world, we kinda live in a C.S.I. world where

Closing arguments

1 everybody wants D.N.A. and fingerprints and everything on
2 video. Unfortunately, that just doesn't happen. We don't
3 have that all the time. And of course I know he's going to
4 get up and say, well, we could've had it if they'd kept the
5 video on.

6 Does that mean that he didn't possess this heroin,
7 because it wasn't on video? When the officer testified
8 that they had just done a buy on him for heroin, that he
9 told them that he might have -- he has a gun with him?

10 We heard from Deputy Russell when he's getting out of
11 his car. This guy might have a 15-A, which I asked
12 multiple officers what does that mean. He might have a
13 firearm. How does Deputy Russell know that if that phone
14 call from the D.E.A. didn't occur?

15 Again, my job here is to firmly convince you that this
16 defendant on March 2nd of 2021 in Spartanburg County
17 possessed more than 28 grams of heroin. It's right here.
18 Heroin fairy didn't leave it in his car. He put it in his
19 car.

20 It's my job to convince you firmly, and the reason I
21 keep saying firmly convinced, you'll hear during his
22 instruction on the law on reasonable doubt that it is our
23 job to firmly convince. That's another definition of
24 reasonable doubt.

25 That I'm going to firmly convince you that he had a

Closing arguments

1 weapon, that Sig Sauer P-365, 9mm, in that same bag just
2 like Investigator Brunson said he was going to have.

3 And as a stipulation between the parties, we know that
4 he does have a violent felony conviction.

5 You'll hear from the law that trafficking heroin is a
6 violent crime under South Carolina Code 16-1-60, therefore
7 possession of a weapon while trafficking this amount is
8 possession of a weapon during the commission of a violent
9 crime.

10 I implore you to use your common sense, to look at the
11 video, the testimony, the evidence. Phillip Miller sold
12 heroin that day in Lexington County, drove to Spartanburg
13 County with more heroin and a gun and got caught. He got
14 caught. He wants you to think because it didn't happen on
15 video that it possibly didn't happen.

16 Use your common sense. What's he wearing in the
17 courtroom? Why does he tell the officer it's heroin? The
18 officer hadn't even found it at this point. They're in the
19 process of searching the car. That was his testimony.
20 They hadn't even found it. Yet he tells them you already
21 know what it is. It's her-on.

22 Thank you very much for your time, and I ask that you
23 come back with a verdict of guilty on trafficking heroin
24 over 28 grams, which includes the mixture; possession of a
25 weapon during the commission of a violent crime, the

closing arguments

1 violent crime being trafficking of heroin; possession of a
2 weapon by a person convicted of a violent felony and
3 unlawful carrying of a handgun.

4 Thank very much for your time. Please listen to
5 Mr. MacDonald. Thank you.

6 MR. MACDONALD: May it please the Court.

7 THE COURT: Mr. MacDonald.

8 MR. MACDONALD: I told you at the beginning of this
9 trial that there's two things I want you to come away with
10 about criminal trials right from the get-go. So, I hope
11 you walk away with this knowledge.

12 That one, that there's a presumption of innocence,
13 and, two, that someone must be proven beyond -- guilt
14 beyond a reasonable doubt to be found guilty of the crime.

15 So, first let's talk about the presumption of
16 innocence. When Mr. Miller came into this courtroom he was
17 presumed innocent of these charges, and that's the starting
18 point. And he is to remain to be presumed innocent on all
19 charges.

20 This presumption remains with him unless the state is
21 able to prove guilt beyond a reasonable doubt.

22 So, when you go back and deliberate in there and
23 you're talking about the evidence, just remember you're
24 under the presumption that he is innocent.

25 Now, let's talk about proof beyond a reasonable doubt.

Closing arguments

1 The law recognizes three different standards of proof.
2 There's a preponderance of the evidence; there's clear and
3 convincing evidence; and then there's proof beyond a
4 reasonable doubt.

5 I'll talk first about preponderance of the evidence.
6 That's the lowest standard. That does not apply to us
7 here, but I'm just going to explain it to so you have a
8 good understanding of each threshold.

9 Preponderance of the evidence is what's used in civil
10 trials, and it's essentially is it more likely than not to
11 be true. Okay. That's the lowest standard, and that's not
12 what we're going to apply in this courtroom.

13 The next standard is clear and convincing. That's the
14 middle standard. That means what it says, that the
15 evidence is highly and substantially more likely to be true
16 than untrue.

17 This is the standard used when the state wants to take
18 away your children. The evidence is clear and convincing.
19 That's not the burden that the state has. They have the
20 highest burden. It's the highest burden in this country.
21 The state has to convince you that the evidence in this
22 case completely eliminates any reasonable doubt. The state
23 has to put forth substantial evidence to convince you that
24 the only existing doubt that could remain is unreasonable
25 doubt.

closing arguments

1 So, let's talk about the actual evidence in this case.
2 I'm going to go in probably the same order that Mr. Hunter
3 went in chronologically.

4 Let's start in Lexington. You had Investigator
5 Brunson testify to a buy. He says that there's a video and
6 audio recording. We didn't get to see that. We didn't get
7 to hear that. Why?

8 We are going to rely on testimony only, and you're
9 going to -- you're going to realize that that's a common
10 theme in this case.

11 It would be much more helpful if you could have
12 watched that video, if you could have heard, you could have
13 seen the video that was being played. You could say that
14 looks like him or it doesn't look like him. But we don't
15 get to know that. We just are relying on an officer saying
16 that that's what he believes. But he is not the jury.
17 You're the jury. He's not the one who determines who it
18 was. It has to be you, and you don't get to see that.

19 You heard the officers from the stand. I asked them
20 about their incident reports that they wrote about the
21 Lexington incident. Every single one of the officers
22 acknowledge that they didn't put that in their incident
23 report. They wrote that within 24 hours of the arrest.

24 Why don't they but the Lexington information in their
25 incident report? It makes total sense because that was

Closing arguments

1 their justification that they gave as one of the reasons why
2 they wanted to search the vehicle, was they believed he did
3 a buy. But they don't put that in their incident report?
4 Why would they omit such crucial information in their
5 incident report? It doesn't make any sense.

6 Again, we're just going to rely on what these officers
7 say in instead of actual evidence.

8 There's no pictures. Where's the \$2,000? Where's the
9 pictures of the \$2,000 recovered?

10 Then we heard from Deputy Russell. He testified that
11 he pulled over the vehicle because he observed a traffic
12 violation. But that's obviously -- that wasn't true. He
13 pulled the vehicle over because he was told to by
14 Investigator Vassar. That's who told him to pull them over.
15 So, it was -- it was completely pretextual in nature. He
16 had no intent on waiting for an infraction. He is just
17 saying I -- you drove over the line, so I'm pulling you
18 over.

19 There's no video; there's no evidence that this person
20 committed a traffic violation. But this officer says, oh,
21 you're crossing the center line, you're doing 55 on a 54.
22 You know exactly what I'm talking about. It's pretextual in
23 nature, and there's no evidence showing that he committed
24 the traffic stop, but that's what they justify it in their
25 report and on the stand.

Closing arguments

1 Deputy Russell was the only person that activated his
2 body camera other than the canine unit. So, we got to see
3 the first four minutes of that stop, and then we get cut
4 off. So, we have nothing else to look at to confirm the
5 testimony that's given by these narcotics officers. So, we
6 have nothing that oversees that what they're saying is true.

7 When they searched the vehicle, they didn't have any
8 cameras or videos or pictures to document what the crime
9 scene looked like, because they're saying that there was
10 drugs in the car. That makes it a crime scene. So, you
11 should document the crime scene.

12 Whenever I -- whenever you have a murder investigation
13 or any other charge, you take pictures of a crime scene so
14 that you can show what the crime scene looked like when you
15 first witnessed it.

16 Every piece of evidence collected in this case was done
17 so without audio or video. So, or if it does exist if there
18 is supposed audio of it, we don't have it and we never got
19 to see it. And in my opinion that's as good as it not
20 existing at all.

21 There's no documentation of anything that was collected
22 in the car. Nothing was tested for D.N.A.

23 How do we know that what was in the car was put there
24 by Mr. Miller? We don't know that. How do we know that
25 those are his drugs? It's all based off of statements

Closing arguments

1 without -- that aren't supported by any proof.

2 Now, let's talk about the statements that Mr. Miller
3 supposedly made while he was in a patrol car about it being
4 her-on. Apparently, only Vassar heard these statements, and
5 they did not make any audio or video recording of the
6 statements.

7 If you have an investigation going on and someone is
8 going to confess to a crime, most officers are going to say
9 let's take your statement, let's let -- they're going to
10 turn on the camera. They're going to do something to get
11 that statement down since they're confessing to a crime.
12 But that doesn't happen here.

13 Instead, he is just going to casually write in his
14 report and testify that that's what I heard him say with
15 nothing to back that up. And, I mean, that's the common
16 theme here. There's been nothing to back up anything that's
17 been testified to by the narcotics officers.

18 And that's a problem because the burden that has to be
19 reached here is proof beyond a reasonable doubt. People can
20 lie. Camera and video and audio equipment, they don't lie.
21 They just -- they're objective.

22 And Mr. Miller was in the back of a patrol car when he
23 supposedly made these statements. Deputy -- it was Deputy
24 Russell's patrol car. He could have just briefly turned it
25 back on to capture that confession, but he didn't. So, we

Closing arguments

1 just have to go off of what Deputy or Investigator Vassar
2 claims he said with nothing to back that up.

3 Now, I mentioned this earlier, but, again, I just want
4 to reiterate. Incident reports are done right after the --
5 right after the event concludes.

6 You heard Investigator Vassar say he probably did a
7 couple of them in the 24 hours. Other officers saying they
8 did it within 24 hours of that day in question. Think the
9 same thing with Investigator Brunson.

10 We heard Vassar say on the stand that he intentionally
11 and willingly omitted information in his investigative
12 report when referring to the Lexington case.

13 What oversight do we have here on police if they're
14 going to omit information, if they're going to change
15 information or retroactively apply information?

16 How do we police that if they cut everything off that
17 can document what they're doing? How do we know that
18 they're above the line here?

19 There's zero transparency in this case. It's simply
20 trust us but don't make us prove what we're telling you is
21 the truth with video evidence because we don't do that.
22 It's against it's policy.

23 Like I said, cameras don't lie. Cameras don't withhold
24 information. They're unbiased pieces of evidence that
25 officers, most officers, use to support what they write in

Closing arguments

1 their incident reports that will back up so when we come to
2 court and say -- and we said that they're not being truthful
3 with us, we say, well, look at what's on the body camera.

4 But narcotics don't have to wear body cameras even when
5 they're searching a car? How is searching someone else's
6 car protecting identities when you just have a body camera
7 that's going outward into the car? Whose identity are you
8 protecting?

9 It's supposed to document the investigation here. So,
10 by not having anything to document, then we're just relying
11 on people's testimony, and people can lie. People can
12 misremember and people can alter what -- what the facts are.
13 And without having something as an oversight, we'll never
14 know.

15 So, the last thing I want to do is I want us to review
16 the only body camera that was used in this case, and that's
17 the body camera of the deputy in this case -- Deputy
18 Russell. I just want us to sit and watch that and talk
19 about it.

20 (Whereupon, the video was played for the jury.)

21 MR. MACDONALD: Stop. Back it up just a little bit.

22 Okay. This is what I want you to pay attention to.
23 Every narcotics officer got on the stand, and they said
24 they didn't search this car until the canine came. All of
25 them. They took an oath. They swore they were going to

Jury charge

1 tell the truth. They said no one searched that car until
2 the canine comes.

3 what's happening right there? They're in that car.
4 Look at them. They lied on the stand, every single one of
5 them. They lied.

6 And this is the case that we're supposed to rely just
7 exclusively on testimony and they can't even tell the truth
8 about what they're doing? If they're going to lie about
9 searching a car at this -- something so minuscule, what --
10 what makes you think the rest of their testimony is the
11 truth? Watch that video when you go back and deliberate.

12 This was only captured because Deputy Russell
13 accidentally left his body camera going, because this isn't
14 supposed to happen because their policy is you shut off
15 your body cameras while we do our work.

16 well, they -- they said no one searched that car, no
17 one went in that car until a canine came. This is all we
18 see for a split second because we didn't have Deputy
19 Russell watching the car on this body camera. This is all
20 we get to see. We don't get to see what else happened.

21 This is why they have a no-body-camera policy, because
22 they don't want to have someone overseeing what they're
23 doing in their investigations because they're willing to
24 lie, cheat and play dirty. This is why Deputy Vassar tells
25 Deputy Russell to shut it down, because they don't want

Jury charge

1 anyone seeing what they're doing.

2 They lied about what they did on the stand. All of
3 them. You can't find their testimony credible. None of
4 it.

5 You have to find my client not guilty because there's
6 no documentation. There's no proof that he's in possession
7 of any of those things at all. So, please come back with a
8 not-guilty verdict.

9 THE COURT: Turn off the video.

10 (Pause.)

11 THE COURT: Mr. Foreman and ladies and gentlemen of
12 the jury, you of course have heard and seen all the
13 evidence in the case.

14 You have now heard the final summations of the
15 lawyers, and therefore it now becomes my duty and
16 obligation to instruct you on the law that's applicable.

17 You'll then be asked to go back and to begin with your
18 deliberations, and through that process you'll examine the
19 evidence, you will determine the facts, you'll apply the
20 law and arrive at a fair and just decision, whatever that
21 decision might be.

22 As jurors it is your exclusive duty to determine what
23 the facts are. You do that through your own common sense
24 examination and evaluation of all of the testimony and
25 other evidence received during the course of this trial.

Jury charge

1 You 12 jurors alone will decide what weight, value and
2 effect to give to any particular witness' testimony or
3 other evidence in the case.

4 Your sole objective of course is to render a fair and
5 impartial decision based upon that evidence, your
6 determination of fact and then your application of the law
7 as I will have provided it to you.

8 And because you are the judges of the facts, you are
9 therefore necessarily the sole judges of the credibility,
10 that is the believability, of each witness that has
11 testified during the course of this trial.

12 You 12 jurors alone will decide what weight, value and
13 effect to give to any particular witness' testimony, but
14 there are several factors which you should consider in
15 arriving at your assessment as to a particular witness'
16 credibility, and I'm going to list those factors for you.

17 You should consider the demeanor of the witness. That
18 is how the witness appeared to you while the witness was
19 testifying from that witness stand. Was the witness
20 straightforward in responding to questions or was the
21 witness hesitant or evasive in responding to questions that
22 were posed to that witness. Simply put, did the witness
23 appear to you to be telling the truth and to have knowledge
24 of the facts to which that witness has testified.

25 You should also consider whether or not the testimony

Jury charge

1 of a witness is consistent, or is it inconsistent with that
2 witness' own testimony provided here in court or whether
3 it's consistent or inconsistent with other statements made
4 by that same witness, whether it be in court or outside of
5 court.

6 You should also consider whether or not the testimony
7 of a witness is consistent or is it consistent with other
8 testimony and other evidence received during the course of
9 this trial.

10 You should also consider how the witness came to know
11 the facts to which that witness has testified. In other
12 words, what was that witness' ability and opportunity to
13 perceive the existence of those facts to which that witness
14 has testified by having previously used his or her senses,
15 and then what is the ability of that witness to be able to
16 come into court and to accurately recollect to you as to
17 what they have previously perceived.

18 You should also consider any bias or prejudice or
19 interest that a witness might have in the outcome of the
20 course. In other words, do you find some reason that a
21 particular witness would come into court and would testify
22 one way or another to help or hurt one side or the other,
23 and you may consider any interest that a witness might have
24 in the outcome of the case if you determine that the
25 witness does have an interest and you determine that that

Jury charge

1 interest would bear upon that particular witness'
2 credibility.

3 You should also consider whether or not the testimony
4 of a witness was straightened or was it weakened by other
5 testimony or other evidence received during the course of
6 the trial.

7 Now, because you are the finders of the fact and you
8 are the judges of the credibility of each witness'
9 testimony, you are permitted to believe as much or as
10 little of what a witness has testified to as you deem is
11 appropriate. And so you may believe everything that a
12 witness testified to. You may choose to believe none of
13 it.

14 You may believe some portion of a witness' testimony
15 and reject some other portion of that same witness'
16 testimony.

17 In a given case you could believe one as against more,
18 or more as against one. But whatever your good judgment
19 and common sense tells you is the most credible and
20 believable testimony is the testimony you should accept,
21 and you should reject any testimony or other evidence that
22 you find not to be credible or believable. Again, your
23 sole objective is to simply render a fair and impartial
24 decision based upon the evidence presented and the law
25 that's applicable.

Jury charge

1 Now, the same law that provides that you are the
2 judges of the facts also provides that I am the judge of
3 the law. That simply means that nobody is going to tell
4 you how to arrive at your determination of fact in this
5 case.

6 You do that, as I've already stated, through the
7 exercise of good judgment and common sense conscientiously
8 applied to the testimony and the evidence received during
9 the course of the trial.

10 You must however under your oath as a juror accept the
11 law as I provide it to you as being the law that you are to
12 apply in the case.

13 In other words, you're never to concern yourself with
14 what you thought the law was before you came to serve as a
15 juror this week or what you think the law ought to be.

16 Under your oath as a juror you must accept the law as
17 I provide it to you as being the law that you are to apply
18 in this case, and then you simply take that law and you
19 apply it to the facts as you 12 jurors determine those
20 facts to be based upon your common sense examination of the
21 evidence in the case.

22 Now, the state, as you know, has alleged the defendant
23 to be guilty of four separate and distinct offenses, and
24 those four separate and distinct offenses are set forth in
25 the indictments that I previously read from. And I think,

Jury charge

1 as I told you also, that the indictments are not evidence
2 in the case. They don't prove anything; they don't
3 establish anything. They're simply the means by which any
4 person who is accused of a crime is brought into this court
5 to stand trial as to that charge.

6 The indictments will however be in the courtroom,
7 because, Mr. Foreman, it's on the back of these indictments
8 in the lower left-hand corner you'll see the word verdict.
9 And it's beneath that word that you're going to indicate
10 the jury's unanimous decision as it relates to the charge
11 set forth in that particular indictment.

12 So there are four charges. One indictment has two.
13 That's the indictment for trafficking in heroin. It also
14 has a count two, which is possession of a firearm during
15 the commission of a violent crime, the violent crime
16 alleged to be the trafficking.

17 And then the two other indictments are possession of a
18 firearm by a person who has previously been convicted of a
19 violent offense classified as a felony, and then the
20 remaining indictment is for the unlawful possession of a
21 handgun.

22 As I told you, as to the charges contained in each of
23 those indictments the defendant has entered a plea of not
24 guilty, and that plea of not guilty has placed upon the
25 state the burden of proving the allegations that they have

Jury charge

1 made by way of each of those indictments, the burden of
2 proving each of the essential elements of the crimes that
3 are alleged in each of those indictments; and therefore the
4 burden is upon the state to establish the defendant's guilt
5 as to a particular charge beyond a reasonable doubt before
6 you could make such a finding on a particular indictment.

7 The burden is never upon a defendant or a person
8 accused of a crime to prove that they are not guilty or to
9 prove that they are innocent because in some cases that
10 might not be possible.

11 The burden is always upon the state because they made
12 the acquisition and they brought the charge to prove the
13 defendant's guilty -- to prove the defendant's guilt beyond
14 a reasonable doubt.

15 You are further instructed that it is a vital and
16 important rule of law that every defendant in a criminal
17 trial, and no matter how serious the offense might be for
18 which that person stands charged, that person shall always
19 be presumed innocent of that charge. And that presumption
20 of innocence remains with every defendant, as it does with
21 this defendant, from the time that they are placed under
22 arrest and throughout the course of the criminal process
23 and even throughout the course of the trial in the case.

24 As I previously told you, that presumption of
25 innocence will be with Mr. Miller even as you back into

Jury charge

1 your jury room to begin with your deliberations in this
2 case, and that presumption of innocence will be with him in
3 that jury room, and it'll be with him forever unless you 12
4 jurors determine that he's no longer entitled to that
5 presumption of innocence as it relates to a particular
6 charge.

7 In other words, after you have carefully considered
8 all the evidence in the case, and from that evidence you
9 have been able to determine the material facts that relate
10 to the charges made, and after deciding those facts you
11 apply the law that I will have provided you, if you 12
12 jurors determine that his guilt as to a particular charge
13 has been proven beyond a reasonable doubt, then he would no
14 longer be entitled to that presumption of innocence as it
15 relates to that particular charge. But it is only if,
16 unless and until you are satisfied of his guilt beyond a
17 reasonable doubt that the presumption of innocence would no
18 longer be applicable.

19 Now, as I said, the state has the burden of proving a
20 defendant's guilt beyond a reasonable doubt. That doesn't
21 mean that the state has prove his guilt beyond all doubt or
22 beyond any possible doubt, but it does require the state to
23 prove his guilt to your satisfaction beyond a reasonable
24 doubt.

25 The term reasonable doubt should be given its plain

Jury charge

1 and ordinary meaning. A reasonable doubt is the kind of
2 doubt that would cause a reasonable person to hesitate to
3 act upon the information provided.

4 The defendant in a criminal case is entitled to any
5 reasonable doubt that arises from the evidence or lack of
6 evidence in a case, and if, upon any factual issue
7 essential to a finding of a verdict of guilty you have some
8 reasonable doubt as to how that issue should be resolved,
9 it would be your duty to resolve that reasonable doubt in
10 favor of the defendant.

11 Now, while there are various forms of evidence such as
12 testimony, and photographs and documents and charts and
13 videos and weapons and other types of physical exhibits,
14 there are really only two types of evidence, either or both
15 of which may be used to prove any fact in issue. But the
16 two types of evidence are direct evidence and
17 circumstantial evidence.

18 Direct evidence is the testimony of a person who
19 testifies from actual knowledge of that fact. It is
20 testimony by a person who has perceived the existence of
21 some fact by means of his or her senses, and then that
22 person comes into court and they testify as to what they
23 have previously perceived by the use of those senses.

24 Direct evidence directly proves the existence of a
25 fact, and it does not require any deduction or any

Jury charge

1 inference in order to establish that fact.

2 Circumstantial evidence, on the other hand, is the
3 proof of some other fact or a chain of facts which taken
4 either singly or collectively may prove the existence of a
5 fact in question as a necessary consequence. That is
6 through a deduction or an inference.

7 An inference is simply a deduction of fact that may
8 logically and reasonably be drawn from the proof of some
9 other fact or set of facts.

10 In other words, it's a fact not proven by the direct
11 testimony of a witness based upon their personal
12 perception, but it is a conclusion which might reasonably
13 be drawn from the proof of other facts.

14 In other words, you may infer that a particular event
15 occurred or that a particular fact exists based upon proof
16 of sufficient factual circumstances which would reasonably
17 warrant your arriving at that particular conclusion.

18 The commission of a crime and any particular element
19 necessary to establish that crime may be proven by direct
20 evidence or by circumstantial evidence or by a combination
21 of both direct and circumstantial evidence.

22 You are further instructed that the law makes no
23 distinction between the weight or the value to be given to
24 direct evidence or circumstantial evidence, nor is a
25 greater degree of certainty required of circumstantial

Jury charge

1 evidence as opposed to direct evidence.

2 However, to the extent that the state relies upon
3 circumstantial evidence in order to establish the
4 commission of a crime, all of the circumstances proven must
5 be consistent with each other and when taken together point
6 conclusively to the guilt of the accused beyond a
7 reasonable doubt.

8 If these circumstances merely portray the defendant's
9 behavior as suspicious, then that proof is insufficient and
10 it fails.

11 The burden rests with the state, regardless of whether
12 they rely upon direct evidence or circumstantial evidence
13 or some combination of the two, to prove the defendant
14 guilty beyond a reasonable doubt.

15 Proof beyond a reasonable doubt is proof that leaves
16 you firmly convinced of the defendant's guilt. There are
17 very few things in the world that we know with absolute
18 certainty, and in criminal cases the law does not require
19 proof that overcomes every possible doubt.

20 If, based upon your consideration of the evidence in
21 this case and in the exercises of good judgment and common
22 sense you are firmly convinced that the defendant has been
23 proven guilty of a crime for which he is now charged, you
24 must find the defendant guilty of that crime.

25 If, on the other hand, you think there is a real

Jury charge

1 possibility that the defendant is not guilty of a crime for
2 which he stands charged, then you must give him the benefit
3 of that doubt and find him not guilty.

4 Now, as you know, there are four charges --
5 trafficking in heroin, possession of a weapon during the
6 commission of a violent crime -- that violent crime being
7 trafficking in heroin -- possession of a weapon by a person
8 who has previously been convicted of a violent crime
9 classified as a felony and unlawful possession of a
10 handgun.

11 So, I'm going to start with trafficking. I'll kind of
12 go in order of the indictments. Trafficking, possession of
13 a firearm during the commission of trafficking, and
14 possession of a firearm after having been convicted of a
15 crime of violence classified as a felony, and then
16 possession of a handgun unlawfully. These are all
17 statutory offenses. I'm going to read the statute to you,
18 and I'm going to explain to you terms contained in the
19 statute.

20 So, begin with -- beginning with trafficking. Section
21 44-53-370(e) of the Code of Laws of South Carolina -- and
22 the Code of Laws -- we don't have any in here any more, but
23 they're volumes of laws. I have them in the office.
24 They're blue volumes.

25 Every year the from January to June the legislature

Jury charge

1 meets, and they pass a number of laws and rules and
2 regulations that govern our conduct in a variety of ways.

3 Some of those statutes are criminal-penalty statutes,
4 and that just means that the legislature defines a crime.
5 They prohibit us in engaging in that activity that
6 constitutes that crime. And if we're found to have
7 committed a violation of that statute, therefore committed
8 a crime, it subjects us to some form of punishment or
9 penalty as a result.

10 Please understand however that you are never to be
11 concerned with punishment or penalty. That's not something
12 that you decide. It's not something that you are to
13 consider or be concerned with.

14 Your sole obligation and duty under your oath as a
15 juror is to simply determine whether or not the defendant's
16 guilt has been proven beyond a reasonable doubt as it
17 relates to a particular charge, and you are to make that
18 decision without regard to any punishment or consequence of
19 that decision that you make.

20 Section 44-53-370(e) provides that any person who
21 knowingly sales, manufactures, cultivates, delivers,
22 purchases or brings into this state, or who provides
23 financial assistance, or who otherwise aids, abets,
24 attempts or conspires to sell, manufacture, cultivate,
25 deliver, purchase or bring into this state, or who is

Jury charge

1 knowingly in actual or constructive possession of 4 grams
2 or more of heroin or any mixture containing heroin is
3 guilty of the crime of trafficking in heroin.

4 Section 44-53-370(c) provides that it shall be
5 unlawful for any person to knowingly or intentionally
6 possess a controlled substance unless obtained directly
7 from or pursuant to a valid prescription or order of a
8 practitioner who is authorized by law to dispense a
9 controlled substance while acting in the course of his or
10 her professional practice.

11 And section 44-53-190(C)(10) classifies heroin as a
12 Schedule I narcotic drug, and therefore is declared to be a
13 controlled substance under the law of the State of South
14 Carolina.

15 And the statute further provides that the weight of
16 any controlled substance includes the substance in pure
17 form or any compound or any mixture containing that
18 controlled substance.

19 So, in this case the state is alleging that the
20 defendant did traffic in heroin in that he did have in his
21 actual or constructive possession more than 28 grams of
22 heroin, a Schedule I controlled substance.

23 So, before the defendant may be found guilty of
24 traffic in heroin in this particular case, it will be
25 necessary that the state has proven to your satisfaction

Jury charge

1 beyond a reasonable doubt that the defendant did knowingly
2 have in his actual or constructive possession a quantity of
3 more than 28 grams of heroin or of any mixture which
4 contained heroin.

5 I'm now going to instruct you on the law as it relates
6 to possession of -- actual possession and constructive
7 possession.

8 Before a person may be found guilty of trafficking by
9 possession, as in this case of heroin, it must be proven
10 beyond a reasonable doubt that the person did knowingly
11 have in his actual or constructive possession the heroin
12 that is claimed to have been possessed.

13 knowingly is defined as having knowledge of the fact.
14 It connotes an act that is done wilfully, purposefully and
15 consciously and not by accident, mistake or inadvertence.

16 Actual possession of a substance occurs when the
17 substance is shown to have been in the actual physical
18 custody or control of the person charged with possession
19 with knowledge of its presence.

20 Constructive possession of a substance, on the other
21 hand, occurs when a person, although not in actual physical
22 custody of the substance, has the right to exercise
23 dominion and control over the substance or otherwise
24 exercises dominion and control over that substance.

25 A person has possession of a substance within the

Jury charge

1 meaning of the law when he has both the power and the
2 intent to control the disposition or use of the substance.

3 And the act of possession, as well as the elements of
4 knowledge and intent, may be proven by either direct
5 evidence or circumstantial evidence or by a combination of
6 both types of evidence. And possession of a substance or
7 an item may be jointly shared by two or more persons.

8 You are permitted to infer the act of possession of a
9 substance or an item, as well as the elements of knowledge
10 and intent, from evidence of acts, declarations and conduct
11 of the person charged with possession, as well as any other
12 circumstances established by the evidence in this case from
13 which you might reasonably infer possession and knowledge
14 and intent.

15 You are however instructed that the proof of mere
16 presence of the defendant at or near a location where a
17 quantity of drugs or any other item is found is not
18 sufficient by itself to prove the defendant's possession of
19 it.

20 A defendant's mere presence where a quantity of drugs
21 or other item is located, even with knowledge of its
22 presence, is not sufficient standing alone to prove
23 possession of it.

24 So, if after your review of the evidence in this case,
25 you determine that the state has only proven that the

Jury charge

1 defendant was merely present at or near some location where
2 a quantity of drugs or any other item is located but has
3 failed to prove beyond a reasonable doubt that the
4 defendant did actually or constructively possess it as I
5 have described those terms for you, then you must find the
6 defendant not guilty of the crime for which proof of
7 possession of it is required.

8 And, on the other hand, if, after you review all the
9 evidence in this case and you determine that the state has
10 proven beyond a reasonable doubt that the defendant did
11 unlawfully, actually or constructively possess a quantity
12 of drugs or some other item, then your verdict would be
13 guilty of the crime for which proof of possession of that
14 item is required.

15 In this case, as you know, the state alleges that the
16 defendant not only possessed a quantity of heroin but that
17 he possessed an amount of more than 28 grams of heroin; and
18 therefore the burden is upon the state to establish that
19 fact.

20 And as previously instructed, the amount or weight of
21 a controlled substance includes the substance in pure form,
22 as well as any compound or mixture which contains that
23 controlled substance.

24 Now, the next indictment that I will address is
25 possession of a -- excuse me -- count two of that

Jury charge

1 trafficking indictment, possession of a weapon during the
2 commission of a violent crime.

3 That's also a statutory offense. That statutory
4 offense is set forth in 16-23-490(A). It provides as
5 follows: A person shall be guilty of an additional
6 criminal offense if a person is in possession of a firearm
7 or visibly displays what appears to be a firearm during the
8 commission of a violent crime and that person is convicted
9 of having committed or attempted to commit that violent
10 crime as defined in 16-1-60. And 16-1-60, which does
11 define and lists violent crimes, includes trafficking in
12 heroin as a violent crime under the law.

13 So, before the defendant could be found guilty of a
14 violation of this particular section it would be necessary
15 that you have found the defendant to be guilty of the crime
16 of trafficking in heroin and you further find beyond a
17 reasonable doubt that the defendant possessed a firearm
18 during the commission of that violent crime of trafficking
19 in heroin.

20 Like possession of a controlled substance that I
21 described earlier, possession of a firearm may also be
22 actual or constructive, actual meaning in the actual
23 physical custody of the person charged with its possession,
24 and constructive meaning when one has knowledge of the
25 presence of the firearm and the intent to exercise dominion

Jury charge

1 and control over it.

2 Next charge is the indictment setting forth the crime
3 of possession of a firearm by a person convicted of a
4 violent classified as a felony.

5 Again, that's a statutory offense set forth in
6 16-23-500(A). And that section provides that it is
7 unlawful for a person who has been convicted of a violent
8 crime as defined in section 16-1-60 that is classified as a
9 felony offense to possess a firearm or ammunition within
10 this state.

11 So, before the defendant could be found guilty of a
12 violation of this particular provision of law it would be
13 necessary that you have found the defendant to be guilty of
14 actual or constructive possession of a firearm and at the
15 time he possessed it he had previously been convicted of a
16 violent crime that was classified as a felony under the law
17 of this state.

18 And the remaining indictment charges unlawful
19 carrying, unlawful possession of a handgun. That's set
20 forth in 16-23-20. And that particular statute reads in
21 its relevant parts: It is unlawful for anyone to carry
22 about their person any handgun, whether concealed or not,
23 except that a person may lawfully possess a handgun in his
24 home or upon his own real property or in a vehicle if the
25 handgun is secured in a closed glove compartment, a closed

Jury charge

1 console, a closed trunk or in a closed container secured by
2 an integral fastener and transported in the luggage
3 compartment of the vehicle.

4 All right. Ladies and gentlemen, I am not in any way
5 concerned with what your decisions are, but you are
6 instructed that no verdict may be rendered as to any
7 particular indictment unless all 12 jurors are in agreement
8 as to what that decision is.

9 So, Mr. Foreman, as you know, in addition to the
10 evidence that you'll have in the jury room, you'll have
11 these indictments. They're going to serve as the verdict
12 form.

13 One indictment, the trafficking indictment, has two
14 counts. So, there'll be two verdicts rendered as to that
15 particular indictment -- count one and count two, count one
16 being trafficking in heroin, count two being possession of
17 a weapon during the commission of that violent crime. As
18 to each count, the potential verdict forms are guilty and
19 not guilty.

20 And as to the other two indictments, each has just one
21 count in it, and the verdict forms are, again, guilty or
22 not guilty. So, whatever that decision is, you'll indicate
23 it in the space provided. You'll sign your name as the
24 foreperson. You're the only juror that needs to sign the
25 verdict forms. You'll also place the appropriate date.

Jury charge

1 And today is the 28th of February.

2 Also, let me emphasize to you that the fact that a
3 defendant does not testify during the course of a criminal
4 trial is not a fact or a circumstance that the jury may
5 consider in any way during your deliberations or in your
6 determination as to whether or not his guilt has been
7 proven beyond a reasonable doubt.

8 And you could not allow such a fact to weigh in the
9 slightest degree against the defendant, because, as I've
10 already told you, the burden is always upon the state
11 because they made the accusation to prove a defendant's
12 guilt beyond a reasonable doubt.

13 The burden is never upon a defendant or a person
14 accused of a crime to prove that they are not guilty or to
15 prove that they are innocent, and therefore -- because in
16 some cases that might not be possible. And therefore you
17 are not to draw any inference nor draw any conclusion from
18 the fact that a defendant does not testify or offer
19 additional evidence during the course of a trial, nor may
20 that fact even be discussed by the jury while you are
21 engaged in your deliberations.

22 Now, during deliberations there may come a time where
23 you have a question about the evidence in the case or the
24 facts of the matter. I'm never permitted to comment upon
25 the evidence or the facts. You simply must determine the

Jury charge

1 facts from your consideration of the evidence received
2 during the course of the trial, as well as any reasonable
3 inference that might be drawn from it.

4 . No additional evidence can be received now that you're
5 going back to begin deliberations. So, don't ask me if
6 there's something else you could have to help you resolve
7 the case, because even if it did exist, it could not be
8 introduced now because the case is closed. All of the
9 evidence that's going to be introduced has been introduced.
10 And no additional evidence can now be received.

11 The evidence that has been introduced, we will verify
12 the exhibits before they go back and to be sure that all
13 are present, but that is all the evidence that you will
14 have -- physical evidence -- to consider when you're back
15 in the jury room.

16 As far as testimony goes, if you ever have a question
17 about a witness' testimony and you think that question can
18 be answered by having that witness' testimony replayed in
19 whole or in part, we can do that. But I don't have
20 transcripts. But I can bring you back into the courtroom
21 and we can replay the witness' testimony in its entirety or
22 just in part if that's all you need.

23 So, should you need to rehear testimony, let me know
24 of that fact. We'll bring you back into the courtroom for
25 that purpose.

Jury charge

1 Should you have a question about the law that's
2 applicable, I am always permitted to answer those
3 questions. So, should you need a complete re-instruction,
4 I can provide you with that.

5 Should you simply need an additional explanation or a
6 clarification on the law that you are to apply, I can
7 provide you with that.

8 So, Mr. Foreman, if at any time during deliberations
9 you have a question or a matter that needs to be addressed
10 to me, if you'll write it on a piece of paper, give it to
11 the bailiff, the bailiff will give it to me and I'll
12 address it accordingly.

13 After the jury has reached unanimous decisions, you'll
14 indicate it on the verdict form as instructed. Knock on
15 the door, tell the bailiff you've reached your decisions,
16 and we'll bring you back to receive those decisions.

17 When that time comes, Mr. Foreman, you will hold on to
18 the verdict forms. Don't give those to the bailiff. I'll
19 receive those from you when the jury comes back in for us
20 to receive the verdicts in the case. So, you simply hold
21 on to them until that time.

22 I don't know if we have any smokers on the jury, but
23 if you want to smoke, you can't smoke in the courthouse.
24 You have to go outside. So, if anybody wants to smoke, let
25 the bailiff know, and somebody'll take you outside to

Jury charge

1 accomplish that purpose.

2 But you instructed that deliberations cannot take
3 place unless all 12 jurors are present in the jury room so
4 that all may participate in that decision and in those
5 deliberations.

6 So, if at any time a juror is absent for some
7 authorized purpose, the deliberations have to stop, and
8 they may only resume when all 12 are present so that all
9 can participate.

10 I think that covers everything, but if it doesn't one
11 of these lawyers will jog my memory. If I need to bring
12 you back, I will, and provide you with additional
13 information.

14 If I don't need to bring you back, I won't, and I'll
15 just simply send word by way of the bailiff that you may
16 begin deliberations, and in that event he or she will bring
17 to the jury room all of the exhibits which have been
18 introduced.

19 And to you, Mr. Foreman, she or he will also bring the
20 indictments that will serve as the verdict forms.

21 Now, there have been some videos that have been
22 introduced, and so you'll have a computer back there to
23 look at those if you like. If for some reason you can't
24 get it to work, let me know, and we'll help you with that.
25 But I figure y'all 12 should be able to figure that out

Verdict

1 better than I can. That's for sure. But let us know if
2 that becomes an issue.

3 All right. Now, I'm going to ask my two alternates --
4 Mr. Hutchins and Mr. Peake -- if you'll stay here in the
5 courtroom with me.

6 I'll ask the 12 primary jurors to please retire to
7 your jury room, but do not begin deliberations yet. I'll
8 send you word when to do so. Okay.

9 (Whereupon, the jury retired to deliberate at
10 3:14 p.m.)

11 (Whereupon, the alternate jurors were excused.)

12 THE COURT: Are there any exceptions taken to the
13 instruction or requests for additions to the instruction by
14 the state?

15 MR. HUNTER: None from the state, Your Honor.

16 THE COURT: By the defendant?

17 MR. MACDONALD: No, Your Honor.

18 THE COURT: And y'all have verified the exhibits?

19 MR. MACDONALD: I've got two right here, Judge, I've
20 just got to put back in their sleeves.

21 THE COURT: Have you got the computer?

22 MR. HUNTER: Yes, Your Honor.

23 (Pause.)

24 MR. HUNTER: Your Honor, the state has looked at the
25 evidence, and I agree with the exhibits that are going

Verdict

1 back.

2 MR. MACDONALD: As does defense.

3 THE COURT: Okay.

4 (Whereupon, the exhibits were submitted to the jury.)

5 (Question from the jury and response submitted to the
6 jury marked Court's Exhibit No. 4.)

7 (Whereupon, a recess was taken.)

8 THE COURT: I am told the jury has reached a decision.
9 Are we ready to receive it?

10 MR. HUNTER: The state is ready, Your Honor.

11 MR. MACDONALD: Yes, Your Honor.

12 THE COURT: Bring them in.

13 (Whereupon, the jury returned to the courtroom at
14 5:00 p.m. to report its verdict.)

15 THE COURT: Mr. Foreman, have you and your fellow
16 jurors reached unanimous decisions?

17 THE FOREMAN: We have, Your Honor.

18 THE COURT: Did you reflect those decisions on the
19 back of the indictments as requested?

20 THE FOREMAN: We have, Your Honor.

21 THE COURT: Did you sign your name and date it?

22 THE FOREMAN: No. I haven't, Your Honor.

23 (Pause for foreperson to sign indictments.)

24 THE COURT: Okay. Please hand those up by way of the
25 bailiff.

Verdict

1 You may publish the verdicts.

2 THE CLERK: In the State of South Carolina, in the
3 Court of General Sessions, two thousand -- Indictment
4 No. 2022-GS-42-2532, the State vs. Phillip Ronald Miller,
5 count one, indictment for trafficking in her-on and
6 possession of the weapon during a violent crime, as to
7 count one, the jury finds the defendant guilty; as to count
8 two, possession of a weapon during a violent crime or
9 attempt to commit a violent crime, guilty.

10 2022-GS-42-2534, the State of South Carolina vs.
11 Phillip Ronald Middle -- Miller, possession of a firearm by
12 a person convicted of a violent felony, guilty.

13 Two -- 2022-GS-42-2533, the State of South Carolina
14 vs. Phillip Ronald Miller, weapons or unlawful carrying of
15 a pistol, not guilty.

16 Signed by the foreperson the 28th day of February of
17 2024.

18 Ladies and gentlemen of the jury, is this your verdict
19 and still your verdict? If so, please raise your right
20 hand.

21 (Whereupon, all jurors responded in the affirmative.)

22 THE CLERK: So say you all.

23 THE COURT: Does the defendant wish to have the jury
24 polled?

25 MR. MACDONALD: Yes, Your Honor.

Verdict

1 THE COURT: All right. Poll the jury please, ma'am.

2 THE CLERK: Ladies and gentlemen of the jury, at this
3 time I'll pose a question, my question being is this your
4 verdict and still your verdict.

5 When your juror number and name is called, please
6 stand and respond to the question.

7 Juror No. 119, Omarion Miller.

8 THE JUROR: Yes.

9 THE CLERK: Juror No. 143, Ella Schofield.

10 THE JUROR: Yes.

11 THE COURT: Juror No. 23, Dylan Bright.

12 THE JUROR: Yes.

13 THE CLERK: Juror No. 170, Ben Whitaker.

14 THE JUROR: Yes.

15 THE CLERK: Juror No. 117, Loren Means.

16 THE JUROR: Yes.

17 THE CLERK: Juror No. 146, Aleksey Shevchenko.

18 THE JUROR: Yes.

19 THE CLERK: Juror No. 149, Linda Smith.

20 THE JUROR: Yes.

21 THE CLERK: Juror No. 8, Jerome Aya-ay.

22 THE JUROR: Yes.

23 THE CLERK: 159, Tiffany Tirella.

24 THE JUROR: Yes.

25 THE CLERK: Juror No. 56, Emilia Erardi.

Sentence

1 THE JUROR: Yes.

2 THE CLERK: Juror No. 99, Meagan Kirk.

3 THE JUROR: Yes.

4 THE CLERK: Juror No. 98, Latrivia Johnson.

5 THE JUROR: Yes.

6 THE CLERK: Thank you.

7 THE COURT: Are there any other matters to be
8 addressed with the jury present?

9 MR. HUNTER: Not from the state, Your Honor.

10 MR. MACDONALD: No, Your Honor.

11 (Whereupon, the trial jury was excused.)

12 (Notice of life sentence, copy of indictment and
13 sentence sheet marked Court's Exhibit No. 5.)

14 THE COURT: All right. Any matters to address prior
15 to the imposition of sentence?

16 MR. MACDONALD: Your Honor, I just want to renew all
17 of my objections from previous hearings.

18 THE COURT: All right. Those are noted.

19 MR. HUNTER: And, Your Honor, I've passed up -- I
20 believe it's court -- what I've requested to be a court's
21 exhibit -- which is our notice of life without parole based
22 on his prior convictions for, I believe, a distribution, I
23 believe a meth second in 2016 in Lexington County -- the
24 sentencing sheet from that as well as a 2009 conviction for
25 burglary second violent. Both are serious offenses. This

Sentence

1 would be at least his third strike. It appears also that
2 he has a conviction out of Lexington for a half-mile charge
3 as well. But, specifically, those two charges which were
4 served on the public defender's office and Mr. Miller. The
5 state is requesting a life-without-parole under 17-25-45
6 for the trafficking conviction.

7 THE COURT: All right. Mr. MacDonald, do you and
8 Mr. Miller agree that prior to, and in accordance with the
9 statute, each of you were served the state's notice with
10 intent to seek a sentence of life without parole for a
11 conviction for trafficking in heroin pursuant to 17-25-45?

12 MR. MACDONALD: Your Honor, I know I was served.
13 There's a period of time where Mr. Miller represented
14 himself. So, I'm not sure if he was served or not.

15 THE COURT: All right. Well, have you got an
16 affidavit of service?

17 Mr. Miller, did you get served with a notice?
18 Have you got a copy of it?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You got a copy of it?

21 MR. MACDONALD: Not -- not with me, Judge.

22 THE COURT: I don't have the original.

23 MR. HUNTER: Your Honor, may I approach?

24 THE COURT: Yeah.

25 MR. HUNTER: We have an affidavit of service from a

Sentence

1 competent officer at the Spartanburg County Detention
2 Facility serving Ronald Miller with notice of intent to
3 seek life on July 15th of 2022.

4 THE COURT: Was that -- has that been filed, the
5 original filed?

6 MR. HUNTER: Yeah. That's in the original file. It's
7 been clerked -- a copy in the clerk's office.

8 THE COURT: Okay. And show Mr. MacDonald and
9 Mr. Miller the affidavit, as well as the notice that was
10 served.

11 MR. HUNTER: Your Honor, I think my one copy that I
12 still have was the one I made a court's exhibit.

13 THE COURT: Mr. Miller, are you in agreement that you
14 did -- you were served with notice?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Mr. MacDonald.

17 MR. MACDONALD: Yes, Your Honor.

18 THE COURT: Anything you want to tell me?

19 MR. MACDONALD: No, Your Honor.

20 Obviously, the jury reached their verdicts. And I've
21 informed Mr. Miller that we'll file an appeal at his
22 request if he so chooses, Judge.

23 That's all, Your Honor.

24 THE COURT: All right. Mr. Miller, you got anything
25 you want to tell me before I impose a sentence?

1 THE DEFENDANT: No.

2 (Pause.)

3 THE COURT: All right. On Indictment
4 2022-GS-42-02532, an indictment for trafficking in heroin,
5 count one, and possession of a firearm during the
6 commission of a violent crime, count two; as to count one,
7 Sentence of the Court is you be confined to the South
8 Carolina Department of Corrections for the balance of your
9 natural life pursuant to section 17-25-45. As to count
10 two, five years concurrent.

11 On Indictment 2022-GS-42-02534, an indictment for
12 possession of a firearm by a person convicted of a violent
13 offense classified as a felony, wherein you have been found
14 guilty by the jury, the Sentence of the Court is you be
15 confined to the South Carolina Department of Corrections
16 for a period of five years. That's also concurrent with
17 any other sentence.

18 Mr. Miller, you have a right to appeal the verdicts of
19 the jury and the Sentence of the Court. You must file any
20 notice of your intent to appeal those decisions within ten
21 days of today's date. All right. You can discuss that
22 with Mr. MacDonald.

23 END OF REQUESTED TRANSCRIPT OF RECORD

24

25

Deputy Report for Incident 21030086

Page 3 of 13

Narrative

On 03/02/2021, I was traveling on I26 West at MM 36, in Spartanburg County, when I observed a black Chevy Tahoe bearing SC tag SMQ301 failing to maintain its lane by crossing the yellow line. I was also informed by an investigator that the vehicle was traveling at 85MPH in a 70MPH zone. At this time I activated my lights and sirens to initiate a traffic stop. I was also informed that there was a suspect, Philip Miller, in the vehicle that had a warrant.

At this time I approached the passenger side of the vehicle. I asked the driver for her license registration and proof of insurance. The driver of the vehicle was identified as Laura Miller and the passenger provided his SC ID and was identified as Phillip Miller.

We were informed by an investigator that Phillip Miller had a activate warrant for Assault and Battery 3rd and it was in hand.

Phillip was asked to step out of the vehicle. He was placed in handcuff behind his back, double locked and checked for proper fit. A search incident to arrest was conducted and no items were found. A sum of money was located in Phillip's front right pocket and was immediately given to investigators on scene.

He was then placed in the rear of the patrol vehicle, seat belted in and transported to the Spartanburg County Detention Center without incident. Phillip was served the arrest warrant for A&B 3rd, Warrant #2021A4210200537.

Lara was given a warning for Improper Lane Use, Warning #030215, and was released from the scene due to having a valid drivers license and insurance.

Responsible LEO:

Approved by:

Date



WITNESSES

SCSO

J. C. Sauer

ARREST WARRANT NUMBER

2021A4210201283 (Count One)

2021A4210201284 (Count Two)

ACTION OF GRAND JURY

MAY 20 2022 *THO*

Danielle Woodward

Foreperson of Grand Jury

Date:

VERDICT

Count 1: Guilty

Count 2: Guilty

Bar W. Miller

Foreperson of Petit Jury

Date: *2/28/2024*

DOCKET NO.

22-GS-42-2532

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 23 2022

TERM

THE STATE

vs.

Phillip Ronald Miller

Indictment for

TRAFFICKING HEROIN AND POSSESSION
OF A FIREARM DURING COMMISSION OF
OR ATTEMPT TO COMMIT A VIOLENT
CRIME

SC Code: 44-53-370; 16-23-490

RECEIVED
MAR 04 2024
SC Court of Appeals

FILED
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA
MAY 23 2022

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 20 2022 the
Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE - TRAFFICKING IN HEROIN

That the Defendant, Phillip Ronald Miller, did in Spartanburg County on or about March 2, 2021, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or did knowingly attempt to actually or constructively possess, more than twenty-eight (28) grams of Heroin, a schedule I controlled substance, in violation of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO - POSSESSION OF FIREARM DURING
COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That the Defendant, Phillip Ronald Miller did in Spartanburg County on or about March 2, 2021, possess a firearm, or visibly display what appeared to be a firearm, or visibly display a knife during the commission or attempted commission of a violent crime, to-wit: Trafficking in Heroin, in violation of Code § 16-23-490, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as-amended.

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Spartanburg

STATE

VS.

INDICTMENT/CASE#: 2022GS4202532

Phillip Ronald Miller

A/W#: 2021A4210201283

AKA:

Date of Offense: 3/2/21Race: BlackSex: MaleAge: S.C. Code §: 44-53-370 (c)(3)(c7)DOB: SS#: CDR Code #: 6149Address: City, State, Zip: DL#* SID#

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☒ PLEADSTO: Trafficking Heroin over 28 gramsIn violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0149☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☒ § 17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s Initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

<u>77517</u>	<u>Phillip Miller</u>	<u>102614</u>
Solicitor	Defendant	Attorney for Defendant
Eddie Hunter	Phillip Ronald Miller	Daniel James MacDonald, IV
SC Bar #		SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of life days/months/years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: count 2.☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC. days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

RECEIVED

MAR 04 2024

SC Court of Appeals

STATE VS. Phillip Ronald MillerINDICTMENT/CASE#: 2022GS4202532**SPECIAL CONDITIONS:**☐ **PTUP** after _____ months/years**And Other Terms Listed Below:**

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$

- ☐ Appointed PD or appointed other counsel, Provviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees
- ☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

TOTAL \$ 283.25Clerk of Court/Deputy Clerk: T. Camp
Court Reporter: Debra MoffittPresiding Judge: _____
Judge Code: _____
Sentence Date: February 20, 2024

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg

STATE

VS.

Phillip Ronald Miller

AKA:

Race: Black Sex: Male Age: DOB: SS#: Address: City, State, Zip: DL# SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2022GS4202532-AA/V#: 2021A4210201284Date of Offense: 3/2/21S.C. Code §: 16-23-490CDR Code #: 349

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☒ PLEADSTO: Possession of Weapon During Violent Crime (Succes)In violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 349☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

<u>Eddie Hunter</u>	77517	<u>Phillip Miller</u>	<u>Daniel James MacDonald, IV</u>	102614
Solicitor	SC Bar #	Defendant	Attorney for Defendant	SC Bar #
		Phillip Ronald Miller	Daniel James MacDonald, IV	

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 5 days/months/years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC. days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

RECEIVED

MAR 04 2024

SC Court of Appeals

STATE VS. Phillip Ronald MillerINDICTMENT/CASE#: 2022GS4202532-A

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$

- ☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees
- ☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

\$500	\$
TBD	\$
TOTAL	\$ 12875

Clerk of Court/Deputy Clerk: T. Camp
Court Reporter: L. MoffattPresiding Judge: _____
Judge Code: _____
Sentence Date: February 28, 2024

WITNESSES

SCSO

J. G. Barnett

ARREST WARRANT NUMBER

2021A4210204552

ACTION OF GRAND JURY

MAY 20 2022

FILED

Danella Woodward

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Ben Hester

Foreperson of Petit Jury

Date:

2/28/2024

DOCKET NO.

22-GS-42-2534

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 23 2022

TERM

THE STATE

vs.

Phillip Ronald Miller

Indictment for

POSSESSION OF FIREARM BY
PERSON CONVICTED OF
VIOLENT FELONY

SC Code: 16-23-0500 (A)

CDR Code 3434

Class FEL/F

RECEIVED

MAR 04 2024

SC Court of Appeals

FILED
MAY 23 2022
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 2 2 2022 the

Grand Jurors of Spartanburg County present upon their oath:

**POSSESSION OF FIREARM BY PERSON CONVICTED OF
VIOLENT FELONY**

That Phillip Ronald Miller did in Spartanburg County on or about March 2, 2021, willfully and unlawfully possess a firearm, he having been convicted of a crime of violent felony in the Courts of the State of South Carolina as defined by §16-1-60, and he not being authorized by law to so possess a firearm, in violation of §§16-23-0500 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg

STATE

VS.

Phillip Ronald Miller

AKA:

Race: BlackSex: MaleAge: DOB: SS#: Address: City, State, Zip: DL# SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2022GS4202534AW#: 2021A4210204552Date of Offense: 3/2/21S.C. Code §: 16-23-500CDR Code #: 3434

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Possession of Firearm or Ammunition by Person Convicted of Violent Felony (10-5 & 10-24)
In violation of § 16-23-500 of the S.C. Code of Laws, bearing CDR Code # 3434☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

<u>Eddie Hunter</u>	77517	<u>Phillip Miller</u>	<u>Daniel James MacDonald, IV</u>	102614
Solicitor	SC Bar #	Defendant	Attorney for Defendant	SC Bar #
		Phillip Ronald Miller	Daniel James MacDonald, IV	

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 5 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation for

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

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by
SCDOC. days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-
65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

RECEIVED

MAR 04 2024

SC Court of Appeals

STATE VS. Phillip Ronald MillerINDICTMENT/CASE#: 2022GS4202534**SPECIAL CONDITIONS:**☐ **PTUP** after _____ months/years**And Other Terms Listed Below:**

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:
 Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

§14-1-206 (Assessments 107.5%)	\$100	\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
§14-1-211 (A)(2)(DUI Surcharge)	\$12	\$
§56-5-2995 (DUI Assessment)	\$25	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$150	\$
§14-1-213 (Drug Court Surcharge)	\$41	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$50	\$
§50-21-114 (BUI Breath Test Fee)	\$40/ea	\$
§56-5-2942(J) (Vehicle Assessment)	TBD	\$
3% to County (if paid in installments)		
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$
TOTAL		\$ 128.75

Clerk of Court/Deputy Clerk: _____
Court Reporter: _____

T. Camp
L. Moffett

 Presiding Judge: _____
 Judge Code: _____
 Sentence Date: _____

2023
February 28, 2024

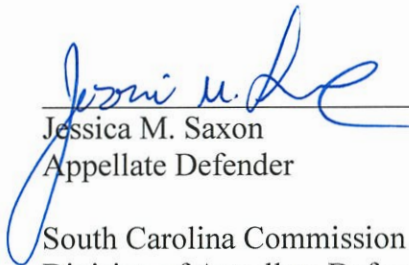
Apr 28 2025

CERTIFICATE OF COUNSEL FOR APPELLANT

SC Court of Appeals

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

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 28th day of April, 2025.

RECEIVED

Apr 28 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

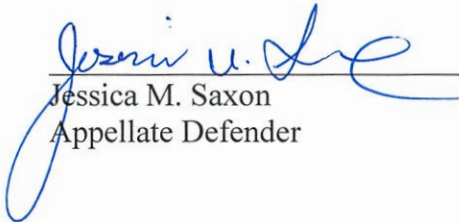
V.

PHILLIP RONALD MILLER,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above referenced case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS) this 28th day of April, 2025.



Jessica M. Saxon
Appellate Defender

Leverett, Scott

From: Leverett, Scott
Sent: Monday, April 28, 2025 2:31 PM
To: Josh Edwards
Cc: Susan Spencer; Saxon, Jessica
Subject: 2024-000320 - State v. Phillip Ronald Miller - Record on Appeal
Attachments: 2024-000320 - State v. Phillip Ronald Miller - Record on Appeal.pdf

Dear Mr. Edwards,

Attached please find a copy of the Record on Appeal in the above referenced case that is being filed today with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Jessica Saxon
Appellate Defense