

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
Court of General Sessions

Daniel Dewitt Hall, Circuit Court Judge

Appellate Case No. 2020-000184

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SC Court of Appeals

The State of South Carolina

Respondent

Vs.

Ramona Gales,

Appellant,

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA v. RAMONA MONTEAL GALES – 2018-GS-46-03573

STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS
CIRCUIT COURT DIVISION
YORK COUNTY CASE NUMBER: 2018-GS-46-03573

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STATE OF SOUTH CAROLINA, :
 :
 :
 vs. :
 :
 :
 RAMONA MONTEAL GALES, :
 :
 :
 Defendant. :
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TRANSCRIPT OF JURY TRIAL
VOLUME I
PAGES 1 - 248
JANUARY 29, 2020
* * *

Taken at the Moss Justice Center, York
County Courthouse, General Sessions, before the
HONORABLE DANIEL D. HALL, Judge Presiding.

Reported by: Kymberlee M. Williams, CSR/RPR

A P P E A R A N C E S

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1 criminal case a serious case, but nothing as far as
2 potential penalties.

3 MR. BROOKER: Certainly, Your Honor.

4 MR. PORTER: Finally, Your Honor, we ask the
5 defense be refrained from arguing matters of law such as
6 search and seizure in front of the jury.

7 THE COURT: What is your position on that?

8 MR. BROOKER: Your Honor, certainly we would not
9 argue any matter of law during the trial of fact. In
10 course they are entitled to factual disputes in court.
11 I don't think there's a probable there whatsoever.

12 THE COURT: Certainly would be the facts that are
13 presented at trial for the jury might include the facts
14 that are the basis for a search and seizure motion, and
15 you agree to stay away from any matters going on in
16 front of the jury.

17 Anything else as far as pretrial from the State?

18 MR. PORTER: No, sir, Your Honor.

19 THE COURT: Mr. Brooker, I'll be glad to hear
20 your motions.

21 MR. BROOKER: Yes, Your Honor. The first motion,
22 obviously, Your Honor, is a motion to suppress the
23 evidence based on the grounds that the -- that when the
24 State conducted a tarry stop on Ms. Gales, which
25 ultimately led to the search of her vehicle, that tarry

1 stop was not supported by reasonable suspicion;
2 therefore, it was unlawful. In course, any evidence
3 that was obtained through that illegal detention should
4 be suppressed under the fruit of the poisonous tree
5 doctrine.

6 The second motion, Your Honor, is similar. It's
7 a motion to dismiss based upon a lack of probable cause
8 to search a rented vehicle that the defendant was
9 driving. That motion is based upon Illinois v.
10 Cabelles, in course, which indicates that probable cause
11 to search can only be established by a well-trained dog.

12 I think also in some other case, United States v.
13 Diaz, United States v. Wilson, which are District Court
14 cases, state the burden of proof is on the prosecutor.
15 To prove that that dog actually alerted to the presence
16 of drugs sufficient to establish probable cause to
17 search.

18 The last motion, Your Honor, is very similar.
19 It's a motion to suppress based upon lack of probable
20 cause on the basis that the dog was not a well-trained
21 dog. Underneath Illinois v. Cabelles, the same cases
22 that I just discussed, U.S. v. Diaz, U.S. v. Wilson, it
23 establishes the cases that the State has to prove that
24 the dog was qualified to conduct -- I apologize.

25 Was a reliable dog sufficient enough to establish

1 probable cause to do a warrantless search under Illinois
2 v. Cabelles?

3 In course, we challenge the fact of the
4 proposition that that dog was a well-trained dog, under
5 Cabelles; therefore, it was insufficient to satisfy or
6 establish probable cause to search the vehicle when they
7 employed the dog.

8 In course, the last one, obviously, is Jackson v.
9 Denno, Your Honor. I think, if my understanding is
10 correct, Ms. Gales made some statements to law
11 enforcement at the scene of her arrest. In course, that
12 would challenge as to whether or not her statements were
13 made intelligently and voluntarily.

14 THE COURT: Let me -- I'm just a little bit
15 confused. It appears you called it your second motion
16 and your third motion. Okay. I see.

17 You called it a motion to suppress for no
18 probable cause for lack of a well-trained dog.
19 Therefore, in theory, you follow that with a motion to
20 dismiss because there would be no probable cause to go
21 forward. I'm trying to figure out -- it seemed liked
22 one motion.

23 MR. BROOKER: It is very similar, Your Honor. I
24 will hand up this case law to you. Whenever law
25 enforcement uses a drug dog, law enforcement has to

1 first --

2 THE COURT: I understand that. My question is:
3 It seems to me that you have two separate motions.
4 They're basically asking for the same thing.

5 MR. BROOKER: They are asking for the same thing,
6 Your Honor. If a dog didn't alert then, in course,
7 probable cause wasn't established.

8 Also, if the dog alerts but the dog was not a
9 well-trained dog, under Illinois v. Cabelles, in course,
10 again, probable cause could not have been established
11 because the dog was not reliable enough to establish
12 probable cause.

13 THE COURT: I see where we are.

14 Is the State ready to proceed with the testimony on
15 these motions?

16 MR. PORTER: Yes, sir, Your Honor.

17 THE COURT: Call your first witness.

18 MR. PORTER: The State calls Detective Peter
19 Carbonaro.

20 * * *

21 PETER CARBONARO,
22 called as a witness by and on behalf of
23 the State to testify, being first duly
24 sworn was examined and testified as follows:

25 * * *

1 VOIR DIRE EXAMINATION BY MR. PORTER
2 BY MR. PORTER:
3 Q. Good morning, Detective.
4 A. Good morning.
5 Q. Detective, would you please state your name for
6 the record.
7 A. Detective Peter Carbonaro.
8 Q. What is your current occupation?
9 A. I work for the Charlotte-Mecklenburg Police
10 Department.
11 Q. How long have you worked for the police
12 department?
13 A. Since 2007.
14 Q. What is your present duty?
15 A. Firearms enforcement unit, attached to the ATF
16 task force, violent crimes.
17 Q. On January 31st of 2018, what was your role?
18 A. I was a detective with the vice and narcotics
19 unit.
20 Q. Do you have any training in vice and narcotics
21 enforcement?
22 A. Yes, I do.
23 Q. What is that?
24 A. I received training through the
25 Charlotte-Mecklenburg Police Academy. I've also

1 received training with the DEA for drug street-level
2 gang.

3 I went to Mississippi for a week-long training on
4 investigation and surveillance on street level drugs.

5 Q. Do you recall becoming involved in the
6 investigation of Ramona Gales on January 31, 2018?

7 A. I do.

8 Q. How did you become involved in that
9 investigation?

10 A. I received a phone call -- not a phone call, but
11 a radio communication, through Lead Detective Grimsley,
12 who asked for assistance with surveillance.

13 Q. What was your role?

14 A. Surveillance.

15 Q. And were you able to locate Ms. Gales at any
16 time?

17 A. Yes. I set up in the neighborhood close to her
18 address, 9707 Holden Court in Charlotte. I was in the
19 neighborhood. Detective Grimsley advised over the radio
20 that there was a black female leaving the residence,
21 getting into a dark blue 300 Chrysler. It was a
22 Missouri tag, Frank, Five, Adam, Five, King, leaving the
23 residence.

24 I met Ms. Gales at the corner of Watkins Glenn
25 Drive and Community House Drive. I pulled alongside the

1 vehicle. I observed the driver of the vehicle, the sole
2 occupant of the vehicle. I looked at the driver, and
3 the driver looked back at me. I described over the
4 radio what I was seeing to the other detectives. That
5 vehicle turned left, I turned right. Another
6 surveillance officer picked up that vehicle.

7 Q. Did you make any identification of the driver?

8 A. Yes. As other detectives were following the
9 vehicle, I was able to pull up a mobile app on my phone,
10 CJLEADS, which give pictures of recent arrests and
11 driver's license, North Carolina driver's license,
12 pictures of individuals. I was able to look at a
13 picture of Ms. Ramona Gales and ID her.

14 Q. Did you relay the positive identification to
15 anyone?

16 A. Yes, sir. I relayed it to Detectives Buehler and
17 Grimsley.

18 Q. Do you see the Defendant seated in the courtroom
19 today?

20 A. I do.

21 Q. Is this Ms. Gales?

22 A. Yes.

23 MR. PORTER: No further questions, Your Honor.

24 THE COURT: Thank you. Mr. Brooker.

25 MR. BROOKER: Briefly.

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VOIR DIRE EXAMINATION BY MR. BROOKER

BY MR. BROOKER:

Q. I think you indicated that you received a call from Detective Grimsley asking you to participate in surveillance of Ms. Gales; is that correct?

A. Radio communication. I said call, but I meant radio communication. I wanted to clarify that.

Q. It was radio communication?

A. Yes. Police radio communication.

Q. Were you on the job at that time?

A. Yes.

Q. Were you driving, I guess, a police-issued vehicle?

A. I was.

Q. In course, the radio communication between yourself in the force and Investigator Grimsley, would that be recorded?

A. It would be.

Q. All radio communication is recorded; is that correct?

A. Police communication generally is recorded on the vice-narcotics channel. I'm not 100 percent sure on that. I'm not really sure on that matter. The channels are encrypted.

1 Q. They may be encrypted, but I'm asking you: Do
2 you know if they're encrypted? Through the course, are
3 you sure they may not be subjected to a broader
4 population of officers?

5 A. I don't know for sure.

6 Q. But there is a recording of that radio
7 communication, correct, whether it's restricted to a
8 limited number of officers?

9 A. I would agree with that, yes, sir.

10 Q. In course, I know you said you spoke with
11 Detective Grimsley. Did you speak with anyone else over
12 the radio?

13 A. Detective Buehler.

14 Q. The report stated -- my understanding is that you
15 started your surveillance of Ms. Gales, I think, when
16 you were at her residence; is that correct?

17 A. I was close to the residence. I think it was
18 Torrelle Drive, which is in her neighborhood.

19 Q. In course, I think that this surveillance that
20 resulted or ended in the detention of Ms. Gales -- I
21 think at a dentist's office in Fort Mill -- were you a
22 part of the surveillance for the entire time?

23 A. I was.

24 Q. In course, besides talking with the other
25 Mecklenburg Police Officers, did you talk with any

1 officer over the radio from the York County Drug Unit?

2 A. I did not.

3 Q. Did you ever talk with, I guess, Detective Todd

4 with the York County Multi-Jurisdiction Drug Enforcement

5 Unit?

6 A. I did not. Detective Grimsley was the point of

7 contact between the two agencies.

8 MR. BROOKER: If you can indulge me for just a

9 second, Your Honor. I want to make sure that I don't

10 have any further questions.

11 Just a couple more.

12 No further questions for this witness.

13 THE COURT: Any redirect?

14 MR. PORTER: No, sir, Your Honor.

15 THE COURT: Thank you, Officer. You can step

16 down.

17 (Whereupon, the witness exited the witness stand.)

18 THE COURT: Call your next witness.

19 MR. PORTER: The State calls Detective Jordan

20 Buehler.

21 * * *

22 JORDAN BUEHLER,

23 called as a witness by and on behalf of

24 the State to testify, being first duly

25 sworn was examined and testified as follows:

1 * * *

2 THE COURT: Solicitor.

3 MR. PORTER: Thank you, Your Honor.

4 * * *

5 VOIR DIRE EXAMINATION BY MR. PORTER

6 BY MR. PORTER:

7 Q. Good morning, Detective. Could you please state
8 your name for the record.

9 A. Jordan Buehler.

10 Q. Where are you currently employed?

11 A. Charlotte-Mecklenburg Police Department.

12 Q. What is your role with the Charlotte-Mecklenburg
13 Police Department?

14 A. I am a detective with the vice-narcotics unit.

15 Q. How long have you worked in that role?

16 A. Three years.

17 Q. What are your duties in that position?

18 A. To investigate and enforce narcotic laws as well
19 as vice-related laws.

20 Q. Do you have training or experience in
21 street-level drug deals with drug enforcement in that
22 role?

23 A. I do. I have hundreds of hours of Federal,
24 State, and local training of narcotic investigations, as
25 well as undercover operations, on-the-job training.

1 I've conducted approximately 100 narcotics purchases.

2 Q. Have you, yourself, actually made narcotics
3 purchases?

4 A. I have.

5 Q. On January 31, 2018, do you recall being involved
6 in the investigation of Ramona Gales?

7 A. I do.

8 Q. How did you become involved in that
9 investigation?

10 A. Detective Grimsley and myself were partners and
11 received information from two confidential informants
12 that Ramona Gales was still selling narcotics in the
13 Charlotte area. We were also aware of her -- she had a
14 pending conspiracy for trafficking of cocaine charge in
15 Mecklenburg County at that time as well.

16 Q. Those confidential reliable informants, have you
17 relied on their information in the past?

18 A. Yes.

19 Q. Has that information proven to be truthful when
20 they have provided it to you?

21 A. Yes.

22 Q. Did you have any concerns about the reliability
23 of their information?

24 A. No.

25 Q. Do you see Ramona Gales seated in the courtroom

1 here today?

2 A. I do.

3 Q. Where is she seated?

4 A. Sitting at the Defendant's table.

5 Q. What did you observe prior to January 31st about
6 Ms. Gales?

7 A. Prior to January 31st, we conducted a number of
8 surveillance operations at her house. In each incident,
9 we saw her at her house at 9707 Holden Court.

10 Q. On January 31st, where did that investigation
11 begin?

12 A. It began at 9707 Holden Court. Detective
13 Grimsley and myself and Detective Carbonaro arranged a
14 surveillance operation that would begin at her
15 residence, which was the address on the driver's
16 license.

17 Detective Grimsley initially got behind the house
18 and the rest of us set up in the area for potential
19 surveillance.

20 Q. Did anyone observe her leave at any point?

21 A. We did.

22 Q. What did you do when she left the residence?

23 A. At approximately 2:22, Detective Grimsley
24 observed Ramona Gales exit her residence through the
25 garage door and get into a blue Chrysler 300 with a

1 Missouri license plate. That tag came back to
2 Enterprise, which we were able to find was leased or
3 rented to Ramona Gales.

4 Q. Did you as part of the Charlotte-Mecklenburg
5 Police follow that vehicle?

6 A. We did.

7 Q. Who was involved in that procedure?

8 A. Detective Grimsley, myself, Carbonaro, and a
9 couple of our uniformed guys.

10 Q. Were you or anyone with Charlotte-Mecklenburg
11 able to maintain constant visual surveillance of the
12 vehicle?

13 A. As a unit, yes, we were.

14 Q. Did you receive any information about who was
15 driving the vehicle?

16 A. We did initially. Detective Grimsley thought
17 that it was Ramona Gales exiting the residence.
18 Detective Carbonaro was able to pull up to Ramona Gales'
19 vehicle, Chrysler 300, while we were parked at a stop
20 sign and was able to identify 90 percent.

21 Q. While you were following her, how would you
22 characterize her driving?

23 A. Very fast. At one point later in the day, I
24 mean, it was in excess of 100 miles per hour.

25 Q. Is it common as a vice-narcotics officer to make

1 traffic stops on individuals?

2 A. Sometimes.

3 Q. Is your vehicle equipped with blue lights, siren?

4 A. No. None of our vehicles, myself, Detective

5 Carbonaro's or Grimsley's have lights or cameras. We

6 don't have the capability to conduct any kind of traffic

7 stop or any kind of infraction. They're the same

8 vehicles that we use to do undercover purchases.

9 Q. You would not have been able to stop her for the

10 speeding that you just stated that you observed?

11 A. Correct.

12 Q. Did you ever see her get out of the vehicle in

13 North Carolina?

14 A. I did.

15 Q. When was that?

16 A. After she left her residence, we followed her to

17 a gas station located at 5200 Piper Station Drive. It's

18 a gas station near Railroad 45.

19 Q. Did you arrive at that residence alone?

20 A. The gas station?

21 Q. The gas station.

22 A. Yes, I did.

23 Q. I am showing you what has been marked for

24 identification as Court's Exhibit 1.

25 Could you please tell The Court what that is.

1 A. This is an aerial shot of the gas station at 5200
2 Piper Station Drive.
3 Q. Is it a true and accurate depiction of that
4 property?
5 A. It is.
6 MR. PORTER: Your Honor, we ask that this be
7 admitted as Court's Exhibit 1.
8 THE COURT: Mr. Brooker, any objection to Court's
9 Exhibit 1 being admitted as a part of an exhibit in this
10 hearing?
11 MR. BROOKER: No objection, Your Honor.
12 THE COURT: Marked and introduced as an exhibit
13 in this hearing.
14 (COURT EXH. 1, Photograph, was received into
15 evidence.)
16 MR. PORTER: May I publish it, Your Honor?
17 THE COURT: Yes, you may.
18 BY MR. PORTER:
19 Q. Detective Buehler, can you see that on the screen
20 there?
21 A. My screen here?
22 Q. Yes, sir.
23 A. There's nothing on it.
24 MR. PORTER: Madam Clerk, can you publish that?
25 THE WITNESS: I can see it now.

1 BY MR. PORTER:

2 Q. When you arrived at the Piper Station, where was
3 the Defendant parked?

4 A. We arrived, and I followed her into the parking
5 lot of the gas station. She did a full circle,
6 half-circle through the lot. She eventually came and
7 parked at the top north end, the top side of this map,
8 where there was a Chevy Tahoe parked as well with a
9 white male sitting in it.

10 Q. There was already a Tahoe there?

11 A. Yes. As she was circling the lot, I pulled into
12 one of the pumps in the top section to see what was
13 going to happen. When I did -- while I was sitting
14 there, I saw the Tahoe sitting in front of me with a
15 white male sitting in it.

16 Q. Was the location that she pulled into, was that
17 close to the business at all?

18 A. No. I mean, it was not a place to park for the
19 convenience store, generally.

20 Q. Did you ever observe her go into the business?

21 A. I did not.

22 Q. Did you observe her make contact with anyone at
23 that location?

24 A. I did.

25 Q. Could you please describe that interaction.

1 A. Sure. As soon as she pulled around, she pulled
2 next to the Chevy Tahoe. As soon as she pulled up to
3 the Tahoe, on the top portion of the screen, and the
4 white male driver of the Tahoe exited his vehicle,
5 walked over and leaned into the passenger window of Ms.
6 Gales' vehicle.

7 While he was leaning in, he was -- they were
8 interacting. Obviously, I don't know what they were
9 saying. They were interacting for less than 30 seconds.
10 I saw what I believed to be an exchange of some sort of
11 items.

12 As the white male left, he put his hand back in
13 his pocket and walked back to his vehicle.

14 Q. Based on all of that, what did you believe had
15 just occurred?

16 A. A drug transaction.

17 Q. Is that based on your training and experience?

18 A. It is.

19 Q. Did she at any point enter the business?

20 A. No.

21 Q. What did she do after the white male left her
22 vehicle?

23 A. She left the area and got in her car.

24 Q. What did you do after that?

25 A. We arranged to continue our surveillance.

1 Q. Did she make any other stops in North Carolina?
2 A. She did not.
3 Q. Were you and the other CMPD officers able to
4 maintain constant visual surveillance of her vehicle?
5 A. Yes.
6 Q. Did you continue following her?
7 A. We did.
8 Q. Where did you follow her to?
9 A. Eventually by way of 485 and 77 to 105 Ben Casey
10 Drive, Fort Mill.
11 Q. Showing you what has been marked for
12 identification as Court's Exhibit 2. Would you please
13 tell The Court what that is.
14 A. This is an aerial shot of 105 Ben Casey Drive.
15 Q. Is it a true and accurate picture of the location
16 you were operating in that day?
17 A. Yes.
18 MR. PORTER: Your Honor, I ask that it be
19 admitted as Court's Exhibit 2.
20 THE COURT: Any objection?
21 MR. BROOKER: No objection for the purposes of
22 this hearing.
23 THE COURT: Admitted for the purposes of this
24 hearing without objection.
25 (COURT EXH. 2, Photograph, was entered into

1 evidence.)

2 MR. PORTER: May I publish?

3 THE COURT: Yes, you may.

4 BY MR. PORTER:

5 Q. Where did -- you observed her at 105 Ben Casey
6 Drive. When you arrived there, what happened?

7 A. When we arrived at this location, she turned
8 in -- this would be the top right, the top right
9 entrance to the parking lot.

10 As she did, I pulled into the parking lot. I
11 turned right into the parking lot across the street and
12 parked in the parking spot.

13 Q. On the screen there, where is 105 Ben Casey
14 located?

15 A. 105 Ben Casey is that main large building in the
16 middle of the screen.

17 Q. Where did you set up?

18 A. Kind of the top right corner parking lot on the
19 screen.

20 Q. Were you able to maintain visual contact on her
21 there as well?

22 A. Yes, other than a brief moment when I turned
23 around and she walked into the foyer of the dentist's
24 office.

25 Q. Did you observe her step out of the vehicle?

1 A. Yes.

2 Q. Where did she go?

3 A. She eventually went into the dentist's office.

4 Q. Approximately how long was she in the dentist's

5 office?

6 A. Half an hour.

7 Q. Prior to being at the dentist's office, did she

8 meet with anyone in the parking lot?

9 A. She did.

10 Q. Please describe that interaction.

11 A. Immediately as she entered the parking lot, she

12 drove all the way through the parking lot to where there

13 was a white Chevy express van already parked. She

14 parked -- looking at the back of the Chevy Express van,

15 she parked to the left of it. She never exited her

16 vehicle at this time.

17 As soon as she pulled in that parking spot and

18 stopped, a white male driver exited the Chevy Express

19 van and walked around to the driver's side window and

20 began an exchange of some sort of items.

21 Q. How long did that interaction take?

22 A. Less than 30 seconds.

23 Q. What did the individual she met with do after

24 that?

25 A. He walked back over to his Express van and then

1 left the area.

2 Q. You stated previously Ms. Gales walked into the
3 dentist's office?

4 A. Yes.

5 Q. What did you do at that time?

6 A. At that time Detective Grimsley put me in contact
7 with the York County Drug Enforcement Unit in order to
8 get them to assist with the investigation.

9 Q. At any point did you observe Gales leave the
10 dentist's office?

11 A. I did.

12 Q. Did you take any further part in the
13 investigation once she left the dentist's office?

14 A. When she left, I called on the radio, mainly to
15 Detective Grimsley, who was relaying it to York County
16 officers that she had left the business -- we later
17 found out it was a dentist's office -- carrying a white
18 plastic bag.

19 Q. After this, were you able to obtain a search
20 warrant for the Defendant's home based on the
21 information that you provided to the Magistrate?

22 A. I was.

23 Q. Were you able to take part in the execution of
24 that search warrant?

25 A. I did.

1 Q. That was for the home on 9707 Holden Court?

2 A. Yes.

3 Q. Based on your training and experience -- I

4 neglected to ask you this. Based on your training and

5 experience, the interaction with the driver of the white

6 Chevy Express van, was that consistent with a

7 hand-to-hand drug transaction?

8 A. It was.

9 Q. Was it remarkably similar to the interaction at

10 5200 Piper Station?

11 A. Very similar.

12 Q. Again, you had actually engaged in street level,

13 hand-to-hand drug transactions prior to this hearing?

14 A. I have.

15 Q. Prior to that day?

16 A. Yes.

17 MR. PORTER: No further questions, Your Honor.

18 THE COURT: Cross-examination.

19 MR. BROOKER: Thank you, Your Honor.

20 * * *

21 VOIR DIRE EXAMINATION BY MR. BROOKER

22 BY MR. BROOKER:

23 Q. Detective Buehler. I said your name correctly,

24 didn't I?

25 A. You did.

1 Q. My understanding is, and I think it was your
2 testimony, that you and Detective Grimsley had, I guess,
3 made the determination to surveill Ms. Gales?

4 A. We did.

5 Q. In course, I think you also testified to The
6 Court that you had received information from two
7 confidential informants that Gales may still be selling
8 drugs; is that correct?

9 A. That's correct.

10 Q. That was your testimony?

11 A. Yes.

12 Q. In course, that was the basis or the reason why
13 you made the determination to surveill her?

14 A. That was part of it.

15 Q. Now, I just want to make clear, I have your
16 incident report. In course, did you receive any
17 confidential information that says that on January 31,
18 2018, that Ms. Gales would be involved in drug
19 transactions at that convenience store that you
20 testified to in Charlotte, North Carolina and also at
21 that dentist's office that you testified to in Fort
22 Mill?

23 A. Prior to that? No.

24 Q. So basically what this was, this was just an
25 observation to, basically, you know -- you didn't have

1 any prior knowledge of any controlled drug buy; is that
2 correct -- that she was to be involved in; is that
3 correct, on that day?

4 A. Correct.

5 Q. So this was simply an observation to see whether
6 or not or what you could find out or what you could
7 see --

8 A. That's correct.

9 Q. -- from your observation?

10 A. Yes.

11 Q. I think you testified when she left her house --
12 and I won't get into this in detail -- you said she was
13 driving over 100 when she left her house, between the
14 house and the convenience store in Charlotte, North
15 Carolina, the first time?

16 A. No. Later in the day I said she eventually drove
17 in excess of 100 miles an hour when she was on 485 and
18 77.

19 Q. Where was that at? Was that Charlotte, North
20 Carolina?

21 A. It was from Charlotte, North Carolina and South
22 Carolina, Fort Mill.

23 Q. That's what I'm asking. Was she driving 100 in
24 Charlotte, North Carolina or when she got in South
25 Carolina or --

1 A. Both.

2 Q. This was after she left the convenience store?

3 A. Correct. It was on the way to the convenience
4 store at Ben Casey.

5 Q. I think you said you followed her to that
6 convenience store. In course, she pulled into the
7 parking lot. In course, you noticed a Chevy Tahoe?

8 A. That's correct.

9 Q. What color was that Chevy Tahoe?

10 A. We later determined it was black.

11 Q. Do you remember putting in your records that it
12 was a brown Tahoe?

13 A. I did.

14 Q. I'm assuming that while you and the other
15 detectives were conducting this surveillance, you-all
16 were in separate cars?

17 A. Yes.

18 Q. I'm assuming you were all communicating with each
19 other? I guess radio communication?

20 A. That's correct.

21 Q. In course, this radio communication, is this
22 standard or is this law-enforcement-issued equipment?

23 A. Yes.

24 Q. I'm assuming the radio communication, that radio
25 communication, if it's like all other radio

1 communication is -- it is recorded; is that correct?

2 A. I can't testify to that. Our vice channels are

3 secured channels. I honestly don't know that.

4 Q. I know they are secured channels. In course, I'm

5 asking you if you know whether or not the radio

6 communication, even on vice, do you know whether or not

7 that's recorded?

8 A. I do not.

9 Q. I thought you testified that -- when you got to

10 the convenience store, was that Tahoe backed into the

11 parking space or was it parked front forward into the

12 parking space?

13 A. It was pulled straight forward into the parking

14 spot. I was able to get the license plate off of it.

15 Q. About how far a distance was your car from where

16 Ms. Gales' vehicle and, in course, the Tahoe was?

17 A. Thirty feet, approximately.

18 Q. I think you testified, and correct me if I'm

19 wrong, a white male got out of the Tahoe. I think you

20 testified he walked around to the driver's side window

21 of Ms. Gales' vehicle?

22 A. No, passenger's.

23 Q. He went to the passenger's side of Ms. Gales'

24 vehicle?

25 A. Yes.

1 Q. In course, I think you testified that they had
2 some sort of conversation for about 30 seconds;
3 somewhere in the neighborhood 30 seconds?
4 A. Very short, yes.
5 Q. In course, I think you said you saw, at least
6 what appeared to be, a hand-to-hand contact between the
7 two?
8 A. Yes. I saw the white male leaning into the
9 passenger's window. He reached his hand forward towards
10 Gales, who is still in the driver's seat.
11 Q. And you said that you think they exchanged
12 something?
13 A. Correct, that is my experience.
14 Q. Did you see a particular object?
15 A. I did not.
16 Q. I think you said -- correct me if I'm wrong --
17 that after this brief conversation, you saw what you
18 believed to be some sort of hand-to-hand contact between
19 the two and then Ms. Gales left.
20 A. Yes.
21 Q. Then also the driver of the Tahoe left; is that
22 correct?
23 A. That's correct.
24 Q. Then, in course, Ms. Gales then drives to Fort
25 Mill; is that correct?

1 A. Correct.

2 Q. It's on that trip that you said that she was
3 sometimes driving in excess of 100 miles an hour?

4 A. Yes.

5 Q. I assume if she drove in excess of 100 miles an
6 hour -- I'm assuming you-all drove just as fast to keep
7 up with her?

8 A. That's correct.

9 Q. That would be including South Carolina and North
10 Carolina?

11 A. That's correct.

12 Q. Just to ask a question. Do you know whether or
13 not -- I think you work with Charlotte-Mecklenburg Drug
14 Enforcement Unit; is that correct?

15 A. Vice-narcotics unit.

16 Q. In course, at that time. In course -- let me ask
17 you this question: Was the Charlotte-Mecklenburg Drug
18 Enforcement Unit or Vice Enforcement Unit -- do you know
19 whether or not there was any sort of cooperative
20 relationship between Charlotte-Mecklenburg's Vice Units
21 and, in course, the Drug Enforcement Unit for York
22 County?

23 A. Yes. We had worked with them in the past.

24 Q. Do you-all have a written cooperation agreement
25 between the two?

1 A. No. We don't have mutual aid across state lines.

2 Q. You don't have mutual aid across state lines?

3 Okay. I'm assuming if you didn't have mutual aid

4 across state lines, when you cross state lines, your

5 jurisdiction ends, I'm assuming.

6 Where at? Where does your jurisdiction end?

7 A. It would end at 77 at the state line near

8 Carowinds Boulevard.

9 Q. I'm sorry. I didn't mean to interrupt you.

10 A. It's somewhere around Carowinds Boulevard.

11 Q. In course, is your jurisdiction county or

12 state -- excuse me -- county or city?

13 A. County.

14 Q. County?

15 A. County.

16 Q. When you followed her into South Carolina, I

17 think you testified she was driving in excess of 100

18 miles an hour. At that time you had no law enforcement

19 authority; is that correct?

20 A. That's correct. For anything that occurred in

21 South Carolina.

22 Q. So she arrives at the dental office, this

23 industrial park in Fort Mill; is that correct?

24 A. Correct.

25 Q. Your testimony is that she parked in a parking

1 lot, parking space; is that correct?

2 A. Correct.

3 Q. In course, there was a van there?

4 A. A white Chevy Express van.

5 Q. I think your testimony is that the driver got out
6 of his van. In course, he walked over to her vehicle?

7 A. Correct, the driver's side window.

8 Q. Your testimony was that they had some sort of
9 dialogue for less than 30 seconds? 30 seconds or less;
10 is that correct?

11 A. That's correct.

12 Q. In course, I think you testified that you saw,
13 again, some sort of -- did you actually see physical
14 hand contact?

15 A. I did not.

16 Q. The gas station, did you see physical hand
17 contact at the gas station?

18 A. I did not.

19 Q. In course, I think your testimony is that, after
20 this 30 seconds, roughly 30-second encounter, the
21 gentleman from the Express van left. In course,
22 Ms. Gales went into the dental office?

23 A. Correct.

24 Q. Now, I know you testified with respect to the
25 dental office that you didn't see hand-to-hand contact.

1 Did you see an object being passed?

2 A. At the dentist's office?

3 Q. Yes.

4 A. No.

5 Q. Couple more questions.

6 Now, my understanding is that, at some point in

7 time -- was it Grimsley that actually contacted

8 Detective Todd with the York County Drug Enforcement

9 Unit?

10 A. Yes.

11 Q. You were not a part of that conversation?

12 A. Between the two of them? No.

13 Q. When Detective Grimsley had that conversation

14 with Detective Todd, were you with him, or were you all

15 in separate vehicles?

16 A. We were in separate vehicles.

17 Q. You were not sitting there when he had that

18 conversation?

19 A. Correct.

20 Q. Do you know how he contacted Investigator Todd?

21 A. I would assume by cell phone. I'm not sure.

22 Q. Almost finished. When you go to the parking

23 lot -- I'm going to take you back to the convenience

24 store.

25 I know that you said you were parked in the

1 convenience store. In course, you saw this encounter
2 between Ms. Gales and, in course, someone in a Chevy
3 Tahoe. At that time when you were making that
4 observation, did you know where Detective Grimsley was
5 in his vehicle?

6 A. I can't say for certain. He was in the area. We
7 followed her in as a team. We would have been staging
8 for a surveillance of the lot.

9 Q. Do you know where Detective Carbonaro was?

10 A. Carbonaro is same thing. He would have been --
11 he was part of the surveillance to that location.

12 At that time I would be calling over the radio,
13 things occurring, tag, arranging for a surveillance
14 other than the convenience store. That only lasted 30
15 seconds.

16 Q. You don't know what the exact locations were at
17 that time that you were making this observation at the
18 convenience store?

19 A. I don't.

20 Q. In course, the same question with respect to the
21 Fort Mill -- the parking lot at the dental office in
22 Fort Mill.

23 Do you know the exact location of those two
24 officers at the time in which you were making, you know,
25 this observation?

1 A. Not the exact location. No.

2 Q. Do you know whether or not -- in course, I'm not
3 asking you to tell me what they said. I'm just asking
4 you whether or not you had knowledge of this. A yes or
5 no answer would be appropriate.

6 Do you know whether or not they saw what you saw
7 at the convenience store?

8 A. I do not think that they did, no.

9 Q. Do you know whether or not they saw what you saw
10 at the dental office in Fort Mill?

11 A. No. I don't believe they did.

12 Q. So when you talked to Detective Grimsley, what
13 did you communicate to Detective Grimsley on that?

14 You observed them at the convenience store.
15 What did you tell him you observed at the convenience
16 store?

17 A. At that time?

18 Q. Yes.

19 A. Exactly what I said here today. That, you know,
20 a white male parked in the parking lot. Ramona Gales
21 pulled up next to him a couple spots down next to the
22 Tahoe. The white male exited the Tahoe, went to the
23 passenger's side window of Ramona Gales' vehicle, and
24 there was an exchange of items. Then they were leaving
25 the scene -- leaving that location.

1 Q. Just for clarification --

2 MR. BROOKER: Excuse me, Your Honor. I'm sorry.

3 I keep coughing.

4 BY MR. BROOKER:

5 Q. When I asked you that question about what you
6 communicated, I'm asking you, I guess, in realtime.

7 On January 31, 2018, during the course of this
8 surveillance, I'm asking you what are you conveying to
9 him over the radio at that time?

10 A. At that time on the radio, it was so -- it
11 happened so quickly, that I would've just said: She's
12 circling the lot. She's pulling up next to the Tahoe.
13 White male exiting vehicle. Seen hand-to-hand.

14 Q. In course, the same question with respect to the
15 dental office in Fort Mill. What did you tell him over
16 the radio as you were observing him or shortly
17 thereafter?

18 A. Just that she pulled up next to a white Chevy
19 Express van and was parking. I would have described
20 where in the lot she was parked, the far end of the lot.
21 I would have been calling out in real time, white male
22 exiting the Express van. Indicating he's walking over
23 to the driver's side window of Gales' vehicle. There
24 appears to be exchange of items and that the car is
25 leaving.

1 Q. Did you tell them that they exchanged items?

2 A. I would have said hand-to-hand. That is what I

3 would have said on the radio.

4 Q. I asked you earlier with respect to whether or

5 not you saw hand-to-hand contact at the convenience

6 store. You said no. I also asked you that same

7 question at the dental office, whether or not you said

8 you saw a hand-to-hand exchange. You said no; is that

9 correct?

10 A. That's correct.

11 Q. Did you tell Detective Grimsley: I did not see a

12 hand-to-hand exchange?

13 A. At that time we did not get into the specifics of

14 it.

15 Q. Did you tell Detective Grimsley that I didn't see

16 any item being exchanged?

17 A. At that time, I did not. It was 30 seconds.

18 Q. Now, you were there when Ms. Gales came out; is

19 that correct?

20 A. I was in the area. I was in the beginning of the

21 neighborhood. I didn't observe her walk out.

22 Q. I apologize. Let me rephrase my question.

23 When she exited the dental office, were you

24 there?

25 A. Yes.

1 Q. Were you still observing that car?
2 A. Yes.
3 Q. About what time did the drug enforcement officers
4 from York County arrive?
5 A. We arrived at Ben Casey at 2:51. I would say
6 they were there within 15 minutes or so.
7 Q. Do you know who arrived?
8 A. I do not.
9 Q. Was it more than one car or vehicle? With
10 respect to the York County Drug Enforcement Unit, did
11 they arrive in one car or separate cars? How many cars
12 were there that you observed?
13 A. I believe separate.
14 Q. How many separate cars?
15 A. I don't know.
16 Q. Did you see a dog there at that time?
17 A. I did.
18 Q. Did you get out and talk to those officers?
19 A. I did not.
20 Q. Were you there when Ms. Gales came out, and did
21 you witness what happened once she came out of the
22 dental office?
23 A. Yes.
24 Q. Tell me what happened when she came out of the
25 dental office.

1 A. When she came out of the dental office, she was
2 walking back towards her vehicle. She was approached by
3 York County investigators.

4 Q. Do you know which investigators?

5 A. I do not. I'm sorry. I missed that. She came
6 out of the dental office. Then what happened, as she
7 was walking back towards her vehicle -- it was parked
8 where she had parked it. She was approached by York
9 County detectives, investigators.

10 Q. I know that you said you don't know which York
11 County investigators. Do you know how many?

12 A. I do not. I mean, pretty much as soon as that
13 happened, I left and went back to North Carolina.

14 Q. As soon as they encountered her, you left?

15 A. Yes.

16 Q. And you didn't observe anything else that
17 happened at the scene?

18 A. That's correct.

19 MR. BROOKER: Indulge me just a second, Your
20 Honor. Let me make sure that I don't have any further
21 questions.

22 No further questions, Your Honor.

23 THE COURT: Any redirect?

24 MR. PORTER: Briefly, Your Honor.

25 * * *

1 VOIR DIRE EXAMINATION BY MR. PORTER

2 BY MR. PORTER:

3 Q. Investigator Buehler, when you related to
4 Detective Grimsley that there had been a hand-to-hand,
5 what did you mean had occurred?

6 A. That I believed there to be a narcotics
7 transaction.

8 Q. That Ramona Gales had distributed drugs to
9 another individual?

10 A. Correct.

11 Q. Was that based on your training and experience?

12 A. Correct.

13 Q. From doing actual transactions like that in the
14 past?

15 A. That's correct.

16 Q. Did you at any point take any enforcement action
17 in this case?

18 A. I did not, no.

19 Q. Would you have been able to arrest her based on
20 her driving in North Carolina?

21 A. Yes.

22 Q. Would South Carolina law enforcement have been
23 able to arrest her for her driving in South Carolina
24 based on her driving?

25 A. Yes.

1 Q. Based on what you observed the Defendant to be
2 engaged in, from your training and experience, what did
3 you believe Ramona Gales did at 15 Ben Casey and 5200
4 Piper Station Drive?

5 A. I believe that they were drug transactions.

6 MR. PORTER: No further questions, Your Honor.

7 THE COURT: Recross?

8 MR. BROOKER: No further questions, Your Honor.

9 THE COURT: Thank you.

10 You can step down, Detective.

11 (Whereupon, the witness exited the witness stand.)

12 THE COURT: Call your next witness.

13 MR. PORTER: Thank you, Your Honor. State calls
14 Detective Matthew Grimsley.

15 * * *

16 MATTHEW GRIMSLEY,

17 called as a witness by and on behalf of

18 the State to testify, being first duly

19 sworn was examined and testified as follows:

20 * * *

21 THE COURT: Take the stand.

22 MR. PORTER: If it please The Court, Your Honor.

23 THE COURT: Solicitor.

24 MR. PORTER: Thank you.

25 * * *

1 VOIR DIRE EXAMINATION BY MR. PORTER

2 BY MR. PORTER:

3 Q. Detective, would you please state your name for
4 the record.

5 A. Matt Grimsley.

6 Q. What's your present occupation?

7 A. I'm a vice-narcotics detective with the
8 Charlotte-Mecklenburg Police Department.

9 Q. How long have you worked in that role?

10 A. About 18-and-a-half years.

11 Q. What are your duties in that position?

12 A. Working from low-level and mid-level to
13 high-level drug trafficking, prostitution, money
14 laundering and whatnot.

15 Q. Specifically in the drug dealing, do you have any
16 training or experience in that field?

17 A. Yes. I have State and Federal training ranging
18 from laundering money to drug identification, sales, how
19 it is conducted, let alone my personal training that
20 I've done in the department and the purchasing of drugs.

21 Q. Have you ever seen street-level purchases of
22 drugs?

23 A. Yes, I have. Firsthand.

24 Q. You have conducted them yourself?

25 A. I have.

1 Q. How did you become involved in the investigation
2 of Ramona Gales on January 31, 2018?

3 A. We had received some information from some
4 confidential informants. They provided a name, a level
5 of drug trafficking. Given that information, we were
6 able to do some research in the law enforcement
7 databases and revealed Ramona Gales, through our
8 investigation, had been convicted of drug trafficking at
9 the time. At the time, she had pending a trial for
10 conspiracy to traffic drugs.

11 Q. She had pending charges in your jurisdiction for
12 trafficking cocaine?

13 A. At that time, yes.

14 Q. You mentioned confidential, reliable informants.
15 Had you ever relied on the information that those
16 informants provided in the past?

17 A. Yes.

18 Q. Had that information proved reliable?

19 A. It had.

20 Q. Have you taken actions based upon that and had it
21 bear out as truthful?

22 A. Yes.

23 Q. Did you have any concerns about the veracity of
24 those individuals?

25 A. No.

1 Q. So do you see Ramona Gales seated in the
2 courtroom here today?

3 A. I do.

4 Q. Where is she seated?

5 A. Ms. Gales is seated over at the defense table.

6 Q. Where did the investigation into Ms. Gales begin
7 that day?

8 A. That day it began at her residence, 9707 Holden
9 Court in Charlotte.

10 Q. How did you know it was her residence?

11 A. Through the investigation databases. The address
12 was on her license through the DMV. We had done some
13 surveillances of the vehicle with the description, and
14 we had a little kid there at the residence.

15 Q. Did you observe her leave the residence that day?

16 A. I did.

17 Q. Could you please describe what action you took
18 based upon that.

19 A. I had got to the residence, observed couple
20 people and see her in her -- at the time, we thought it
21 was a rental car, Missouri tag, Chrysler 300. She left
22 the residence, and we began following her.

23 During the process of following her, we first
24 went to 5200, I think it was, Piper Glenn or something,
25 the Exxon station off of Rea Road where she was seen

1 going into the gas station.

2 Q. Did you participate in the surveillance there?

3 A. I was in the surveillance, but I did not witness

4 the events that took place in the lot.

5 Q. What was your role in the surveillance at 5200

6 Piper Station?

7 A. At that time I was case lead, you would say, and

8 I was trying to take notes of what events were taking

9 place and seen by other detectives.

10 Q. Were you also responsible for picking her up if

11 she left that location?

12 A. Yes.

13 Q. Who was the primary person observing her behavior

14 at 5200 Piper Station?

15 A. Detective Buehler.

16 Q. So you didn't see anything at Piper Station.

17 Did you -- what did you do? Did you observe her

18 at any point leave Piper Station?

19 A. Once I received information from him that a

20 transaction had occurred at that location and she was

21 leaving, I came out on that street. We began to follow

22 her onto Rea Road and then onto 485.

23 Q. Were you participating in the surveillance as the

24 other officers seemed to be?

25 A. Myself and Detective Carbonaro.

1 Q. Were you able to maintain constant surveillance
2 of her at that point?

3 A. Once she left 5200, yes.

4 Q. How would you characterize her driving?

5 A. Erratic and very fast.

6 Q. How did that tail proceed? Where did you follow
7 her to?

8 A. We got on the 485, and we ended up traveling to
9 77 southbound at a high rate of speed. Got on 77
10 southbound. As we approached, I believe it's Route 160,
11 she made an overt movement, quick movement from the
12 Number 2 lane, which would be the second lane from the
13 left, crossed up over the median onto the exit.

14 Then we followed her down to the business park, Ben
15 Casey Drive.

16 Q. What did you do when you arrived at Ben Casey
17 Drive?

18 A. We pulled into the Ben Casey Drive business
19 complex. She went to the right when you come into the
20 entrance from the main road. I don't know if you need
21 to look at the map or not.

22 Q. I'll show you what is been previously entered as
23 Court's Exhibit 2. Do you recognize that?

24 A. I do.

25 Q. What is that?

1 A. That is an aerial photograph of the Ben Casey
2 Drive parking lot. This is the area that she entered
3 (indicating).

4 Q. Would you please describe to The Court how the
5 parties entered that area.

6 A. She entered on the main road, coming down the top
7 right. Come down, make the first right. She turned in
8 there. When she made that right, Detective Buehler was
9 behind me in the surveillance and took over. I made a
10 left and sat over in the other area while he kept her
11 under observation.

12 Q. Did you receive any information from Investigator
13 Buehler about Ms. Gales at 105 Ben Casey?

14 A. Yes.

15 Q. What did he tell you?

16 A. She had met up with a white -- like a little work
17 van of some sort. The subject got out, approached her
18 vehicle in seconds, and returned back to his vehicle and
19 left. Similar to what happened at 5200 Piper.

20 Q. What information did you receive from Detective
21 Buehler about what happened at 5200 Piper Station?

22 A. That she had met a white male who got out of his
23 vehicle, approached her vehicle. Then a transaction
24 that was indicative of a drug transaction. He then
25 returned to his vehicle and they separated.

1 Q. Based on the information that Detective Buehler
2 provided to you, what did you believe Ms. Gales had done
3 at both of those locations?

4 A. Given the information that we had prior, her
5 history, the observations that he made, knowing his
6 training -- which I helped assist to train him -- she
7 was drug trafficking, selling drugs. Potentially
8 selling drugs at the scene.

9 At that point, I notified the York County Multi
10 Jurisdictional Task Force member Josh Todd.

11 MR. PORTER: No further questions, Your Honor.

12 THE COURT: Mr. Brooker?

13 * * *

14 VOIR DIRE EXAMINATION BY MR. BROOKER

15 BY MR. BROOKER:

16 Q. Detective Grimsley, I think you testified that
17 you received information from confidential informants
18 alleging that Ramona Gales was in the drug game and
19 maybe selling drugs; is that correct?

20 A. Correct.

21 Q. Now, did you receive specific information -- with
22 respect to that day, did you receive information from a
23 confidential informant that said on January 31, 2018,
24 Ramona Gales was going to be involved in two drug sales
25 at these locations?

1 A. That specific date, no.

2 Q. With respect to that specific date, you didn't
3 have specific intelligence. You were just conducting
4 surveillance to try to see what you can see; is that
5 correct?

6 A. The investigators would gather information from
7 informants and/or prior activity, set up surveillance at
8 predetermined locations, and see what daily activities
9 to document and surveillance and/or follow up in the
10 surveillance if we see documented incidents maybe of
11 crimes.

12 Q. This was surveillance. This was not specific
13 intelligence -- this was not your acting on specific
14 intelligence of drug transactions that was supposed to
15 take place that day. This was observing her conduct; is
16 that correct?

17 A. Based on the intelligence I had prior, on the
18 31st we conducted surveillance to see her activities.

19 Q. I think you answered my question. I just want to
20 make sure. No specific intelligence with respect to her
21 engaging in drug transactions that day; is that correct?

22 A. On January 31st, you are correct.

23 Q. That's what I'm asking. I'm sorry if I didn't
24 clarify myself.

25 I think my understanding is that you-all convened

1 at her home. In course, you surveilled her when she
2 left her home?

3 A. Correct.

4 Q. You may have already testified to this. The
5 first place, to your understanding, is that she went to
6 a convenience store in Charlotte, North Carolina; is
7 that correct?

8 A. Correct.

9 Q. My understanding from your testimony is that this
10 alleged encounter that she had with a white male, that
11 you didn't witness that encounter?

12 A. I did not.

13 Q. In course, you relayed information -- let me
14 rephrase that question.

15 Buehler made the actual observation of what took
16 place in the parking lot of the convenience store, and
17 you were conveyed that information to you; is that
18 correct?

19 A. Yes. Via radio.

20 Q. What did Detective Buehler convey to you
21 specifically?

22 A. He did provide a tag number. He described the
23 white male and the type of vehicle.

24 Q. What type of vehicle did he say that he was
25 driving?

1 A. It was a Chevy Tahoe.

2 Q. Do you know what color it was?

3 A. At the time, I documented that it was a white

4 one.

5 Q. Did you also document that it was a white one?

6 A. That's what I heard also.

7 Q. You heard Detective Buehler say a white one?

8 A. Correct.

9 Q. Detective Buehler gave you a specific description

10 of this person that she met with in the parking lot?

11 A. He gave me a description, yes. It was a white

12 male. Maybe I wrote it in my notes. I have to look at

13 my notes to say exactly what I wrote down. This was

14 occurring rapidly.

15 Q. Yes, sir. Let me just ask you this. I know that

16 he gave you the race. Then, in course, he gave you the

17 gender.

18 Did he give height to you and say, he was

19 around, 5'10, 6'? Did he give any height description?

20 A. I don't recall if he did. He could have. I

21 could have wrote it down. His priority at that time was

22 trying to get the tag off the vehicle.

23 Q. Did he give a weight description that you recall?

24 A. I have to look at my notes to be sure about the

25 weight. I don't want to be inaccurate.

1 Q. Later on you prepared a report as a result of
2 this surveillance. Do you know whether or not you
3 recorded anything in your report other than a white
4 male?

5 A. I may have given -- if I can review, to be
6 precise. I don't want to give you inaccurate
7 information. There's a lot of details in this case. I
8 don't want to give you something wrong.

9 Q. I don't mind --

10 A. I have a copy on me --

11 Q. -- if you look at your report to refresh your
12 memory.

13 A. I have a copy, if I can look at it.

14 Q. Sure. I don't have any objection to you
15 refreshing your recollection from the report for this
16 portion.

17 MR. PORTER: No objection, Your Honor.

18 THE WITNESS: Do you want me to refer to the
19 notes first or just the report itself?

20 BY MR. BROOKER:

21 Q. The report. Do you have notes?

22 A. I have a copy of them, of the notes.

23 Q. Go ahead and take a look at your report.

24 A. Paragraph beginning with, about 2:33 p.m. is
25 where things transpired at the Piper Station, Exxon gas

1 station. At that time I have a white male. One
2 indication, approached the passenger's side window.
3 Made a hand-to-hand transaction. Then they left shortly
4 thereafter. I'm looking for additional -- I'm sorry.

5 Prior to that, it was a white male driving a
6 light Chevrolet Tahoe displaying North Carolina
7 registration Mary, X-ray, Robert 7684. There's no
8 height or age description in there.

9 Q. No other description other than the race and
10 gender?

11 A. Correct.

12 Q. In course, I think you said you -- were you
13 taking notes, I guess, contemporaneous notes at the time
14 in which Buehler was conveying this information to you?

15 A. I was taking the notes as best I could while I
16 was driving, yes.

17 Q. The reason why -- it's very important. This part
18 is very important so I understand.

19 Do you know exactly what was conveyed to you
20 about the encounter between this male and Ms. Gales? Do
21 you know exactly what was conveyed to you?

22 A. Exactly was a white male in a black Tahoe with a
23 North Carolina description approached her window, did a
24 hand-to-hand transaction. That is exactly what I
25 recall.

1 Q. He told you it was a hand-to-hand transaction?
2 A. Correct.
3 Q. Did he tell you that he saw what was being
4 exchanged?
5 A. No.
6 Q. He did tell you it was a hand-to-hand
7 transaction?
8 A. Correct.
9 Q. I think you also said you-all were communicating
10 via radio; is that correct?
11 A. Correct.
12 Q. I'm assuming you-all were in standard-issue law
13 enforcement vehicles?
14 A. Well, we work in an undercover capacity. Our
15 cars look just like anyone's. Our stuff is minimal at
16 best.
17 Q. The equipment, this equipment is obviously
18 equipment that was provided by the department; is that
19 correct?
20 A. I have a hand-held transmitter radio that I was
21 utilizing.
22 Q. I got you. In course -- is the communication
23 from that hand-held device, is that recorded?
24 A. I can't answer that. More than likely nowadays
25 it probably could be. I don't know. Ours is encrypted.

1 It may not be because ours is a secured channel, so it
2 may not be.

3 Q. I understand that. The reason why I ask that
4 question that it may be encrypted -- in course, if it's
5 encrypted, then in course it's meant to limit the scope
6 to a need-to-know basis upon the people who needed to
7 know.

8 I'm just trying to figure out whether or not it's
9 recorded.

10 A. I can't answer that.

11 Q. If you were to get in any trouble, there is an
12 officer down, would you call dispatch from that same
13 device?

14 A. The device, correct, but not the channel.

15 Q. You would call from that same device but a
16 different channel?

17 A. Correct. They were not monitored, if that's what
18 you are getting at. They're not monitored on that
19 channel.

20 Q. You're not monitored by dispatch?

21 A. Correct.

22 Q. But you don't know whether or not the
23 communication over that device is recorded is what
24 you're saying?

25 A. Correct.

1 Q. Even on this encrypted channel?

2 A. I can't answer that. You have to ask Buehler on
3 that.

4 Q. I got you. Just a couple more questions.

5 During the course of your observation, during
6 this course of observation or surveillance, did you-all
7 use any video?

8 A. I did not.

9 Q. Do you know whether or not any of the other
10 officers were using video?

11 A. I don't know, but I'm assuming not because it
12 would be pretty hard to do that at the same time.

13 Q. What about any audio? Other than what you have
14 explained to me about the radio, was there any audio?

15 A. You mean was a recorded audio device utilized?

16 Q. Yes. Any sort of recorded audio. I'm trying to
17 figure out whether or not there was any sort of
18 recording device, video, audio, that was recording that
19 you were using to record the events?

20 A. Typically -- we do not audio record surveillance
21 operations, typically, other than handwritten notes.

22 Q. So you went to Fort Mill; is that correct?

23 A. Yes.

24 Q. In the parking lot -- you testified that you did
25 not observe what Buehler observed in the Fort Mill

1 parking lot; is that correct?

2 A. Of the business parking lot? I did not.

3 Q. You were relying on the information that

4 Detective Buehler transmitted to you with respect to

5 what went on in the encounter between Ms. Gales and this

6 other individual; is that correct?

7 A. Correct.

8 Q. What specifically did Detective Buehler tell you

9 about that encounter between Gales and this male in the

10 parking lot of the dentist's office?

11 A. Would it be okay if I referred to it? That way I

12 can be precise.

13 Q. Certainly. Are you referring to your notes?

14 A. I'm referring to my report.

15 Q. Okay.

16 A. Buehler observed a white male driving a light

17 Express van. Approached driver's window of Ms. Gales'

18 vehicle. As before, he explained that they made a

19 hand-to-hand transaction; that it only lasted a couple

20 of seconds, and that was it. The male went back to his

21 van and left. There was no description of a white male.

22 Q. So, specifically, Buehler says that he told you

23 he observed a white male approached Ms. Gales' vehicle.

24 He told you he observed specifically, a hand-to-hand

25 exchange between the two?

1 A. Correct.

2 Q. Did he tell you whether or not he saw an object
3 being exchanged?

4 A. No.

5 Q. At some point in time, it's my understanding that
6 you contacted Investigator Todd, is that correct, with
7 the York Drug Enforcement Agency?

8 A. Yes.

9 Q. How did you contact him?

10 A. Phone.

11 Q. Your personal cell phone?

12 A. Work phone.

13 Q. I'm assuming because it's a work phone, it's
14 issued by your employer; is that correct?

15 A. Correct.

16 Q. In course -- is the activity on that phone
17 monitored, including phone calls and text messages and
18 that sort of stuff?

19 A. Monitored as in the phone itself monitoring or
20 someone else monitoring it?

21 Q. Is the activity on that phone monitored by your
22 employer, the law enforcement agency?

23 A. I guess it could be. I mean, I'm not sure. We
24 have one system for what I would call work-related
25 issues. In an undercover capacity, the phone is capable

1 of monitoring and recording everything that is discussed
2 with the suspect.

3 Since I wasn't dealing with a suspect, I was
4 dealing with law enforcement, it wouldn't be vocally
5 recorded.

6 Q. That's all I wanted to know. That was a voice
7 phone call you made. In course -- what specifically did
8 you say to Detective Todd when you called?

9 A. I explained to him the events that we actually
10 just went over here; that we had followed Ms. Gales from
11 her residence. She had made a transaction, what we
12 believed was indicative of a drug transaction in
13 Charlotte. We followed her to Ben Casey Drive. We
14 observed the same thing and her driving patterns.

15 He asked if he could assist, to potentially come
16 over since we were out of our jurisdiction at the time.
17 He kept her under surveillance, and asked if he could
18 come over, and he did as such.

19 Q. In course -- what you communicated to Detective
20 Todd, did you put that in your report?

21 A. Yes.

22 Q. You have your report. I'm going to read what you
23 have in your report. You tell me whether or not I am
24 reading this correctly. I'm on, I think, the paragraph
25 that says: Buehler positioned himself.

1 A. Okay.

2 Q. In course, it says: Buehler positioned himself
3 in an area to observe Gales' vehicle. While positioning
4 himself, Buehler believed Gales entered one of the
5 businesses nearby. As detectives kept surveillance on
6 Gales' vehicle, Grimsley made contact with Investigator
7 Josh Todd of the Fort Mill Police Department/York County
8 Jurisdictional Drug Task Force and informed him of
9 Gales' criminal history along with observations made
10 prior to her arrival on Ben Casey Drive.

11 Grimsley and Todd agreed to give the agency --
12 agreed on his agency making a voluntary contact as Gales
13 returned to her vehicle. A short time thereafter, Todd
14 and his colleagues positioned themselves in the area to
15 make contact with Gales as she approached her vehicle.
16 That's consistent with what you told him?

17 A. Yes.

18 Q. Did you tell him anything else that's not
19 included in this report?

20 A. Not that I recall. It could be a word or two,
21 but only related to observations made. Then it was up
22 to him -- we always -- the terminology here, voluntary
23 contact, is something we always pursue first with basic
24 information. The officers can do otherwise.

25 Q. I'm assuming that -- you were there when Todd

1 arrived; is that correct?

2 A. I was across the lot when they arrived. I didn't
3 see them initially.

4 Q. Did you at any point in time approach them after
5 they arrived?

6 A. After they had made contact with Ms. Gales.

7 Q. Only after they made contact with Ms. Gales did
8 you approach them?

9 A. Correct.

10 Q. When they made contact with Ms. Gales, were you
11 there with them or were you observing them from your
12 vehicle at a distance.

13 A. When they made contact, I was still parked across
14 the way, as Buehler had the visual on there. I had
15 Investigator Todd on the phone. When he came to the
16 site, he notified me.

17 We had a little bit -- we don't have the same
18 radio networks, so we had to use the phone. As that
19 transpired, they did their part. Then once Mr. Todd
20 notified me that they had made contact, I came up.

21 Q. What did you observe -- specifically about the
22 contact when the York County Drug Enforcement officers
23 made contact with Gales. Tell me what you observed with
24 respect to that contact.

25 A. They had already made contact with her. I came

1 up after they were there speaking with her. They were
2 out talking with her, one of the investigators. I can't
3 tell you exactly which one at the time. I was more
4 dealing with Mr. Todd at that point. He came back. His
5 words were that the dog had alerted and cocaine was --
6 there was supposedly cocaine in the car.

7 Q. You came after the dog had sniffed the car?

8 A. Yes. Right after.

9 Q. So you didn't see that part?

10 A. No. I did not.

11 Q. I'll ask you the same thing I asked Detective
12 Buehler. Do you know whether or not there is a
13 cooperation or need-assistance agreement between your
14 agency and, in course, the agency that Detective Todd
15 worked for at that time?

16 A. Between the two?

17 Q. Yes.

18 A. I don't know if there's an acronym. I'm sure
19 there's some kind of combined thing. I have not looked
20 at it. We work together on cases all the time.

21 Q. I'm not talking about a working agreement. Do
22 you-all have some sort of cooperation agreement between
23 the two agencies?

24 A. Not that I'm aware of. Other than law
25 enforcement courtesy, no.

1 MR. BROOKER: If you can indulge me just a
2 second, Your Honor. I may be finished.
3 No further questions, Your Honor.
4 THE COURT: Any redirect?
5 MR. PORTER: No, Your Honor.
6 THE COURT: Detective Grimsley, you can step
7 down.
8 (The witness exited the stand.)
9 THE COURT: Who might your next witness be?
10 MR. PORTER: Your Honor, we have two pretty quick
11 ones. Investigators Ervin, Atwell, and then Josh Todd
12 is going to be extensive.
13 THE COURT: Let's try to get through Ervin and
14 Atwell.
15 MR. PORTER: Yes, sir, Your Honor. The State
16 calls Investigator Ervin.
17 * * *
18 RAYFORD LEWIS ERVIN, JR.
19 called as a witness by and on behalf of
20 the State to testify, being first duly
21 sworn was examined and testified as follows:
22 * * *
23 VOIR DIRE EXAMINATION BY MR. PORTER
24 BY MR. PORTER:
25 Q. Good afternoon. Please state your name for the

1 record.

2 A. Rayford Lewis Ervin, Jr.

3 Q. Where are you presently employed?

4 A. I work for the York Police Department. I am

5 currently assigned to the York County Multi-Jurisdiction

6 Drug Enforcement Unit.

7 Q. What are your duties in that role?

8 A. I'm a supervisor.

9 Q. What are the primary missions of that agency?

10 A. We do drug investigations.

11 Q. Do you recall becoming involved in the

12 investigation into Ramona Gales on January 31, 2018?

13 A. Yes, sir.

14 Q. Were you present during that investigation?

15 A. Yes, sir, I was.

16 Q. Where did that occur?

17 A. 105 Ben Casey Drive, which is off of 160 in Fort

18 Mill, which is York County.

19 Q. Who was present during that investigation?

20 A. Myself, Officer Todd, Officer Atwell, Officer

21 Holland. There was some Charlotte PD officers up there,

22 too.

23 Q. Do you see anybody you knew to be Ramona Gales in

24 the courtroom today?

25 A. Yes, I do.

1 Q. Where is she seated?

2 A. Sitting right there (indicating).

3 Q. Was she present that day as well?

4 A. Yes, sir.

5 Q. Were you present during the initial interaction

6 with her?

7 A. Officer Todd and Officer Holland made personal

8 contact, and then I walked up. Yes, sir.

9 Q. When you walked up, what happened?

10 A. When I walked up, I was standing there. We were

11 just making general conversation.

12 Q. Was she detained at that time?

13 A. Yes, sir.

14 Q. Did she deny consent to search her vehicle?

15 A. I believe she did. Yes, sir.

16 Q. Did you ask her any other questions after that?

17 A. No, sir.

18 Q. Based on that, did you observe Investigator Todd

19 do anything?

20 A. Yes, sir, Investigator Todd retrieved his K-9 MJ

21 from his vehicle, which is trained in illegal narcotic

22 drugs. At which time Officer Todd started walking the

23 dog around the vehicle.

24 Q. Did Ms. Gales make any statements to you at that

25 time?

1 A. The dog came around, and just before the dog
2 alerted, she advised me that there was some cocaine in
3 the vehicle.

4 Q. Did you ask her any questions to elicit that
5 response?

6 A. No.

7 Q. Did you make any promises to her to elicit that
8 response?

9 A. No, sir.

10 Q. In your opinion, was that a voluntary statement
11 she made of her own accord?

12 A. Yes, sir.

13 Q. Did you observe the dog to sit?

14 A. Yes, sir.

15 Q. Did you inform Investigator Todd of what
16 Ms. Gales stated to you?

17 A. Yes, sir. I did.

18 Q. What did he do based upon that information?

19 A. He advised me that the dog had already alerted on
20 the vehicle. They started conducting the search of the
21 vehicle.

22 Q. After Investigator Todd began to search, did you
23 observe anyone read her the Miranda Rights?

24 A. Yes. I did.

25 Q. Who read her the Miranda Rights?

1 A. Officer Atwell.

2 Q. Were you present when those warnings were read?

3 A. Yes, sir.

4 Q. Were they correct, in your opinion?

5 A. Yes, sir.

6 Q. Did she appear to understand those rights?

7 A. Yes.

8 Q. Did she appear to be intoxicated in any way?

9 A. No, sir.

10 Q. Did she appear to have any educational, physical,
11 or mental limitations that made it such that she would
12 not understand the rights that were advised to her?

13 A. No, sir.

14 Q. Did she have any difficulty understanding any of
15 her questions or comments before or after being read
16 Miranda?

17 A. No, sir.

18 Q. And were her answers to your questions after
19 Miranda rational and responsive to any questions that
20 you asked?

21 A. No, sir.

22 Q. Were they responsive? Did she answer the
23 questions appropriately?

24 A. Yes, sir.

25 Q. Did you threaten or coerce her or pressure her in

1 any way to make any statements?

2 A. No, sir.

3 Q. Were you standing with her during the entire
4 interaction, or for the majority of it?

5 A. For the majority of it, yes, sir.

6 Q. Did you observe anyone do those things?

7 A. No, sir.

8 Q. Did you offer any promise or hope of reward?

9 A. No, sir.

10 Q. At any point at 105 Ben Casey, did she change her
11 mind, invoke her right to remain silent, or request an
12 attorney?

13 A. No. She just continued to talk to us.

14 Q. To the best of your knowledge, were her
15 statements made both before and after Miranda freely,
16 voluntarily, and intelligently given?

17 A. Yes.

18 Q. What did she state to you after she was read her
19 Miranda Rights?

20 A. As far as the dope that was in the car?

21 Q. Yes, sir.

22 A. Right before Miranda, she advised me that there
23 was some cocaine in the car. I think it was on video.
24 She actually tells myself and the officers about how
25 much cocaine is in the car.

1 Q. That was recorded on the body camera?
2 A. Yes, sir.
3 Q. Who was wearing that body camera?
4 A. Officer Todd.
5 Q. Did she at any point instruct the officers about
6 where the cocaine was in the car?
7 A. She said there was some cocaine in a little black
8 coffee cup maybe, or something like that right there.
9 Officer Todd was messing with a white container, trying
10 to get it open. She advised that there was a key that
11 was in the book bag.
12 Q. She actually told them where that key was?
13 A. Yes, sir.
14 MR. PORTER: No further questions, Your Honor.
15 THE COURT: Thank you.
16 Mr. Brooker.
17 MR. BROOKER: Thank you, Your Honor.
18 * * *
19 VOIR DIRE EXAMINATION BY MR. BROOKER
20 BY MR. BROOKER:
21 Q. I'm sorry. Could I get your name again, sir.
22 A. Rayford Lewis Ervin, Jr.
23 Q. Mr. Ervin, what was your title at that time?
24 A. At that time I was the sergeant. I'm the
25 supervisor of that office that works in that area.

1 Q. So it would be appropriate for me to call you
2 Sergeant Ervin?
3 A. That's fine.
4 Q. Thank you, sir.
5 Sergeant Ervin, were you with Detective
6 Grimsley -- excuse me. Were you with Detective Todd
7 when Detective Todd received a call from Detective
8 Grimsley?
9 A. No, sir. I was in a separate vehicle. I believe
10 Officer Holland was with Officer Todd.
11 Q. They were in the same vehicle?
12 A. Yes, sir.
13 Q. In course -- how were you notified to come out to
14 that location?
15 A. Officer Todd advised me, advised myself and
16 Officer Atwell, that we needed to head towards 105 Ben
17 Casey. They had received information from Officer
18 Grimsley from CMPD that they were following Ms. Gales
19 around, watching her meeting with people.
20 She had came into York County and was reckless
21 driving and he directed us to that area.
22 Q. Did he communicate with you and Atwell through
23 radio communication?
24 A. I believe it was.
25 Q. Was radio communication recorded?

1 A. I don't think our channel was on, because we have
2 secured channels.

3 Q. In course, when you received your communication
4 from Todd, did you head to the location?

5 A. Yes.

6 Q. You headed to that location that he advised you?

7 A. Yes, sir.

8 Q. Did you arrive before Todd and Holland, or did
9 you arrive after them?

10 A. I think Holland and Todd arrived first. Then I
11 think myself and Officer Atwell arrived a tad later.
12 Maybe -- I would say five minutes later.

13 Q. When you first got there, what did you observe?

14 A. I was sitting in the parking lot. CMPD advised
15 that they had eyes on the car. We watched her go into
16 a, I believe, a dentist's office. We were sitting in
17 the area. Then everybody advised us that she had come
18 out of the dentist's office.

19 Q. What did you observe when she came out of the
20 dentist's office?

21 A. She was carrying a white bag, which I think is
22 what my dentist office gives you when you go to the
23 dentist. I know they always give them to everyone. She
24 walked towards her car.

25 Q. Was she stopped at some point in time by Todd and

1 Holland?

2 A. Yes, sir.

3 Q. In course, were you close by when she was stopped
4 by Todd and Holland?

5 A. I believe I arrived there maybe 30 seconds to a
6 minute later. I was sitting, like, a couple of parking
7 lots back.

8 Q. You were sitting a couple parking lots back?

9 A. Yes, sir.

10 Q. So when you pulled up, they had already engaged
11 Ms. Gales?

12 A. Yes, sir.

13 Q. So I'm assuming you were not privy to that
14 conversation they had with Ms. Gales?

15 A. They were having a conversation with her. By the
16 time I there, Ms. Gales was standing at the back of her
17 car in front of Officer Todd's car. I just walked up
18 and struck up a normal conversation.

19 Q. About how long did -- when you arrived, about how
20 long was it before the dog was taken out after you
21 arrived?

22 A. Are you talking about making contact with her or
23 arrived and conducted surveillance?

24 Q. I'm trying to figure out, when you pulled -- I'm
25 sorry. Let me ask you this question. Let me rephrase

1 the question.

2 From the time in which Todd and Holland made
3 contact with Ms. Gales to the time in which Todd then
4 pulled his dog out, about how much time elapsed?

5 A. Approximately, maybe two minutes.

6 Q. In course, I think you said when you pulled up,
7 Ms. Gales was at the back. Was it her car or was it the
8 detective's car?

9 A. I think she was standing in front of Officer
10 Todd's car, but it was kind of at the back of her car.

11 Q. At the back of her car, in front of Todd's car.
12 In course, who was standing with her? Was anyone
13 standing with her?

14 A. At that time -- I'm not sure who was standing
15 with her. I know there was officers standing there.

16 Q. Was it Atwell?

17 A. No, sir. Atwell, he showed back up.

18 Q. Was there any other officer there?

19 A. It was myself, Officer Todd, Officer Holland, and
20 Officer Atwell.

21 Q. If you and Atwell had not showed up, it would
22 have had to be Todd or Holland that was standing with
23 Ms. Gales; is that correct?

24 A. That's correct.

25 Q. One of them was standing with Ms. Gales?

1 A. Yes.

2 Q. In course, what did you observe then?

3 A. At that time Officer Todd went back and got his
4 K-9 out, MJ, who is trained and certified in detecting
5 narcotic drugs. He started going around the car with
6 the dog. When he got on the passenger's side, the dog
7 alerted.

8 Q. I don't think you know this, but I'm going to ask
9 you. I'm not going to ask you because you were not
10 there when Holland and Todd initially encountered
11 Ms. Gales.

12 I think you said you watched the dog as Todd ran
13 the dog around the car.

14 A. Yes, sir. I was there at that time standing with
15 Ms. Gales.

16 Q. Are you a dog handler?

17 A. No, sir.

18 Q. Any training whatsoever?

19 A. No, sir.

20 Q. When you got there, did you read Ms. Gales her
21 rights?

22 A. No, sir. Officer Atwell did.

23 Q. Was he reading -- he was there when Atwell read
24 the rights?

25 A. Yes, sir.

1 Q. You said Atwell arrived shortly after you did?
2 A. Maybe 30 seconds behind me. It wasn't long.
3 Q. Todd was already in the process of running a dog
4 around the car when Atwell arrived; is that correct?
5 A. Yes, sir.
6 Q. Let me ask you this question: Was Ms. Gales free
7 to walk away from that encounter?
8 A. No, sir.
9 Q. She didn't have an option? If she had said, see
10 you later and started walking away, would you have
11 stopped her?
12 A. Yes, sir.
13 Q. Was she in handcuffs at that time?
14 A. No, sir.
15 Q. Just someone was standing with her watching?
16 A. Correct.
17 Q. I think you testified previously -- I don't know
18 whether or not this is from your personal observation.
19 I think you testified previously that she did not give
20 consent to search her car?
21 A. Yes, sir.
22 Q. She didn't want to have car searched?
23 A. No, sir.
24 Q. Were you wearing a bodycam?
25 A. No, sir.

1 Q. Was Atwell wearing a bodycam?
2 A. No, sir.
3 Q. The car that you were driving, was that an
4 undercover car?
5 A. Yes, sir.
6 Q. Had lights in it?
7 A. Yes, sir.
8 Q. Has a camera in it?
9 A. No, sir.
10 Q. What about the car driven by Atwater -- I
11apologize, Atwell. Did his car have lights in it?
12 A. Yes, sir.
13 Q. Did it have video equipment in it?
14 A. No, sir.
15 Q. Did he have a bodycam?
16 A. No, sir.
17 Q. You are the supervising agent. I think you said
18you are the supervising agent with the drug unit; is
19that correct?
20 A. Yes, sir.
21 Q. Do you-all have a bodycam policy?
22 A. Our bodycam policy is we use it mostly when we
23are doing buy-busts or take-downs or search warrants.
24 Q. What is your policy? I know you said this is
25when you use it the most. I'm asking: What is your

1 policy?

2 A. We don't have to carry it all the time, No, sir.

3 Q. When did you have to wear it?

4 A. When we do search warrants or what we call

5 buy-busts or take-downs.

6 MR. BROOKER: If you can indulge me just a

7 second, Your Honor.

8 I don't have any further questions, Your Honor.

9 THE COURT: Any redirect?

10 MR. PORTER: No, sir, Your Honor.

11 THE COURT: Officer, you may step down. This is

12 a good place for us to stop for lunch. Be back at 2:00.

13 (A luncheon recess transpired.)

14 (Whereupon, the following proceedings were

15 held in open court. The defendant was

16 present with her attorney, along with

17 counsel for the State.)

18 THE COURT: Is the State ready?

19 MR. PORTER: Yes, Your Honor.

20 THE COURT: Is the defense ready?

21 MR. BROOKER: Yes, sir.

22 THE COURT: Solicitor, call your next witness.

23 MR. PORTER: Thank you, Your Honor. State calls

24 Investigator Ray Atwell.

25 THE BAILIFF: I'll go. I apologize. He's with

1 the jury.

2 * * *

3 EDWARD RAY ATWELL, JR.,
4 called as a witness by and on behalf of
5 the State to testify, being first duly
6 sworn was examined and testified as follows:

7 * * *

8 THE COURT: Solicitor.

9 MR. PORTER: Thank you, Your Honor.

10 * * *

11 VOIR DIRE EXAMINATION BY MR. PORTER

12 BY MR. PORTER:

13 Q. Good afternoon, sir. Would you please state your
14 name for the record.

15 A. Edward Ray Atwell, Jr.

16 Q. Where are you presently employed?

17 A. Employed with York City Police Department. I am
18 attached to the York County Drug Unit.

19 Q. What do you do for the drug unit?

20 A. Drug investigations, et cetera.

21 Q. How long have you worked in that role?

22 A. Since February of 2016.

23 Q. Do you have any prior law enforcement experience?

24 A. Yes, sir. I started my law enforcement career in
25 Chester Sheriff's Office in '03, at the detention

1 center. Then I moved to Chester City Police Department
2 in '05. Back to the Sheriff's Office on the road in
3 '08. Then I came to the Fort Mill Police Department in
4 2010 in January.

5 Q. Were you present when investigators initially
6 approached Ramona Gales in Fort Mill on January 31,
7 2018?

8 A. Yes, sir.

9 Q. Do you see her seated here in the courtroom?

10 A. I do.

11 Q. Where is she seated?

12 A. Right there (indicating).

13 Q. What was your role in that interaction?

14 A. Initially, I was sitting on the outer perimeter
15 in case she decided to run. I was beyond the outer
16 perimeter, hoping that she would run in my direction.
17 If she would have run, she was being approached by a
18 bunch of investigators.

19 Q. Did she?

20 A. No. She did not.

21 Q. Did you approach her at any point?

22 A. I did. When I got up to the parking lot where
23 Ms. Gales was, I read her her Miranda Rights.

24 Q. Showing you what's been marked for identification
25 as Court's Exhibit 3, could you please tell The Court

1 what that is.

2 A. That is a photocopy of my Miranda card and also a
3 photocopy of Ms. Gales' general ID card, driver's
4 license.

5 Q. Did you obtain that identification from her?

6 A. I did.

7 Q. Did you make that scanned copy?

8 A. I did.

9 Q. Is that a true and accurate depiction of the
10 scan?

11 A. Yes, sir.

12 Q. Did you make the notes that are contained on that
13 scan?

14 A. I did.

15 MR. PORTER: Your Honor, I would move to enter
16 this as Court's Exhibit 3 for purposes of this hearing.

17 THE COURT: Any objection?

18 MR. BROOKER: No objection, Your Honor.

19 THE COURT: Court's Exhibit 3 is admitted as an
20 exhibit for this hearing.

21 (COURT EXH. 3, Photocopy of Miranda Card and
22 driver's license, was entered into evidence.)

23 BY MR. PORTER:

24 Q. Did you read the Miranda Rights off of that card?

25 A. Yes, sir.

1 Q. Could you please read it into the record.

2 A. Yes, sir. You have the right to remain silent.

3 Anything you say can and will be used against you in a

4 court of law.

5 You have the right to have an attorney present.

6 If you cannot afford an attorney, one will be appointed

7 to you before any questioning.

8 If you desire, you can decide at any time to

9 exercise these rights and not answer any questions or

10 make any statements.

11 Q. Did she appear to understand -- did you read that

12 to her?

13 A. I did.

14 Q. When did you do that?

15 A. I did it on January 31, 2018 at approximately

16 4:26 p.m.

17 Q. Did she appear to understand what you had read to

18 her?

19 A. Yes, sir.

20 Q. Did she invoke any of her rights after being read

21 those rights?

22 A. I asked her if she understood her rights. She

23 said, yes. After that I had no more questioning that I

24 asked of Ms. Gales.

25 Q. Did you observe her to have any mental or

1 physical disabilities that would impair her ability to
2 understand what you told her?

3 A. No, sir.

4 Q. Did she appear to have any educational problems,
5 or did she ask any questions or follow-up about those
6 things?

7 A. No, sir.

8 Q. Did she appear to be intoxicated in any way that
9 would have impaired her ability to understand?

10 A. No, sir.

11 Q. Did you ask her any questions after that?

12 A. I did not. I may have -- I did transport
13 Ms. Gales to the Fort Mill Police Department where I may
14 have done the booking sheet on her. At that time, I
15 would have asked her name, date of birth, stuff like
16 that, to fill in the booking sheet.

17 Q. Was that your total involvement in this case?
18 Reading Miranda rights?

19 A. And transportation.

20 MR. PORTER: No further questions, Your Honor.

21 THE COURT: Cross-examination.

22 MR. BROOKER: Just briefly, Your Honor.

23 * * *

24 VOIR DIRE EXAMINATION BY MR. BROOKER

25 BY MR. BROOKER:

1 Q. Investigator Atwell, you were not with
2 Investigator Todd when he had -- when he had received
3 this phone call from Investigator Grimsley; is that
4 correct?
5 A. Correct.
6 Q. So you can't testify as to what the basis of that
7 contact was; is that correct?
8 A. Correct.
9 Q. In course, I think you said that you were on the
10 outer perimeter?
11 A. Yes, sir.
12 Q. In course, at some point in time after Ms. Gales
13 was approached by Investigator Todd, then, in course,
14 you then joined the rest of them at her vehicle?
15 A. Yes, sir. In the general area. I never went to
16 her vehicle, per se. Where her vehicle was, I would
17 have been in the parking lot toward the rear of the
18 vehicle, behind our patrol vehicles.
19 Q. Then, in course, you arrived there. In course,
20 Ms. Gales was standing there with officers?
21 A. Yes.
22 Q. In course, was Ms. Gales free to leave at any
23 point in time?
24 A. Once I got up to that general area, no, sir. She
25 was being detained.

1 Q. She was not free to leave?

2 A. Correct.

3 Q. In course, I think what's been entered into the

4 record is that same exhibit 3. Court's Exhibit 3?

5 MR. PORTER: Yes, sir.

6 BY MR. BROOKER:

7 Q. Court's Exhibit 3, in course, that is Gales'

8 North Carolina's driver's license and, in course, her

9 Miranda warning card; is that correct?

10 A. Yes, sir.

11 Q. Did you have a copy of this on scene, or did you

12 make a copy of this on scene?

13 A. I made this copy once I got back to the Fort Mill

14 Police Department where our office is. As far as the

15 card goes, I carry it in my wallet at all times.

16 Q. In course, the notes that are on Court's Exhibit

17 Number 3, that wasn't made contemporaneous with the

18 occurrence or the events; is that correct?

19 A. I'm sorry. I don't understand your question.

20 Q. I apologize. I'll rephrase it.

21 The handwritten notes on Court's Exhibit Number 3

22 that you wrote in there, R. Atwell advised Ramona Gales

23 of her Miranda warnings, that was not generated right

24 there. That was generated later on when you got back at

25 your station and had a chance to be able to make a copy

1 of these documents?

2 A. Yes, sir. I time stamped them. I looked at my
3 watch and made a note of what time I read her Miranda at
4 the scene, and then I transferred it onto this paper
5 after I made a photocopy.

6 Q. Does York County have a Miranda Waiver of Rights
7 form that you-all use when someone waives their rights?
8 Do you-all have those Waiver of Rights forms?

9 A. All I have is my card that is at our department,
10 the Fort Mill Police Department. There is a Miranda
11 Waiver form that they do have when they are doing, like,
12 an interview.

13 Q. There is a form?

14 A. There is one that I have seen at the Fort Mill
15 Police Department, yes, sir.

16 Q. My understanding is that on that form, there's a
17 place where she would read the rights. There's an
18 acknowledgment at the bottom where the person was
19 signing acknowledging that they was read those rights
20 and that they understood what those rights mean on that
21 form; is that correct?

22 A. I honestly cannot answer that. I've seen it
23 vaguely. I've never had to use one personally. I don't
24 know what form is used. I know that it says Waiver of
25 Rights at the top of it. I've never studied one

1 personally.

2 Q. That's fine. So when you read her her rights,
3 was that after the dog had been escorted around the car?

4 A. I could not tell you that. I'm not 100 percent
5 sure on that, sir.

6 Q. Do you have access to the files and, in course,
7 access to the reports of the officers in this case?

8 A. I was not a case agent. I did my part and gave
9 it to the case agent.

10 Q. I'm just asking you, because I don't know.
11 Did you have access to the reports of the
12 different officers in this case?

13 A. I did have access to the summaries, what you are
14 holding, from all of us and the investigators that were
15 involved in the case.

16 Q. Did you ever see a report that was prepared by
17 Detective Grimsley?

18 A. No, sir.

19 Q. Your testimony is, just to make it clear and then
20 I'm going to move on. You don't know whether or not you
21 read her her rights before or after the dog was escorted
22 around the car?

23 A. Correct. I read her her rights, and then I had
24 to go fetch to my car. I was instructed to go get my
25 car to transport her. I initially walked up from where

1 the car was parked where I was set up on the outer
2 perimeter.

3 Q. Did you witness the dog being escorted around the
4 car?

5 A. I don't recall. I seen the dog out, but I cannot
6 testify that I actually personally watched the K-9 walk
7 around the vehicle at the time.

8 Q. The same question: Did you have on a bodycam
9 that day?

10 A. No, sir, I did not.

11 Q. Did you vehicle have a recording device in it? A
12 camera?

13 A. No, sir.

14 Q. Did you prepare an incident report based upon
15 what you observed at the scene?

16 A. No, sir.

17 Q. You didn't prepare a report memorializing the
18 facts that you observed that day at the scene?

19 A. No, sir. I was not the case agent. Like I said,
20 the only thing I did was the Miranda reading and the
21 transportation of Ms. Gales to the Fort Mill Police
22 Department. I may or may not have actually done the
23 booking sheet. If I seen the booking sheet, I would be
24 able to tell you if I actually filled that out.

25 MR. BROOKER: Indulge me just a second, Your

1 Honor. I may be done.

2 THE COURT: All right.

3 MR. BROOKER: No further questions, Your Honor.

4 THE COURT: Any redirect?

5 MR. PORTER: No, sir, Your Honor.

6 THE COURT: Officer, you may step down.

7 (Whereupon, the witness exited the witness stand.)

8 THE COURT: Call your next witness.

9 MR. PORTER: State calls Investigator Josh Todd.

10 * * *

11 JOSHUA TODD,

12 called as a witness by and on behalf of

13 the State to testify, being first duly

14 sworn was examined and testified as follows:

15 * * *

16 VOIR DIRE EXAMINATION BY MR. PORTER

17 BY MR. PORTER:

18 Q. Good afternoon, sir. Would you please state your

19 name for the record.

20 A. Josh Todd.

21 Q. What's your present occupation?

22 A. I work for the Fort Mill Police Department. I am

23 currently assigned to the York County

24 Multi-Jurisdictional Drug Enforcement Unit.

25 Q. How long have you worked in that role?

1 A. Almost eight years.

2 Q. What are your duties in that position?

3 A. To investigate narcotic-related crimes.

4 Q. Did you have any training in narcotic
5 investigation, drug enforcement?

6 A. I do. I have done several different classes
7 ranging anywhere from hotel interdiction to trafficking
8 interdiction to undercover buys to working CIs.

9 Q. Working CIs, that would be your actual work
10 experience; is that correct?

11 A. Yes. That's primarily what we do.

12 Q. When you say confidential informant, what does
13 that mean?

14 A. Personally utilize a person who goes out and buys
15 narcotics under our control.

16 Q. Have you arranged undercover buys using
17 confidential informants to purchase narcotics?

18 A. Yes, sir.

19 Q. Do you recall receiving a phone call from CMPD
20 regarding Ramona Gales on January 31, 2018?

21 A. Yes.

22 Q. Who made that phone call?

23 A. Grimsley from CMPD.

24 Q. What information did you receive from Detective
25 Grimsley?

1 A. I don't recall exactly everything that was said,
2 but I do remember they advised me what they observed in
3 Charlotte and what they observed down here in South
4 Carolina, as far as what they believed to be
5 hand-to-hand drug transactions.

6 Q. What did you do when you received that phone
7 call?

8 A. Myself and Investigator Holland got in my car and
9 drove to 105 Ben Casey.

10 Q. Is that within York County?

11 A. It is.

12 Q. Within your jurisdiction?

13 A. Yes.

14 Q. Were you able to locate the suspect at any time?

15 A. Yes.

16 Q. Do you see her seated here in the courtroom
17 today?

18 A. I do.

19 Q. Where is she seated?

20 A. At the defense table.

21 Q. When you first arrived, what did you do?

22 A. Myself -- since the CMPD officers already had
23 visual on her, myself and investigators kind of
24 positioned ourselves behind another building in the
25 area.

1 Q. Did you observe her leave the business there at
2 any time?

3 A. I did not visually see her walk out. I was told
4 when she was walking out.

5 Q. Were you able to locate her as she walked out of
6 the business?

7 A. Yes.

8 Q. What did you do when you saw her?

9 A. Myself and Investigator Holland approached her
10 and asked her about the previous drug transaction, what
11 they thought was a drug transaction. Then we ended up
12 asking her for consent to search her vehicle, which she
13 denied.

14 Q. What did you do after she denied consent to
15 search?

16 A. At that point I put on my vest with my body
17 camera on it, deployed my K-9, and I ran my K-9 around
18 the people.

19 Q. Is that a requirement to run your body camera
20 while you're doing a K-9 search?

21 A. It is per my Fort Mill bodycam policy.

22 Q. Speaking of your K-9, how long have you worked as
23 a K-9 handler?

24 A. Approximately four years.

25 Q. On January 31, 2018, is it fair to say two years

1 as a K-9 handler, approximately?

2 A. About then, yes, sir.

3 Q. How long has MJ been in service as a drug

4 detection K-9?

5 A. Approximately four years.

6 Q. Were you actually trained on MJ as a K-9 handler?

7 A. I was trained to handle her, yes.

8 Q. That specific dog?

9 A. Yes.

10 Q. Where does MJ live while not in service?

11 A. At my house.

12 Q. How old is she?

13 A. She will be six in June.

14 Q. What functions is she trained for?

15 A. To detect the odor of narcotics.

16 Q. What specific narcotics?

17 A. Marijuana, heroin, cocaine, and methamphetamine.

18 Q. What training had you and MJ -- let's go to MJ

19 specifically. What training had MJ received prior to

20 you being assigned to her?

21 A. She was trained by Custom Canine Unlimited prior

22 to me. Then I spent three weeks training with her at

23 Custom Canine Unlimited.

24 Q. Approximately how many hours would that have

25 been?

1 A. Approximately 120, I believe.

2 Q. She had already been trained by Custom Canine,
3 and you learned how to operate her?

4 A. Yes.

5 Q. The 120 hours, could you just briefly summarize
6 what all you went through during that training?

7 A. The trainers would set out items. There are
8 different odors of the four odors of dope. Basically,
9 every single day that is about what we did.

10 Q. Did you receive and/or MJ receive any
11 certifications from Custom Canine about drug detection?

12 A. Yes.

13 Q. What is that?

14 A. Her narcotics certification.

15 Q. Prior to January 31, 2018, approximately how many
16 times had you trained with MJ -- let me restart.

17 Do you regularly train with MJ to keep her skills
18 fresh?

19 A. Yes. We try to train at least eight hours a
20 month.

21 Q. What does that entail?

22 A. There's four total narcotic dogs that we have in
23 the county. We usually all try to train together. We
24 will take turns hiding the different odors and running
25 our dog on the odors, so we don't always know where the

1 hides are at.

2 Q. So approximately one out of every four times you

3 know where the hides are?

4 A. Yes.

5 Q. Three out of four times, you don't?

6 A. Yes.

7 Q. Approximately how many trainings had you done

8 with MJ prior to January 31, 2018?

9 A. Probably around 60, 65, probably.

10 Q. Did you observe her to be reliable in the

11 detection of narcotics during this training sessions?

12 A. Yes.

13 Q. How many times had she been deployed in the field

14 to do free-air sniffs prior to January 31, 2018?

15 A. Somewhere around 50.

16 Q. Did you find her to be reliable in detecting

17 narcotics during all of those interactions?

18 A. I did.

19 Q. At some point during your field training

20 experience, did she ever alert to a car where no

21 narcotics were found?

22 A. I don't know prior to that. I would have to look

23 at my training records to know if there was one prior to

24 that.

25 Q. Have you experienced situations where she alerted

1 but there was another explanation as to why there was an
2 odor of narcotics in the vehicle?

3 A. Yes.

4 Q. During your training sessions, what narcotics do
5 you use to train her?

6 A. Heroin, marijuana, methamphetamine, cocaine, and
7 sometimes the guy that brings the dope will sometimes
8 utilize crack cocaine.

9 Q. Are you certified by any -- were you and MJ
10 certified by any other organizations in South Carolina?

11 A. Yes.

12 Q. What is that?

13 A. South Carolina K-9 Association.

14 Q. Is that a yearly certification?

15 A. It is.

16 Q. What is required for that certification?

17 A. The guy from the company comes up, and he hides
18 for the four owners of our dogs that they are imprinted
19 on. We have to find all the odors and call correctly
20 where they're at by watching our dog's behavior and all
21 of that.

22 Q. Have you received certification each year that
23 you had MJ as your K-9?

24 A. I have.

25 Q. Was your certification current January 31, 2018?

1 A. Yes.

2 Q. What breed is MJ?

3 A. She's a black lab.

4 Q. Is that a breed known for acute power of scent?

5 A. Yes.

6 Q. Are they commonly used for narcotics detection?

7 A. Yes.

8 Q. In fact, how many of the narcotics dogs in York
9 County are labs?

10 A. Three of four.

11 Q. When you're going through a search, what are you
12 looking for with MJ? What are you observing?

13 A. I'm looking for change in the dog's behavior, her
14 breathing, and then obviously her final alert, which is
15 sit. She will sit when she is alerting.

16 Q. When the dog sits for you, what does that
17 indicate to you?

18 A. That she smells an odor, one of the four drugs
19 that she is imprinted on.

20 MR. PORTER: Your Honor, we move to qualify
21 Investigator Todd as an expert in K-9 narcotics
22 investigation.

23 THE COURT: Mr. Brooker, you made a motion in
24 limine for him being qualified as an expert. What is
25 your position on that? Do you have any objection to

1 that?

2 MR. BROOKER: I'm sorry, Your Honor. He is being

3 qualified as an expert in K-9 what?

4 MR. PORTER: Narcotics investigation.

5 MR. BROOKER: K-9 narcotics investigation?

6 THE COURT: For purposes of this hearing.

7 MR. BROOKER: No objection, Your Honor.

8 THE COURT: I find he is qualified and can

9 testify in K-9 narcotics investigation as an expert.

10 Solicitor.

11 MR. PORTER: Thanks, Your Honor.

12 BY MR. PORTER:

13 Q. Did you perform a free-air sniff with MJ on

14 January 31, 2018?

15 A. Yes.

16 Q. Please explain to The Court what you did.

17 A. I got MJ out of the kennel of my vehicle. I took

18 her to the grassy area. I believe it was located in

19 front of her vehicle. What we call broke the dog, which

20 is let them use the bathroom. Once she did that, I took

21 her to the vehicle. I gave her the word, find it, which

22 tells her to find the odor of narcotics.

23 We walked around the car. We went across the

24 front, down the driver's side, across the back, and then

25 the passenger's side where she gave a final alert

1 between the rear passenger's and front passenger's door.

2 Q. Did you observe any behavioral changes prior to

3 the final alert to indicate?

4 A. I did. When she got right there in the area

5 before she gave the final alert, I noticed a change in

6 her breathing where she will breathe really heavy in and

7 out through her nose. Her tail will start wagging and

8 things like that when she gets excited, and then she sat

9 down.

10 Q. When she alerted, what did that indicate to you?

11 A. That she smelled the odor of one of the four

12 narcotics she's imprinted on.

13 Q. Were these events recorded on body camera?

14 A. They were.

15 Q. After you completed the sniff, did you receive

16 any information from Investigator Ervin?

17 A. I did. As I was putting my dog back in the

18 vehicle, Commander Ervin walked over to me and advised

19 me that Ms. Gales had stated to him that she had a

20 little bit of cocaine in the car.

21 Q. Showing you what's been marked for identification

22 as State's Exhibit 3.

23 Do you recognize that item?

24 A. I do.

25 Q. How do you recognize it?

1 A. By my initials.

2 Q. Have you previously reviewed the contents of this

3 disk?

4 A. I have.

5 Q. Are they a true and accurate depiction of the

6 events as they occurred that day?

7 A. They are.

8 MR. PORTER: Your Honor, we have marked this as

9 Court's Exhibit 3. If The Court would like to see the

10 body camera footage for purposes of this hearing, we

11 would like to publish it.

12 THE COURT: It's not necessary. We'll leave that

13 up to the defense whether he wants to utilize it.

14 MR. PORTER: Thank you, Your Honor.

15 MR. BROOKER: I don't have any objection, Your

16 Honor, with that being admitted for purposes of this

17 hearing.

18 THE COURT: Exhibit 3 is admitted as an exhibit

19 in this hearing.

20 MR. PORTER: I believe it would Court's 4. I

21 would make another copy of this.

22 THE COURT: What is it marked?

23 MR. PORTER: It's marked State's Exhibit 3. We

24 shouldn't send Court's exhibits back to the jury.

25 THE COURT: Well, we don't know. It may end up

1 being State's Exhibit 3 in evidence.

2 What's the mark on it? What does it say? State's

3 Exhibit what?

4 MR. PORTER: 3.

5 THE COURT: All right. Then what are we calling

6 the green markers?

7 MR. PORTER: This is Court's 3.

8 THE COURT: You want this to be Court's 4?

9 MR. PORTER: Yes, sir.

10 THE COURT: Let's put Court's 4 mark on it.

11 (COURT EXH. 4, DVD, was entered into evidence.)

12 MR. PORTER: Your Honor, the State does not

13 intend to publish it at this time. If the Court would

14 like --

15 THE COURT: That is fine.

16 BY MR. PORTER:

17 Q. Investigator Todd, based on the information you

18 received from Investigator Ervin and MJ's alert, what

19 did you do?

20 A. I searched the vehicle.

21 Q. Why did you do that?

22 A. Because of my dog giving a positive indication on

23 a vehicle and also Gales' statement.

24 Q. Did you believe that there was cocaine in the car

25 based on all of those circumstances from your training

1 and experience?

2 A. Yes.

3 Q. Did you actually find cocaine inside the vehicle?

4 A. Yes.

5 MR. PORTER: No further questions, Your Honor.

6 THE COURT: All right. Mr. Brooker.

7 MR. BROOKER: Thank you, Your Honor.

8 * * *

9 VOIR DIRE EXAMINATION BY MR. BROOKER

10 BY MR. BROOKER:

11 Q. Investigator Todd, let's start off by talking

12 about the telephone call that you received from

13 Investigator Grimsley.

14 When you received that call from Investigator

15 Grimsley, I think you testified that the information

16 that he gave you was, basically, that they saw what they

17 believed to be two drug transactions; one occurring in

18 North Carolina and, in course, the other occurring in

19 South Carolina; is that correct?

20 A. Yes.

21 Q. I know I'm paraphrasing. In course, if you can

22 remember, I would like for you to tell The Court

23 specifically. What did Grimsley tell you about the

24 general basis of it?

25 A. I couldn't tell you the basis of what exactly was

1 said. It was too long ago.

2 Q. Okay. All right. I think -- as a result of
3 that, did you-all make a determination that you-all
4 would conduct a tarry stop or do an investigative stop
5 on Ms. Gales when she exited the business that she was
6 at?

7 A. With the information I received from Investigator
8 Grimsley, yes. Myself and Investigator Holland made the
9 decision to get out with Ms. Gales and detain her.

10 Q. In course, did you approach her as she was coming
11 out to her vehicle?

12 A. I don't remember that. I want to say that she
13 was right at her driver's door when we walked up to the
14 vehicle, or she was right in that general area when we
15 approached her, yes.

16 Q. She was getting ready to get in her vehicle when
17 you-all stopped her?

18 A. Yes.

19 Q. In course, can you tell me the conversation,
20 specifically, to the best your recollection -- I know it
21 has been awhile.

22 To the best of your recollection, what was the
23 conversation between yourself and Holland and Ms. Gales?

24 A. As far as I can remember, we approached her and
25 asked her about the transactions that CMPD observed.

1 After that, I believe I was the one that asked her for
2 consent to search her vehicle. She denied. At that
3 point, I had no further conversation with her.

4 Q. In course, at that particular period of time you
5 made a determination that you were going to deploy your
6 dog MJ?

7 A. Yes.

8 Q. My understanding is that -- you testified that
9 you went back to your vehicle. In course, you got your
10 vest?

11 A. Yes, which contained my body camera.

12 Q. In course, what vehicle were you driving?

13 A. My department-issued vehicle.

14 Q. Was that an SUV?

15 A. It was.

16 Q. In course, my understanding is -- I don't know if
17 you remember from the videotape. It's my understanding
18 that the SUV was parked right behind Ms. Gales' vehicle,
19 kind of blocking it in; is that correct?

20 A. I don't know the exact position. I can't recall.
21 I would say, yes, it was behind it in some form or
22 fashion because she was pulled into a parking spot. I
23 had to be at some angle. I don't know exactly how.

24 Q. Was the purpose of parking right behind her to
25 prevent her from hopping in her car and fleeing?

1 A. I wouldn't say it was the purpose. I mean, like
2 I said, I just pulled up behind her to engage with her.
3 Q. Was she free to walk away?
4 A. No.
5 Q. She was not free to walk away?
6 A. No.
7 Q. You also said that you wore a bodycam pursuant to
8 your employer's policy. Tell me what that policy is.
9 A. I don't know exactly what it says word-for-word,
10 but in some form or fashion I have to utilize my body
11 camera when I'm deploying my K-9.
12 Q. In course, is the purpose of utilizing your
13 bodycam is to capture, you know, the actual, I guess,
14 dog sniff or dog search, that it's memorialized?
15 A. I don't know what the purpose of it is. I didn't
16 write -- I didn't write the policy, I guess. That's
17 what I am trying to say.
18 Q. I understand that. I am not trying to be rough
19 on you. I know you didn't write the policy. In course,
20 as a law enforcement officer, you have to know the
21 policy. In course, you have to follow the policy.
22 That's what I am asking you.
23 Do you know exactly what the policy is with
24 respect to the bodycam?
25 A. I don't know exactly word-for-word what it says.

1 I know that I have to wear my body camera when I deploy
2 my dog.

3 Q. Does it say anything within that policy about the
4 bodycam capturing the free-air sniff? Is the purpose of
5 that is so that the bodycam captures the free-air sniff?
6

7 A. I don't know if that language is in there or not.

8 Q. You went and put on your bodycam. In course,
9 when you went and put on your bodycam, I think you said
10 you got MJ out of the vehicle; is that correct?

11 A. Yes. I got her out of the kennel.

12 Q. Then, in course, you took her off aways. Is it
13 he or she?

14 A. She.

15 Q. So she could relieve herself; is that correct?

16 A. Correct.

17 Q. Then after that, you brought her back to the car
18 and ran her around the car?

19 A. Yes.

20 Q. Is that correct?

21 A. Yes.

22 Q. You testified that you have been with MJ, I
23 think, at that time -- how long had you been with MJ on
24 January 31, 2018?

25 A. Probably about two years.

1 Q. In course, were you the first drug handler to
2 handle MJ?
3 A. Yes.
4 Q. She came straight from the kennel where she was
5 trained. In course, you were the first handler to have
6 her?
7 A. As far as drug connection, yes. I don't know if
8 she was owned by someone prior to Custom Canine. I
9 don't know that.
10 Q. That's what I'm talking about. I'm sorry if I
11 didn't make myself clear. I'm talking about after she
12 left, after she was trained. And, in course, she was
13 in -- just put up for sale to be deployed into service.
14 Was York County the first purchaser of her from
15 the canine training facility?
16 A. To my knowledge, yes. That was the first.
17 Q. In course, it's my understanding -- you correct
18 me if I'm wrong. At these training facilities, in
19 course, what they do is they take these dogs and they
20 train these dogs to specifically detect certain drugs;
21 is that correct?
22 A. I don't train the dog. I couldn't go into how
23 they are trained or any of that. We are trained to
24 handle the dog.
25 Q. I'm not getting into that right now. I'm asking

1 you, that is where they learn -- they are trained to
2 detect drugs; is that correct?

3 A. At Custom Canine?

4 Q. Yeah.

5 A. Yes. That's where she learned, yes.

6 Q. That's where she learned her trade?

7 A. Yes.

8 Q. In course, also where she learns her sign
9 language. What I mean by sign language, for lack of a
10 better term, the dog has to have a way of communicating
11 when the dog has detected drugs to its handlers; is that
12 correct?

13 A. If you're referring to her positive alert, yes.

14 Q. Yes.

15 A. Yes.

16 Q. In course, I've had many cases before. When
17 those dogs come from the kennel, do those dogs come with
18 a manual or instructions as to, you know, the training,
19 as to the signs and everything like that?

20 A. Instruction book, like? I'm not sure what you're
21 asking.

22 Q. Does it come with an instruction book or a
23 manual, you know, that details this dog's training, what
24 he's trained on, what his signs are and all of that
25 stuff? Is there paperwork, regardless of what you call

1 it --

2 A. My certification, yes, sir.

3 Q. What do you call an owner's manual or instruction

4 manual? Does that dog come with paperwork that tells

5 the buyer, hey, this is what the dog is trained on?

6 This is what the dog's alert signs are, and all of that

7 information? Is there paperwork that comes with that

8 dog?

9 A. I would say, no, because anybody just can't get

10 my dog and work my dog. You have to be trained to

11 handle the dog. That is why we have 120 hours of

12 handler's training to learn to read my dog.

13 Q. There's no instructional paperwork?

14 THE COURT: He's answered that. Let's move on.

15 I think you have asked that question at least four or

16 five times. The answer is no. There is no

17 instructional manual or paperwork.

18 Move on to your next question.

19 MR. BROOKER: Thank you, Your Honor.

20 BY MR. BROOKER:

21 Q. You testified that you don't know how the dog is

22 trained; is that correct? You don't know the training

23 process; is that correct?

24 A. Yeah. I don't train the dog. I am trained to

25 handle the dog.

1 Q. Yes or no, sir. You don't know how the dog was
2 trained and what was the process; is that correct?

3 A. Yeah. I was not trained for that.

4 Q. If a dog is certified, you don't know what the
5 dog has to accomplish in order to get certified by the
6 kennel?

7 A. No.

8 Q. You don't know what the pass or fail rates are at
9 the kennel? If the answer is just no, just say no.

10 A. Pass or fail as far as what? Whether they passed
11 being certified within our department?

12 Q. Yes.

13 A. I don't know.

14 Q. The training program that the kennel used, is
15 that -- do you know whether or not that program -- I
16 already know the answer to this. I have to ask it for
17 purposes of the record.

18 Do you know whether or not that program that they
19 use to train this dog is a program certified by some
20 governmental entity or either some other bonafide
21 institution as it relates to training drug-sniffing
22 K-9s?

23 A. I don't know.

24 Q. So when you get the dog -- I think when you got
25 the dog, when MJ was paired to you, I think that your

1 testimony is that the same kennel -- what is the name of
2 that kennel again?

3 A. Custom Canines.

4 Q. That you went to that same kennel to be trained
5 to handle MJ; is that correct?

6 A. Yes. To handle her and to learn to read her
7 behavioral changes and all of that. Yes, sir.

8 Q. I'm assuming that MJ was trained to -- let me ask
9 you this question. I'm asking it for a specific reason.
10 Is there a difference between an indication and
11 alert? Have you ever heard those terms before?

12 A. I'm trained to be able to -- I can tell when my
13 dog is in an odor by the way she changes her breathing
14 and her behavior. When she gets as close as she can to
15 the odor, she gives her final alert, which is sit.

16 Q. At the kennel, do they train her to specifically
17 alert, to give a specific alert sign, whenever she
18 detects drugs?

19 A. Yes. She is trained to sit.

20 Q. In course, do you have any paperwork to show you
21 what that specific alert sign is?

22 A. Are you going back to the instruction manual?
23 No.

24 Q. Anything. It didn't have to be an instruction
25 manual. Is there paperwork that shows what her alert

1 sign is?

2 A. No.

3 Q. Now, your dog -- can anybody read your dog or
4 just you?

5 A. I would say just me.

6 Q. So if I were to get your dog, I couldn't take
7 your dog and run around the car and then interpret her
8 behavior and then try to determine what she is
9 communicating?

10 A. I don't know if you have ever been a K-9 handler.
11 I don't know if I can answer that.

12 Q. No, sir, I have not.

13 A. Then I would say no.

14 Q. Is it also true that sometimes dogs can give
15 variations of alerts or indications, and sometimes it
16 can slightly change? That is the purpose of why there
17 has to be a close relationship between the dog and the
18 handler, so the dog handler can interpret that specific
19 behavior. That may not be absolutely consistent every
20 time; is that correct?

21 A. I was trained to handle this dog. I can't speak
22 for other dogs.

23 Q. Just answer about MJ. Is that true for MJ?

24 A. Is what true? Repeat the question, I'm sorry.

25 Q. Does MJ -- is her behavior -- whenever she

1 alerts, is it always absolutely the same, or can there
2 be variations in her behavior when she gives an
3 indication or alert?

4 A. There can be. Not every time she'll show the
5 same exact signs. Every situation is different that she
6 gets deployed into.

7 Q. She doesn't sit every time then?

8 A. Yes. Her main alert, she does. That's speaking
9 as far as her behavioral changes.

10 Q. Did she sit on that day?

11 A. She did.

12 Q. Certification records. Do you have any of her
13 certification records with you? Just yes or no.

14 A. With me here? No, sir.

15 Q. Do you have any of her training records with you?

16 A. Not up here, no.

17 Q. I'm almost finished, I promise. I know that you
18 testified previously there may have been times -- first
19 of all, what is a false positive?

20 A. What are you referring to?

21 Q. What does it mean when a dog gives a false
22 positive?

23 A. I don't know. Where are you getting that from?

24 Q. Let me ask you this: Instead of using the
25 term -- let me ask it this way.

1 What do you call it when a dog indicates or
2 alerts that there is a drugs there but then you search
3 and there isn't any? What do you call it?

4 A. When she gives me an alert, she's not indicating
5 that there are drugs there. She is indicating that the
6 odor of narcotics are there.

7 Q. That's what I said, indicated or alerted, either
8 one. What do you call it when she indicates or alerts
9 that there's drugs there and then you search and there
10 isn't any?

11 A. A positive alert.

12 Q. Has she ever given a positive alert and there was
13 no drugs there?

14 A. Yes.

15 Q. It's hard to answer this question. You said you
16 don't know what a false positive is.

17 THE COURT: I believe he's testified that the dog
18 alerts on the odor.

19 MR. BROOKER: Yes, sir.

20 THE COURT: Go ahead. Ask your next question.

21 BY MR. BROOKER:

22 Q. Next question I'm trying to ask you is, what I'm
23 trying to figure out is, what is her accuracy rate or
24 percentage?

25 A. I don't know off the top of my head. I have to

1 look at my records and all of that.

2 Q. I'll ask twofold. I'll split it up. Do you know
3 what her accuracy rate is in the field?

4 A. Off the top of my head, no, sir.

5 Q. Do you know what her accuracy rate is in a
6 controlled drug training?

7 A. Off the top of my head, no, sir.

8 MR. BROOKER: If you can indulge me just a
9 second, Your Honor.

10 THE COURT: Take your time.

11 BY MR. BROOKER:

12 Q. Custom Canine -- if you don't know the answer to
13 this, just say no. Do you know whether or not Custom
14 Canine is a bonafide organization certified to train
15 dogs?

16 A. I don't.

17 Q. Do you know what, if any, governmental or either
18 private or certifications or associations they may have?

19 A. I don't.

20 MR. BROOKER: I don't have any further questions,
21 Your Honor.

22 THE COURT: Any redirect?

23 MR. PORTER: Your Honor, briefly.

24 There is one still on the video that I would like
25 to play for The Court. May I publish Court's 4?

1 THE COURT: Yes, you may.

2 MR. PORTER: Your Honor, will it be sufficient to

3 display in front of you?

4 THE COURT: I can see it right here. If you get

5 it up where everybody is entitled to see what I'm

6 looking at.

7 (Video playing.)

8 THE COURT: Are you ready to go?

9 MR. PORTER: Not yet, Your Honor.

10 * * *

11 VOIR DIRE EXAMINATION BY MR. PORTER

12 BY MR. PORTER:

13 Q. Investigator Todd, was that after she had been

14 read her Miranda Rights?

15 A. I believe so.

16 THE COURT: Lawyers approach.

17 (Whereupon, a bench conference was held off the

18 record and out of the presence of the court reporter.)

19 THE COURT: Mr. Porter.

20 MR. PORTER: Thank you, Your Honor.

21 BY MR. PORTER:

22 Q. Investigator Todd, I'm showing you an item. Do

23 you recognize what that binder is?

24 A. I do.

25 Q. How do you recognize it?

1 A. It is my K-9's training records.

2 Q. Have you been through them prior to today?

3 A. Yes.

4 Q. Is there a tally sheet of the total K-9 searches

5 that MJ has performed with you in that folder?

6 A. Yes.

7 Q. Did you go over that tally sheet?

8 A. Yes.

9 Q. Are your handwritten notes on there about the

10 various tallies on that first page?

11 A. Yes.

12 Q. On the first column, approximately how many

13 training hides has she done?

14 A. I believe it says 510.

15 Q. Is that your handwriting?

16 A. It is.

17 Q. How many of those hides did she find?

18 A. 510.

19 Q. And the field hits. How many field hits did she

20 have?

21 A 107.

22 Q. And how many times had she alerted where there

23 were no drugs found inside?

24 A. Ten.

25 Q. In the majority of those situations, was there

1 another explanation as to why there was the odor of
2 narcotics present?
3 A. There was.
4 Q. How many times had she not alerted when she was
5 deployed in the field?
6 A. Not many.
7 MR. PORTER: No further questions, Your Honor.
8 THE COURT: Any recross?
9 MR. BROOKER: I'll be very brief, Your Honor, in
10 reference to the training records.
11 * * *
12 VOIR DIRE EXAMINATION BY MR. BROOKER
13 BY MR. BROOKER:
14 Q. The drug search involved with Ms. Gales occurred
15 on January 31, 2018; is that correct?
16 A. Yes.
17 Q. And then, in course, in those training records --
18 this was on January 31, 2018; is that correct?
19 A. Yes.
20 Q. I think, according to the training records -- I
21 don't know whether or not --
22 A. I don't have special reference.
23 Q. But you have those training records in front of
24 you for reference?
25 A. Yes. Which one are you referring to?

1 Q. The next day, on February 1, 2018. I can show it
2 to you to just make it a little bit quicker. I don't
3 want to delay any longer than we have to.

4 A. You said February 1st?

5 Q. February 1, 2019.

6 A. On the performance sheet?

7 Q. That's correct. In course, from that record,
8 which was the very next day after that Ramona Gales'
9 search, MJ was used to approach an F150; is that
10 correct?

11 A. Yes.

12 Q. She was forced to do a free-air sniff on a F150
13 vehicle; is that correct?

14 A. Yes.

15 Q. And, in course, she alerted. And I think it says
16 that there was change in breathing and behavior. Then,
17 in course, she gave a positive alert; is that correct?

18 A. She showed a change in her breathing and
19 behavior. Then she put her nose to the ground and gave
20 a positive alert.

21 Q. To narcotics?

22 A. To the odor of narcotics.

23 Q. In course, there was a search of that vehicle but
24 no narcotics was found. The only thing that was found
25 was the syringe; is that correct?

1 A. Yes, sir.

2 Q. In course, that used syringe, was it tested for
3 narcotics?

4 A. I don't believe so. I don't know.

5 Q. You don't know whether or not that was a syringe
6 for drugs or -- do you know whether or not that was a
7 syringe for a diabetic who was using it to take
8 legitimate medicine?

9 A. I don't know.

10 Q. In course, no known drugs was found; is that
11 correct?

12 A. Just the syringe.

13 Q. In course, on February 9, 2018 -- I'm not going
14 to go through all of these. Just a couple. I'll be
15 finished shortly.

16 February 9, 2018 she was deployed to search, it
17 looks like, a South Carolina welcome center; is that
18 correct?

19 A. Yes.

20 Q. In course, MJ searched a Mercedes; is that
21 correct?

22 A. Yes.

23 Q. In course, she gave a positive alert to the odor
24 of drugs or narcotics; is that correct?

25 A. Yes.

1 Q. And, in course, I think the vehicle was searched
2 and, in course, there was no narcotics found; is that
3 correct?

4 A. That's correct.

5 Q. I think there's an indication that the driver
6 said that her brother smokes marijuana and sometimes
7 drives the vehicle; is that correct?

8 A. Investigators noted the driver lets his brother
9 use his vehicle and stated that his brother drives and
10 does smoke marijuana.

11 Q. No drugs was found; is that correct?

12 A. That's correct.

13 Q. Let me ask you a question. This is very simple.
14 Can a drug dog make a distinction between the actual
15 presence of drugs versus just simply a residual smell
16 from a day ago or two days ago or five days ago?

17 Can the drug dog make a distinction between that?

18 A. No, she's trained to detect the odor of
19 narcotics.

20 Q. Was your answer no?

21 A. She can only detect the odor of narcotics.

22 Q. She detects the odor, but she cannot specifically
23 identify the presence?

24 A. Correct.

25 Q. Just because she detects odors doesn't

1 necessarily mean the presence of drugs; is that correct?

2 A. Correct.

3 Q. In course -- I think this is going to be my last
4 line. In course, I'll move on. There's a couple more,
5 but I'm not going to go through all of these out of an
6 abundance of time.

7 MR. BROOKER: If you can indulge me for just a
8 second, Your Honor. I'm almost finished.

9 BY MR. BROOKER:

10 Q. In those two instances in which she had -- I know
11 you don't call it a false positive. That's just the
12 term I've used that's contained in the language of a
13 case that I read.

14 In those two instances, that's not the only time
15 in which she's actually detected or at least gave the
16 scent of drugs and you searched the car and there was no
17 drugs found; is that correct?

18 A. Yes.

19 Q. Those two instances occurred within -- I think
20 one was the very next day where she had a false
21 positive. Then, in course, the other one was within, I
22 think, a week or ten days. She had another false
23 positive from the search of Ms. Gales' vehicle; is that
24 correct?

25 A. No. She had positive alerts. Like I said, sir,

1 I don't use the term false positive.

2 Q. I'm sorry. Two positive alerts, but no drugs
3 found; is that correct?

4 A. Correct.

5 MR. BROOKER: Just a second, Your Honor. I think
6 I'm finished.

7 I don't have any further questions, Your Honor.

8 THE COURT: Thank you.

9 Investigator Todd, you can step down.

10 Any more witnesses?

11 (The witness exited the stand.)

12 MR. PORTER: No, sir, Your Honor.

13 THE COURT: Mr. Brooker, any witnesses as far as
14 the motion?

15 MR. BROOKER: I think just 30 seconds to speak
16 with her, Your Honor.

17 Your Honor, we have no witnesses.

18 THE COURT: Let me hear you on your motions.

19 MR. BROOKER: Thank you, Your Honor.

20 MR. PORTER: I was just standing to address you.

21 THE COURT: He's going to make his motion. When
22 he states the basis for his motion, then I'll be glad to
23 hear from the State.

24 MR. PORTER: Yes, sir.

25 MR. BROOKER: Thank you, Your Honor.

1 Your Honor, the first motion that we want to
2 address, Your Honor, is the Motion to Suppress based
3 upon the grounds that there was insufficient evidence in
4 which the State could reach -- the Government could
5 reach a conclusion that reasonable suspicion existed at
6 the time in which they conducted the tarry stop on
7 Ms. Gales as she was -- I think as Investigator Todd
8 testified, that she was just about to get in her car
9 when they stopped her.

10 I don't think that there was any question that
11 that was a tarry stop. In course, the factual question
12 is whether or not that Tarry stop was supported by
13 reasonable suspicion. In course, Your Honor, we passed
14 up, I think, this kind of brief. In course, that brief
15 has kind of a citation of what the law is on this
16 particular area. I want to go over all of it, because
17 you have that brief citing the law.

18 In course, the law under reasonable suspicion --
19 the law of reasonable suspicion is that in order for a
20 law enforcement officer to conduct a tarry stop or
21 investigatory stop, an officer has to present evidence
22 or at least facts that support the existence of
23 reasonable suspicion.

24 In course, reasonable suspicion requires more
25 than a particularized -- requires a particularized or

1 objective basis that would lead a person to suspect
2 another of criminality.

3 In course, when reasonable suspicion is being
4 considered, the Court says that it is the totality of
5 the circumstances analysis, in which you have to look at
6 all the facts and circumstances, you know, that existed
7 at that time. But there is a limit on that. In course,
8 I want to make sure that the analysis is done.

9 For purposes of establishing a reasonable
10 suspicion, the Court looks at not the testimony of the
11 officers, all the other officers that were present or
12 involved, but the officer -- the Court has to look at
13 the testimony of the person who is actually exercising
14 reasonable suspicion.

15 In this particular situation, Todd was the
16 officer -- Investigator Todd was the officer that
17 exercised reasonable suspicion. So Todd.

18 So what the Judge has to determine is exactly
19 what information that Todd had at that time, what
20 information did he have at that time to support his
21 conclusion that reasonable suspicion existed to conduct
22 a tarry stop?

23 In course, his experience is relevant. In
24 course, the Court in State v. Taylor says that
25 nevertheless, even though an officer might be

1 experienced, a wealth of experience could not overcome a
2 complete absence of particularized fact.

3 In course, reasonable suspicion is measured in
4 objective terms by examining the totality of the
5 circumstances. As a result, a reasonable suspicion is a
6 highly fact-driven analysis.

7 In course, the analysis of reasonable suspicion
8 must take into account all the factors known to the
9 officer at the time. In course, factors consistent with
10 innocent travel can, when taken together, give rise to
11 reasonable suspicion. However, the articulated facts
12 together must serve to eliminate a substantial portion
13 of innocent travelers before the requirement of
14 reasonable suspicion can be satisfied.

15 That means that when the officer has taken a look
16 at this conduct, when the officer is looking at this
17 conduct and saying, this conduct justifies reasonable
18 suspicion, that conduct has to substantially eliminate
19 most innocent travelers.

20 If that conduct -- which they're alleging
21 constitutes reasonable suspicion -- is conduct that is
22 actually engaged in, you know, by a substantial portion
23 of the population, and it does not eliminate a
24 substantial --

25 THE COURT: I'm well aware of the law and read

1 your brief on the primary law. Let's talk about the
2 circumstances.

3 MR. BROOKER: Okay. Let's talk about the
4 circumstances of this case. In course, I'm going to
5 specifically limit this. I know that you have been
6 given a lot of information, Your Honor.

7 The relevant information is what Grimsley
8 communicated to Todd. I asked all of the officers from
9 Mecklenburg law enforcement whether or not they had any
10 contact with Todd, and they said, no. The only person
11 who communicated the facts to Todd was Grimsley.

12 And I asked Grimsley, what did he communicate to
13 Todd. Grimsley says that he communicated to Todd the
14 generic information that was given to him by Buehler.
15 In course, Buehler says he observed a white male that
16 approached -- this is the first stop, I think, at the
17 convenience store. He observed a white male that
18 approached Gales' car on the driver's side.

19 In course, he observed what appears to be a
20 transaction. In course, that's what he communicated to
21 Todd.

22 In course, I asked him with respect to the second
23 encounter that Gales had and that was at the dentist's
24 office. In course, he said pretty much the same thing;
25 that he communicated to Todd, you know, that a male got

1 out of a van and went to the driver's side. In course,
2 they had kind of a 30-second -- roughly in the
3 neighborhood of 30-second -- exchange with Gales. Then,
4 in course, he departs. In course, he said that it had
5 the indication of a drug transaction.

6 That information -- when I asked Todd what
7 information does he remember that was communicated to
8 him, in course, Todd said he specifically don't
9 remember. He was not able to testify to the specific
10 facts that he took into consideration in making this,
11 which is a fatal flaw.

12 Under the case law -- and the case law says that
13 when the Court goes through this analysis, the Court has
14 to require that the person make reasonable -- making
15 these tarry stops has to require that person to
16 specifically go through each and every factor that
17 person took into consideration to reach that conclusion.

18 In course, Todd is that person. Todd was not
19 able to testify to any specific fact. He said he didn't
20 recall. He said -- but he knew that there was a general
21 conversation about, you know, that they said that they
22 saw her engage in what they believed to be a drug
23 transaction on two occasions. Nothing more.

24 In course, I would also argue, Your Honor, that
25 if you look at the case law and you look at every case

1 that they do in this analysis, they look and take a look
2 at the factors to see whether or not there is factors
3 that would suggest, you know, that this was conduct that
4 might be sinister.

5 Sometimes one of the factors may be that it
6 occurred in a high crime area. Maybe they were in a
7 high crime area.

8 THE COURT: Let's stick with the circumstances of
9 this case. I'm well aware of the case law, instances of
10 suspicion and lack of reasonable suspicion. I'm
11 concerned about this case. As you stated earlier, the
12 Court's got to consider the totality of the
13 circumstances in this case. So let's talk about this
14 case.

15 MR. BROOKER: Certainly, Your Honor. Certainly,
16 Your Honor. So the information that Todd had at his
17 disposal when he made a determination to conduct a tarry
18 stop was that the previous -- that Grimsley said that
19 they saw what they believed to be drug transactions.
20 That occurred at two different locations.

21 In course, there are no particularized facts in
22 which they can point to that could suggest reasonable
23 suspicion. In course, the conduct that they allege and
24 the conduct that was testified to by Buehler -- the
25 Court is considering that conduct. That is conduct that

1 occurred every day.

2 Buehler said two things that was particularly
3 important during his testimony. He said, one is that
4 when he observed the transaction or the alleged
5 transaction that took place at the convenience store --
6 I asked him: Did you see hand-to-hand exchange? His
7 answer was, no.

8 I also asked him: Did you see any items being
9 exchanged? His answer was, no.

10 I asked him the same two questions for the
11 contact Ms. Gales had at the dentist's office. I asked:
12 Did you see a hand-to-hand exchange? A contact? He
13 said, no.

14 I asked him: Did you see any item in exchange,
15 and he said no.

16 I would ask the Court that -- how can he testify
17 or how can he reach a reasonable conclusion that a drug
18 transaction took place when he did not actually see a
19 transaction himself?

20 He saw two people together. They were together
21 for 30 minutes (sic). Thirty minutes is a long time.
22 Thirty minutes is enough time to say: Hey, how are you
23 doing? I'm on my way to the dentist's office. What are
24 you doing? I'm doing this. Good to see you. I got to
25 run. I got to go to my appointment, you know. You take

1 care.

2 Thirty minutes is sufficient enough time for two
3 people to have a generic conversation for every day.
4 They said both of these stops took about 30 seconds.
5 In course, I know Your Honor said that he, you know,
6 knows the law. But, in course, there's a particular
7 reference that one of the Courts says -- and after this
8 I'll sit down and shut up about this.

9 The Court says: An officer in the government
10 must do more than simply label the behavior as
11 suspicious to make it so. The government must also be
12 able to either articulate why a particular behavior is
13 suspicious or demonstrate, given the surrounding
14 circumstances, that the behavior is likely to be
15 indicative of some more sinister activity.

16 I also asked him, well, you know -- they said the
17 reason why they were conducting these surveillances is
18 they had gotten information from a confidential
19 informant that Ms. Gales was in the drug business, and,
20 in course, they were investigating that information.

21 I asked him: Well, did you have any specific
22 intelligence of her engaging in drug transaction? In
23 course, he says no. They were out just collecting
24 evidence.

25 So they didn't have any specific evidence that she

1 was engaged in a drug transaction. This was just a
2 generic gathering of evidence and surveillance.

3 In course, the conduct that they witnessed was
4 actually innocent conduct. In course, I don't think
5 that they can take this and spin this into something
6 sinister. I don't think that they can eliminate most of
7 the innocent population.

8 I can even say for myself that I have engaged in
9 that very same conduct in which Ms. Gales was accused
10 of. I have actually met friends, or family members
11 sometimes and clients, at the convenience stores and
12 various other places, you know, to simply pick up a
13 payment or simply to exchange documents.

14 That conduct occurs all over the United States at
15 truck stops, at convenience stores, at rest stops, at
16 grocery stores and parking lots, among innocent people
17 all across this country. They have not shown that that
18 conduct is something that would eliminate most innocent
19 travelers. It would not.

20 Now, they also indicated that she was driving
21 fast. In course, they said, well -- now I'm
22 anticipating they may say to the Court, Your Honor, that
23 is indicative of criminal behavior. Well, no, it's not.

24 The reason why it's not indicative of criminal
25 behavior is that they have to demonstrate that the way

1 she was driving and that the rate of speed that she was
2 driving was somehow motivated by the presence of law
3 enforcement. So she saw law enforcement, and all of a
4 sudden she says, well, boy. I got to get out of here,
5 so I'm going to drive real fast. So her conduct had to
6 be motivated by the presence of law enforcement as
7 opposed to her just simply trying to make an appointment
8 at the dentist's office.

9 There's nothing to suggest that the rate of speed
10 in which she was driving was something out of the
11 ordinary for her or that her rate of speed in which she
12 was driving was somehow motivated by her knowledge of
13 the presence of law enforcement.

14 In fact, this was surveillance. The whole
15 purpose of surveillance is that law enforcement not be
16 detected. So they are trying to observe her behavior
17 anonymously. There is no probable cause here, Your
18 Honor, equal to suspicion.

19 THE COURT: All right. Thank you.

20 Mr. Porter, do you wish to be heard?

21 MR. PORTER: Yes. Just briefly.

22 The State would like to cite State v. Burgess,
23 394 S.C. 407. It's a Fort Mill case, 2011. Your Honor
24 is clearly aware of that case. If I may approach.

25 In that case, the officer was in a high drug,

1 high crime area. They observed a hand extended. With
2 no prior knowledge of the defendant, he initiated a
3 reasonable suspicious stop based on his training and
4 experience and what he observed. The Court of Appeals
5 found that was sufficient.

6 In this case, based on the totality of the
7 circumstances, the Court at the moment is an objective
8 standard of what law enforcement had in their possession
9 at that time. Investigator Todd is entitled to rely on
10 statements of law enforcement that they had observed two
11 hand-to-hand drug transactions and that the defendant
12 was on bond for drug charges and they had received
13 information about her prior to that day.

14 In order to develop reasonable suspicion to have
15 a short interaction with her and in order to determine
16 if crime is afoot, that information was communicated to
17 Investigator Todd, that -- certainly, he was in a
18 possession of law enforcement globally; therefore, in
19 the objective standard of the Fourth Amendment law
20 enforcement had reasonable suspicion to interact with
21 Ms. Gales for a short period of time, while testimony is
22 it occurred approximately four minutes before the
23 officers developed probable cause to search the vehicle
24 based on her statement and based on the K-9 alert.

25 Your Honor, this case is well within the bounds

1 of Burgess, because the Defendant had a prior record,
2 was known to law enforcement, was engaging in two
3 hand-to-hand transactions, whereas Burgess was just one.
4 We ask you to rely on the actual standing case law here
5 in South Carolina to inform you in your decision.

6 Furthermore, with respect to the Defendant's
7 driving, Charlotte-Mecklenburg could have stopped the
8 Defendant once she left 5200 Piper Station. They could
9 have called in to South Carolina law enforcement and
10 stopped her based on probable cause for reckless
11 driving, speeding, any number of things.

12 So under an objective standard and based on the
13 totality of the circumstances, there is ample,
14 reasonable suspicion for this brief contact to dispel or
15 to prove that the defendant is acting in conformity with
16 what law enforcement already knew prior to engaging with
17 her that day.

18 THE COURT: All right. Thank you. I'm going to
19 deny the motion to suppress. Here's the reason why.
20 I'm quoting from State v. Moore, which is a 2016 South
21 Carolina Supreme Court case that lays out that the
22 concept of reasonable suspicion, like probable cause, is
23 not readily even usefully reduced to a neat set of legal
24 rules. They cite several U.S. Supreme Court cases that
25 test whether reasonable suspicion exists. The objective

1 assessment would certainly tend to show the officer's
2 objective motivations are irrelevant. Again, they cite
3 U.S. Supreme Court cases.

4 The Courts must give due weight, common sense
5 judgement to each of the officer's training and
6 experience. In evaluating whether an officer possesses
7 reasonable suspicion, this Court must consider the
8 totality of the circumstances in the whole picture.

9 Here it appears that Officer Grimsley indicated
10 that what he communicated to Officer Todd -- well, South
11 Carolina officer, Officer Grimsley, in his testimony
12 stated that he -- Detective Grimsley stated that he
13 relayed information to Todd. He gave the Defendant's
14 criminal history, which included a conviction for
15 trafficking crack cocaine and a pending charge for
16 trafficking crack cocaine, trafficking crack cocaine in
17 Charlotte-Mecklenburg.

18 Detective Grimsley indicated that he gave a brief
19 description of what appeared to be two drug
20 transactions. Again, we're not here to determine
21 whether they, in fact, were drug transactions or not.
22 The officer perceived it to be a drug transaction.

23 The officer also indicated -- Detective Grimsley
24 indicated that he relayed to Detective Todd that they
25 had surveilled her, followed her, from Charlotte down

1 into Fort Mill. She was driving an Enterprise rental
2 car with Missouri tags. She approached speeds somewhere
3 near 100 miles an hour on I-77 heading toward Rock Hill.

4 He provided that information and her driving
5 patterns, prior drug -- what they believed were drug
6 transactions -- prior records, criminal history, and
7 their observations.

8 I find that that's information Detective Todd --
9 was communicated to Detective Todd. He says that he
10 received -- Investigator Todd said that he received a
11 phone call from Detective Grimsley, Investigator
12 Grimsley, telling him to drive to 105 Ben Casey Drive
13 here in York County, and that when he was there, in
14 essence, the case was handed over to them.

15 Based on the information, the totality of the
16 circumstances that had been conveyed to him -- and he
17 stated that he had received conversation. I find that
18 there is -- there was reasonable suspicion.

19 Again, this is not probable cause. This is
20 reasonable suspicion to detain the defendant. They, in
21 fact, did detain her when she came out of the dentist's
22 office where she basically was in detention. So based
23 on the reasonableness of the stop, I again find -- I
24 deny the motion and find that there is reasonable
25 suspicion.

1 All right. What's next?

2 MR. BROOKER: The next, Your Honor, is that -- in
3 course, this is simply a factual determination. With
4 respect to whether or not the drug dog alerted, I'm not
5 going into great detail in reference to that. I think
6 the officer or Investigator Todd testified that the dog
7 did alert by sitting.

8 Investigator Todd testified that sitting was the
9 dog's alert sign. One of the things I would implore the
10 Court to read before the Court makes a determination on
11 these two cases or the next two motions -- I'll hand up
12 these two cases to the Court. Let me see if I have one
13 for Mr. Dan Porter here.

14 I do have a citation for one. I do not have a
15 citation for the other.

16 The one case I handed up to Mr. Porter is State
17 v. Wilson, 95 F2d. 455. That's from 2014.

18 I don't have a citation as to the Diaz case.
19 That's U.S. v. Diaz.

20 The reason why I implore Your Honor to read these
21 cases before making a determination on this is in Diaz,
22 Olmstead and Wilson, one of the things that I notice
23 that the Court said that -- the Court seems to express a
24 real concern about allowing the Fourth Amendment to be
25 turned over subjectively to the officer at the scene.

1 I think it was in Wilson -- I think it was in
2 Wilson when the Court basically says that it had a
3 concern where there's no evidence to substantiate what
4 the officers testified to. Then, in course, the Court
5 then would be subjected to, basically, the law
6 enforcement officer having complete control over the
7 Fourth Amendment and, in course, adding complete control
8 over the warrant process, the search warrant process,
9 without any capability of judicial review.

10 In this particular situation, I think the officer
11 testified, you know, that the dog alerted. The officer
12 also testified that the dog gave his usual signs. In
13 course, I think the officer testified, you know, that
14 with respect to his employer's policy, that they're
15 required to have a bodycam, drug camera, dog
16 handlers -- drug dog handlers are required to have a
17 bodycam. In course, that video was obtained under the
18 use of that drug dog.

19 In course, I will submit, Your Honor, that the
20 purpose of that is for the exact purpose that was
21 discussed in Wilson. That is because this is a --
22 because basically the drug handler -- the drug handler
23 of -- a drug dog handler basically has the Fourth
24 Amendment power in his hands. Without review by a Court
25 then -- the Courts said there must be a way in which to

1 conduct oversight.

2 In course, if you take a look at that video that
3 was entered into evidence. In that video is the
4 free-air sniff that was conducted by Investigator
5 Todd -- that is not on the video. We're left,
6 basically, to accept what he says as true without any
7 ability to be able to conduct any objective oversight.

8 The only testimony that there is is that it
9 happened, that he probably alerted. There's no other
10 independent evidence. In course, Wilson, and, in
11 course, also Diaz expressed great concern about that.

12 Now I'll move on to whether or not the drug dog
13 was certified -- or at least a well-trained dog,
14 according to Illinois v. Cabelles -- in order to satisfy
15 probable cause. In course, I think Diaz is probably the
16 better case on that, I think, because Diaz goes into
17 expansive detail in reference to the reliability of the
18 dog, and, in course, what the government has to prove in
19 order to demonstrate that dog is reliable. In course,
20 if you notice in Diaz, the Court -- the officer
21 testified similarly to what was testified to by
22 Investigator Todd.

23 In course, the officer basically presented, I
24 think, tons of field -- I think tons of field tests or
25 field training that the dog had went through when the

1 dog was actually used in the field to detect drugs. In
2 course, the Court basically says that field records are
3 insufficient and unreliable in determining whether or
4 not a dog is reliable.

5 The reason why the Court says that field records
6 are unreliable is that there's no way to verify, when
7 you're looking at field records, as to whether or not
8 the dog actually alerted correctly.

9 An example of that would be that if the handler
10 takes the dog out, in course, and the dog alerts to
11 drugs. In course, there are times in which the dog
12 would say there's drugs there and there's no drugs. The
13 problem would be is that what happened on all of those
14 times is the dog would be deployed around the car, and
15 the dog would give no indication whatsoever.

16 In course, the handler would naturally assume
17 that the dog indicates that there's no drugs, but that
18 can't be verified because the search was never
19 performed. That vehicle in which the dog never alerted
20 to could have had ten kilos in the trunk, but no one
21 would ever know that was a false positive. No one would
22 ever know the error rate of that dog because -- unless
23 you actually searched the vehicle after every time that
24 dog is deployed.

25 THE COURT: Let me ask you. Officer Ervin,

1 Investigator Ervin, testified that she said there's
2 cocaine in the car before the dog ever alerted.

3 Did that not give them probable cause to then
4 search the car? Regardless of what we do with the dog,
5 wouldn't that then give them probable cause?

6 MR. BROOKER: If you believe that, Your Honor --
7 and that's why I was asking Investigator -- I think it
8 was Ervin, I think the one who read her --

9 THE COURT: He didn't read her rights. It was
10 Investigator Atwater (sic). Investigator Ervin's
11 testimony is that he heard her say without
12 questioning -- nobody asked her a question. When the
13 dog was taken out of the officer's car and brought to
14 the side of her car, that she then uttered: There's
15 cocaine in the car. That's his testimony.

16 So my question is simply -- regardless of what we
17 do with the dog. Taken alone, would that not give them
18 probable cause to search the car?

19 MR. BROOKER: Can you give me just a second, Your
20 Honor? I want to make sure that I give a proper answer
21 to that question.

22 THE COURT: The dog is alerting and verifying or
23 corroborating what she told the officer.

24 MR. PORTER: Let me interject this, Your Honor.
25 I think he testified to that as the dog was being

1 deployed -- and my memory might be incorrect. I thought
2 he testified that the dog was being deployed around the
3 car, I think, before the dog alerted. I think that is
4 what his testimony was. Then she said something.

5 THE COURT: That something, what I heard, the
6 Court heard, was that cocaine was in the vehicle, and
7 then the dog sat for a few seconds after that.

8 MR. BROOKER: If that testimony is correct, Your
9 Honor -- again, it's not in the record. In course, I
10 would not say anything that's not in the record. That's
11 why I asked Investigator Atwater (sic) -- was it Atwater
12 who read the rights? I don't want to get the
13 investigators mixed up.

14 THE COURT: Investigator Ervin testified that
15 then after the dog alerted, Detective Atwell read the
16 Miranda warnings. I think that's the chronology that
17 the Court heard.

18 MR. BROOKER: Yes, Your Honor. I think Ervin
19 arrived before Atwater. Atwater was the last of the
20 officers to arrive.

21 THE COURT: I understand that.

22 MR. BROOKER: Atwater is the one who read the
23 rights. Atwater said he read Ms. Gales her rights.

24 In course, I specifically asked him, I think,
25 about the incident and whether or not the test had been

1 completed at that time or whether or not the dog had
2 alerted or a sniff had occurred at that time.

3 In course, his testimony was that he was not sure
4 whether or not it had been.

5 THE COURT: That's Atwater. I understand that.
6 Or Atwell. I understand that.

7 MR. BROOKER: With respect to your question, Your
8 Honor, my only answer would be, Your Honor, that at that
9 particular period of time, once they're running the dog
10 around the car and then, in course, that they started
11 this Fourth Amendment process where she's in detention,
12 she's in custody.

13 In course, I think, at that particular period of
14 time, once they start running the dog around, in course,
15 then the search is initiated under the South Carolina
16 Constitution.

17 THE COURT: There's a Supreme Court, U.S. Supreme
18 Court, case that gives us Place, P-L-A-C-E.

19 MR. BROOKER: Yes.

20 THE COURT: They state that examination by a
21 trained narcotics dog is not a search and seizure but is
22 considered a minor intrusion.

23 MR. BROOKER: You're right, Your Honor. This is
24 the point that I was trying to make. Place does state
25 that. Also, there are a number of states that have --

1 there's a number of states that have written in their
2 Constitution -- like South Carolina does -- that South
3 Carolina has a right of privacy written in their
4 Constitution that the Federal government does not.

5 In course, there's also a couple of other states
6 that have that same right to privacy written in their
7 Constitution. I think one of them is, if my memory
8 serves me correctly, New Hampshire. I've done research
9 on this.

10 In course, in those states that have that right
11 to privacy, in course -- I can get that case law for you
12 later on tonight, Your Honor. In that case law, in
13 those case laws where the states that have, you know,
14 that particular provision that the U.S. Constitution
15 doesn't have, those states have specifically found, have
16 specifically found, because of that, because of that
17 right to privacy clause that's contained within their
18 Constitution, they have reached the conclusion that, you
19 know, whenever a dog is being deployed around the car,
20 that it does trigger -- in course, this is under the
21 State Constitution. It doesn't trigger -- it does
22 trigger, I guess, in their Constitution, the equivalency
23 in their Constitution of the right of search and
24 seizure. It does trigger that.

25 Now, the Federal government says, no.' In course,

1 in those states -- South Carolina -- and this is a novel
2 issue, Your Honor. South Carolina so far has not
3 addressed this particular issue. South Carolina has not
4 addressed the issue like those other states that have
5 that same provision within their Constitution, that
6 privacy clause in the Constitution. South Carolina has
7 not addressed the issue as far as I've been able to
8 research.

9 The issue as to whether or not that privacy issue
10 doesn't invoke a search like those other states that do.
11 The only answer that I would be able to give to that is
12 that -- it's a novel one -- in which we would be asking
13 the Court to make that determination for the first time.

14 In course, if this case goes up on appeal, in
15 course, that the ladies and gentlemen in Columbia, you
16 know, would have to decide that issue for South
17 Carolina, which is different than what Place says,
18 because whether or not South Carolina grants additional
19 protection greater than that of the Federal
20 Constitution.

21 In course, the law is that a State Constitution
22 can grant greater rights than a Federal Constitution.
23 There's a couple things --

24 THE COURT: Let's move on. Let's try to wrap
25 this argument up.

1 MR. BROOKER: Sure. The conclusion is that, if
2 you look at Diaz, Diaz basically says that it is not
3 sufficient. It's not sufficient for the officer to get
4 on the stand and testify: My dog is qualified.

5 In Diaz, the Federal District Court of South
6 Carolina, which is the 2018 case, says that you have to
7 produce documentation to back this stuff up. You have
8 to tell me. You said the dog is certified. Is it a
9 certified dog, you know, from a kennel? You have to
10 tell us, you know, what is the certification procedure.

11 You have to tell us what is the pass and fail.
12 You have to tell us whether or not the procedure that is
13 used by the kennel that trained the dog, whether or not
14 that the procedure is certified by a governmental agency
15 or either some private institution that sets procedures
16 for the certification of dogs.

17 And, in course, it says that, also, when you're
18 coming in and you're saying that this is the dog's alert
19 signs and you provide no information, no manual, no
20 documentation saying exactly what that alert sign is,
21 when you're talking about these training records, and
22 you're not providing any evidence that the training
23 procedure that you're using is a certified training
24 procedure that is reliable, that is sufficient to
25 establish the reliability of the dog, that it's being

1 used to certify or is being used to train.

2 In Diaz, it says that you have to come in and do
3 more than just talk. You have to bring in all these
4 documents so the Court can conduct an independent
5 evaluation with respect to the reliability of the dog.
6 In course, if you look at Diaz, we had a lot of
7 testimony. We have had no testimony with respect to the
8 certification of the procedure, as to whether or not the
9 institution -- I think whether or not the institution
10 that certified this dog is a bonafide institution and
11 that the procedures are reliable.

12 I will inform the Court -- I'm about to sit
13 down -- to please read Diaz and Wilson. Obviously when
14 I read it, I was pretty shocked myself in that this, I
15 think, progressive law was being set by the District of
16 South Carolina. There's other cases, other courts for
17 other districts, that have taken a slightly conservative
18 approach, a little bit more conservative approach.

19 South Carolina in Wilson and Diaz has
20 specifically said that because the dog is actually
21 becoming -- the dog and the dog handler is actually
22 assuming the role of a Magistrate Judge, because
23 normally under the constitution --

24 THE COURT: Diaz is Judge Norton's District Court
25 order. This is not appellate law. This is simply Judge

1 Norton's order in a particular case. Right?

2 MR. BROOKER: Diaz is the Court's decision.

3 THE COURT: Judge Norton's decision?

4 MR. BROOKER: Yes.

5 THE COURT: It is not an appellate court

6 decision, correct?

7 MR. BROOKER: That's correct.

8 THE COURT: Judge Norton's opinion on where he

9 ruled on a search involving a dog, that is his opinion.

10 I want to be sure. You keep quoting Diaz. Diaz is not

11 an appellate opinion.

12 MR. BROOKER: It's not.

13 THE COURT: All right. Go ahead.

14 MR. BROOKER: It's not. Neither is -- for that

15 fact, neither is Wilson.

16 THE COURT: Go ahead.

17 MR. BROOKER: In course --

18 THE COURT: Certainly you're welcome to use it as

19 persuasive help, but I want to be sure that we're clear

20 for the record that that's what both of those are. They

21 are orders from particular judges in the Federal

22 District Court. They're ruling on a particular issue

23 involving dogs brought up in a case in front of them.

24 MR. BROOKER: Absolutely, Your Honor. I'll say

25 this, and then I'll sit down. It is an accurate

1 depiction and statement of the jurisdiction -- of the
2 juris prudence of the law in this particular circuit. I
3 think it's an accurate statement of what the law is in
4 the Fourth Circuit.

5 THE COURT: All right. I understand that.
6 That's your position. I'm going to deny the motion to
7 suppress based on the search of the dog. I think it's
8 clear in South Carolina. I can't find any case under
9 South Carolina law where there's a requirement of
10 specific certification of a dog.

11 There is certain criteria here in this particular
12 case. Investigator Todd testified about his handling of
13 the dog. There were statistics about the number of
14 training hides. Statistically, there were 510 training
15 hides where he testified there was 100 percent accuracy.
16 There were field hit of 107 for this particular dog.
17 Ten of those had found no drugs. He's explained that
18 did not necessarily mean the dog erred. The dog is
19 trained to alert on odors.

20 So I find that I'm going to deny your motion to
21 suppress the evidence based upon the free-air sniff of
22 the dog and that the dog alerted. However, I will state
23 that it appears that regardless of what happens on that
24 issue, again, Investigator Ervin testified that the
25 defendant freely stated that before the dog alerted that

1 she said there was cocaine in the car.

2 I find that that in and of itself would have been
3 the basis of probable cause for the officers to do a
4 search of the car after they had reasonable suspicion to
5 detain her.

6 What's next?

7 MR. BROOKER: I think the only other case is
8 Jackson v. Denno. This is what I'm confused about.
9 The reason why I'm a little bit confused about it is --
10 I think that I don't know whether or not they're trying
11 to, I think, get in a statement that was made, I think,
12 at the scene. In course, I think Mr. Porter played a
13 portion of the video in which I didn't quite understand
14 exactly what statement they were attempting to get in.

15 I'm not quite sure whether or not the statement
16 was made before or after Miranda was applied. I think
17 there may have to be some more clarification on exactly
18 what the statement is that they're trying to get in so
19 that we can make an accurate determination as to whether
20 or not it was given freely and voluntarily.

21 I'm a little bit confused on that, because I don't
22 know the exact language, because, you know, this is not
23 something that's written. This is not a written
24 statement.

25 THE COURT: Let me hear from you, Mr. Porter.

1 MR. PORTER: Your Honor, there's two statements
2 primarily that we're intending to introduce. One is
3 pre-Miranda, a voluntary statement. The second one we
4 played for the Court, approximately -- for the purpose
5 of the record, on Court's Exhibit 4, I believe it is.
6 It's approximately time stamped 1830 onto about 1920.
7 The defendant specifically states -- and the Court heard
8 this -- Ms. Gales states into the body camera that
9 basically -- if I can remember: There's probably about
10 two ounces in the car.

11 In the context of her previously stating that to
12 the officers, it appears she's talking about cocaine.
13 This is after Miranda. She makes the statement
14 voluntarily, intelligently. I can play it again for the
15 Court, but that was why I showed the body camera
16 beginning at 1830 to approximately 1920, for the
17 purposes of the Court.

18 THE COURT: All right. I find that the State has
19 proven by a preponderance of the evidence that any
20 statements made by the Defendant were voluntarily made.
21 It appears that the first statement was not as a result
22 of a question. I'm not clear on if -- it doesn't appear
23 that the second statement was elicited as a result of a
24 question as well.

25 Is that right, Mr. Porter?

1 MR. PORTER: Investigator Todd is walking up. It
2 appears that it may have been part of a question. I
3 can't say for certain, Your Honor.

4 THE COURT: Certainly, Miranda is not required if
5 there's no questioning. It only applies if there has
6 been a custodial interrogation. It's clear she was in
7 custody from the get-go; however, the officers made it
8 very clear that she was not in handcuffs.

9 There were no promises made. There were no
10 threats. Certainly, both statements appear to be made
11 without coercion. She was properly read her Miranda
12 rights when Atwell gave them.

13 Investigator Ervin testified that Atwell read the
14 Miranda Warnings and that the body camera, which he
15 testified to, was after that -- that she told Detective
16 Todd, Investigator Todd, where the cocaine was. In
17 fact, at one point she told him where the key to a
18 container was that they were trying to get.

19 It appears that she -- again, she appeared to be
20 sober. She appeared to know what was going on. She
21 appeared to be -- or at least the testimony is that she
22 was calm and very cooperative.

23 I find, again, that any statements made by the
24 defendant were knowingly, voluntarily, intelligently
25 made and are admissible under the totality of the

1 circumstances that led to this particular case.

2 Any other pretrial motions, Mr. Brooker?

3 MR. BROOKER: No, Your Honor.

4 THE COURT: Anything else from the State?

5 MR. PORTER: Your Honor, just for trial planning

6 purposes, we intend to present, through Investigator

7 Todd, that they received information from CMPD that the

8 defendant was engaged in hand-to-hand drug transactions

9 that had been observed by their officers.

10 Based on that, they determined they needed to

11 interdict her and speak with her to determine if there

12 was further -- if there was any crime afoot, basically.

13 It's affecting -- it is hearsay. We don't intend to

14 offer it for the truth of the matter.

15 If the defense is going to object to that, if the

16 Court finds we have to present CMPD officers, we will go

17 through that. I just want to clarify that before I

18 open -- if we're going to be going through the whole kit

19 and caboodle or if we can rely on effect.

20 THE COURT: Mr. Brooker, he is indicating what he

21 would like to say to the jury about information that we

22 received from the Charlotte-Mecklenburg officers.

23 What do you have to say about that?

24 MR. BROOKER: I'm a little confused, Your Honor.

25 I think because -- I think at least on one of his

1 motions that the Government made is that -- where it
2 says that the State does not require that the defendant
3 would refrain from arguing matters of law.

4 In course, I think we discussed matters of law,
5 and I think he said matters of law and all of this other
6 material would include the facts that were used to
7 support those matters of law, specifically pretrial
8 motions.

9 Obviously, Your Honor has already made the
10 determination that probable cause or reasonable
11 suspicions would satisfy. In course, now he wants to
12 then bring in some facts that is related to reasonable
13 suspicion, but then don't want us to go into that.

14 THE COURT: I'm not going to allow that in. You
15 can ask the question -- you can ask the question
16 basically in the context of: Why were they there?
17 Certainly, you're always allowed to ask officers why
18 they were there.

19 I think, though, that in this particular case I'm
20 not going to allow any testimony that they had received
21 information that she was involved in drug transactions.
22 We don't even know if she was involved in a drug
23 transaction. We just know that the officer says that it
24 was what appeared to be a drug transaction. So it may
25 or may not, but we're not here to determine that.

1 In this particular case, I'm going to limit you.
2 You can ask the question as to what they were doing
3 there. I think their proffered answer would be that
4 they received information from the Charlotte-Mecklenburg
5 Police that we needed to investigate this particular
6 individual and that that's what we did.

7 Does that make sense?

8 MR. PORTER: Yes.

9 THE COURT: You may not agree with it, but does
10 that make sense?

11 MR. PORTER: Yes, sir, it does.

12 Given that it's 4:00, I need to go instruct my
13 officers about that, because my witness order is going
14 to change up based on that. So, Your Honor, I think it
15 may be better for us to reconvene tomorrow.

16 THE COURT: We're going to take about a
17 ten-minute break, and then when we come back in here we
18 are going to see where we are. I understand it's late.
19 We may go as late as we possibly can. I may leave that
20 up to the jury, but we need to get up and moving.

21 Let's take a ten-minute break, and then I'll come
22 back in. When we come back in, then we'll do opening
23 statements.

24 MR. PORTER: Thank you, Your Honor.

25 (Whereupon, a recess was held.)

1 (Whereupon, the following proceedings were
2 held in open court. The defendant was
3 present with her attorney, along with
4 counsel for the State.)

5 THE COURT: Let's bring in the jury.

6 (Whereupon, the jury entered the courtroom.)

7 THE COURT: Good afternoon. Sorry for the delay.
8 As I explained to you a little bit earlier this week,
9 court is certainly not an exact science.

10 We have been working extremely hard on matters
11 while you have been out. There are a lot of things that
12 we do in each case that we take up outside your presence
13 and a lot of things that we do in your presence. It
14 turns out today that there are a lot of issues that we
15 had to deal with outside of your presence, but we have
16 resolved those issues, and we are ready to start.

17 With that, Madam Clerk, if you would swear in the
18 jury.

19 THE CLERK: If you would please stand and raise
20 your right hand.

21 (Whereupon, the jury was duly sworn and impaneled.)

22 THE COURT: Thank you, ladies and gentlemen.
23 This is a matter of housekeeping. When you come in and
24 out, the only seating requirements are these: The two
25 end seats are the alternates, who would keep those two

1 seats throughout the trial.

2 Sometime tomorrow I'll give you an opportunity to
3 elect a foreperson among yourselves. I'll give you some
4 instructions on that tomorrow. When you do elect a
5 foreperson, the foreperson will take this end seat;
6 however, everyone else can sit where you want.

7 You can bring water in an out of the courtroom if
8 you need to do that. If at any time you need to get up
9 and take a break for various reasons, just raise your
10 hand and we'll take a break to allow you to take care of
11 those things.

12 What we're going to do this afternoon is because
13 of the late hour, I will give you some preliminary
14 instructions. Then once I finish the preliminary
15 instructions, then the lawyers will have an opportunity
16 to give opening statements to you. That's probably
17 going to take us until about quarter after 5:00 or so.
18 Normally, we try to run to around 5:00 or 5:30.
19 Oftentimes, people have things that they need to do and
20 get to.

21 Sometimes if I've given my juries fair warning,
22 we will plan to stay longer. I have not given anybody
23 any fair warning about that. Does anybody need -- this
24 is not an issue, so just be honest with me.

25 Does anybody need to leave here by 5:30 or so?

1 If we worked until 6:30 or even as late as 7:00, would
2 that be a real hardship on you on the jury?

3 Seeing none, we're going to work as far as we can.
4 We will probably will try to work somewhere around 6:30
5 or so today. I think that will help you as far as
6 logistics of what we get done tomorrow.

7 With that, let me begin to tell you a little bit
8 about the general instructions to you. The things I
9 will tell you and read to you are simply an introduction
10 to this case.

11 In this particular indictment, Indictment Number
12 2018-GS-46-3573, Ramona Monteal Gales has been charged
13 with trafficking cocaine. That's the crime in which I
14 will later explain to you the elements that are
15 necessary for that charge. I'll do that at the end of
16 the case.

17 This indictment is simply a charge that's brought
18 into court. It is not evidence of any of the
19 allegations that it contains. The defendant in this
20 case has pled not guilty to this indictment; therefore,
21 the State has the burden of proving each of the elements
22 of the indictment beyond a reasonable doubt. It will be
23 your duty, ladies and gentlemen, to determine if the
24 State has met that burden.

25 Your purpose as jurors is to find and determine

1 the facts of this case. You are the sole judges of the
2 facts. If at any time I make any comment regarding the
3 facts, you must disregard it. You are to determine the
4 facts from the testimony you hear and the other evidence
5 introduced in court. It's up to you to determine the
6 inferences which you feel may be properly drawn from the
7 evidence. We expect that you will listen very carefully
8 and consciously.

9 The same law that makes you the judges of facts
10 makes me the judge of the law. The law, as given by the
11 Court, is the only law you may consider. You must
12 accept and follow it, even though you may disagree with
13 it.

14 I cannot tell you what the facts are in the case,
15 and you cannot disagree with me about what the law is or
16 should be. Your job is to take the law as I give it to
17 you and apply it to the facts as you find them through
18 the testimony of the witnesses and any other evidence
19 introduced. After that, I expect that you will be able
20 to render a verdict under the oath that you just took.

21 As I have stated earlier today, there is to be no
22 discussion about the case now that the case has started
23 especially or at anytime. Don't be talking about the
24 case when you're in the jury room. When you go home
25 tonight, don't discuss the case with those folks you

1 live with. Don't look up anything on Google or
2 electronic devices.

3 Enjoy the rest of the evening, but don't discuss
4 this case or do any type of research at all that you
5 might be tempted to do.

6 You must decide this case based solely on the
7 evidence that you hear presented here in the courtroom.
8 I don't think that there are any news reports about this
9 case, but if by chance there were any news reports, do
10 not read or listen to any news reports.

11 In our judicial system, it's important you not be
12 influenced by anything or anyone outside of this
13 courtroom. Your verdict must be based solely on the
14 evidence presented to you in this trial and the law that
15 I instruct you at the close of the trial.

16 In just a few moments the Solicitor will be given
17 an opportunity to make an opening statement. The
18 Solicitor will explain to you the issues in the case, or
19 at least what the Solicitor thinks the issues are in
20 the case. Then the Defense gets to make an opening
21 statement, but they're not required to; however, they
22 will give you their contention of what the issues are.

23 The evidence that is going to be presented in
24 this case will be what comes in through the pieces of
25 evidence that are introduced and the witnesses on the

1 witness stand.

2 During the trial you may hear a lawyer say
3 something like: Your Honor, I have an objection.

4 MR. BROOKER: I have no objection to the
5 instructions that you just gave, Your Honor.

6 THE COURT: I will ask, that while I'm speaking
7 to the jury that no one get up or sit down. If you have
8 an objection, you will make it at the appropriate time.
9 We want to be make sure the jury is not distracted and
10 hears everything that I am saying to them.

11 Sometimes during the course of the trial you may
12 hear lawyers say something like, Your Honor, I object,
13 and stand up or have an issue that needs to be taken up
14 outside of your presence. They're just doing their job.
15 Don't hold that against them if they have an objection
16 or if they need to approach.

17 We may talk about things up here, or I may send you
18 out for us to deal with a particular issue. They're
19 doing their job, so don't hold that against them. So
20 please be considerate of them when they do that.

21 In determining what the true facts are in this
22 case, you must decide whether or not the testimony of
23 the witness is believable. It will be my responsibility
24 to rule as a matter of law as to whether certain
25 testimony is admissible at all or not. Once the

1 testimony is admitted, whether or not you believe it is
2 solely for you to determine.

3 In deciding whether to believe a witness, you
4 have the right to consider the interest of any witness,
5 the bias of any witness, the prejudice of any witness,
6 the opportunity for the witness to have seen the matters
7 and things about which the witness may testify and the
8 way the witness acts on the witness stand.

9 You have a right to consider anything that's in
10 the record that will help you evaluate the testimony of
11 witnesses. That means it's your duty to pay close
12 attention to these witnesses, to observe the witnesses,
13 to listen to the witnesses. Pay close attention to the
14 attorneys and the Court.

15 Again, if you do that, after the close of the
16 case and after arguments of counsel and the charge on
17 the law, you will be in a position to determine what the
18 true facts are and to apply the law to those facts.

19 Again, as I have stated, sometime tomorrow we'll
20 be sure that you elect a foreperson. The foreperson
21 will have the responsibility of simply communicating to
22 the Court. They have no greater say of what takes place
23 in the jury room than any other juror.

24 With that, I think we are ready to begin.
25 Anything further as far as preliminary instructions from

1 the State?

2 MR. PORTER: From the State, no, Your Honor.

3 THE COURT: From the defense?

4 MR. BROOKER: No.

5 THE COURT: Mr. Porter.

6 Will the lawyers approach.

7 (Whereupon, a bench conference was held off the

8 record and out of the presence of the court reporter.)

9 THE COURT: Thank you.

10 Mr. Porter.

11 MR. PORTER: Thank you, Your Honor. May it

12 please the Court.

13 * * *

14 OPENING STATEMENT BY MR. PORTER

15 MR. PORTER: Ladies and gentlemen, on January 31,

16 2018, investigators with the York County Drug

17 Enforcement Unit received information from the

18 Charlotte-Mecklenburg Police Department regarding

19 Ms. Ramona Gales, the defendant in this case.

20 Based on that information, they undertook an

21 investigation that led them to 105 Ben Casey Drive here

22 in Fort Mill. When they arrived, they set up

23 surveillance on the location. They received information

24 where she was located.

25 When she left, investigators approached her and

1 began trying to determine whether that information was
2 indeed correct or not.

3 You will hear from Investigator Todd,
4 Investigator Ervin, and Investigator Atwell about how
5 that investigation proceeded. You will hear about how
6 they approached her and how Investigator Todd brought
7 his drug detection K-9 out of the car, conducted a
8 free-air sniff around her vehicle, and where that K-9
9 eventually alerted to the presence of the odor of
10 narcotics.

11 While that was happening, Investigator Ervin and
12 Atwell were alongside with Ms. Gales, who stated that
13 there was cocaine in the car.

14 Based upon that, Investigator Todd began a search
15 of the vehicle. Inside the vehicle he located a
16 quantity of cocaine inside a black cup -- that you will
17 see -- and a locked white cup. The investigators could
18 not initially get into that white cup. The defendant
19 herself provided information about where that key was
20 located and how that container operated in order to
21 allow investigators to find inside of that 42.31 grams
22 of cocaine.

23 We know that it's cocaine. You will see that
24 it's cocaine, because forensic chemist Cynthia Mitchum
25 will testify that she tested the substance that was

1 located that the defendant stated was cocaine, and that
2 it was actually cocaine. She didn't test all of it.
3 She tested some of it.

4 That gets me to what the defendant was charged
5 with. She was charged with trafficking 28 grams or more
6 of cocaine. Now, what the State is required to prove,
7 to prove that she did that, is that she possessed
8 cocaine in South Carolina that weighed more than 28
9 grams. You will hear testimony that she indeed had 42
10 grams.

11 You also will see Investigator Todd's body camera
12 where she states on camera that she has, approximately,
13 2 ounces of cocaine inside the vehicle.

14 The State has to prove each of those elements.
15 When the evidence is being presented to you, I ask that
16 you look to how all of those items are consistent.

17 I ask that you look to her being the sole
18 occupant of the vehicle, her knowledge of where the
19 cocaine is, her knowledge of the quantity of cocaine,
20 and her knowledge of how to operate the container that
21 the cocaine was in. You will see all of this on
22 Investigator Todd's body camera.

23 This is a serious case for the State and the
24 defense. We ask that you pay close attention. We
25 should hear from the next three witnesses at least this

1 afternoon and probably a little bit tomorrow morning
2 with the chemist and a witness who will establish that
3 the drugs are, indeed, the drugs taken from that stop.

4 Probably tomorrow morning I will address you
5 again, and I will ask you to find the defendant guilty
6 of trafficking cocaine, 28 grams or more. Thank you.

7 THE COURT: Thank you.

8 Mr. Brooker.

9 MR. BROOKER: Thank you.

10 * * *

11 OPENING STATEMENT BY MR. BROOKER

12 MR. BROOKER: Good afternoon, ladies and
13 gentlemen. Before we get started, I always think -- or
14 I have always thought -- that it's very important to at
15 least talk with the jury about some important principles
16 in a criminal case. In course, the reason why I do that
17 is you have often heard that in the United States we
18 have the best judicial system, the best criminal justice
19 system. In course, I am pretty sure that you have heard
20 it a thousand times, if not two thousand times.

21 One of the things that I always tell jurors is
22 that I agree with that concept. I agree with that
23 thought, except with a caveat. Our criminal justice
24 system is only the greatest in the world if you, the
25 jurors, understand the principles that you have to apply

1 in this case and that you apply those principles
2 correctly as they were intended by our founding fathers.

3 So it's very important. You are probably the
4 most important people in this courtroom; that is, that
5 you have to understand those principles. Most
6 importantly, you have to apply those principles.

7 You have to apply those principles even if you
8 don't understand them or you don't quite agree with
9 them. If you don't, if you don't understand those
10 principles and you don't apply them correctly, in
11 course, then the criminal justice system doesn't work.
12 We're no different -- then our criminal justice system
13 will be no different than the system of any other
14 country in the world.

15 So let's talk a little bit about a few of those
16 principles. The first principle, probably one of the
17 most important principles that we have in our criminal
18 justice system, is innocent until proven guilty.

19 I am pretty sure that you heard that several
20 times. In course, that is not just a term that you see
21 on Law and Order or even some other television show.
22 That principle is actually the backbone of our criminal
23 justice system. That principle is one of the most
24 important principles in our criminal justice system.

25 What that principle says is that as Ramona Gales

1 sits here, she is just as innocent as anybody in this
2 courtroom. She is just as innocent as you, me, the
3 Judge, the prosecutor, or anyone else sitting in this
4 courtroom.

5 In order for the criminal justice system to work,
6 first, you have to accept that principle. As she sits
7 there, you have to treat her as if she was just as
8 innocent as anybody else. It's extremely important.
9 Okay. We all have that presumption of innocence. We
10 are born with it.

11 In course, as you were told, the State,
12 sometimes, can accuse a person of a criminal act. The
13 State said: You did something wrong. You did something
14 to violate our laws.

15 In course, if the State makes that allegation and
16 if the State seeks to punish that person, the State has
17 to remove that presumption of innocence. They do it in
18 a certain way. They first have to prove that person's
19 guilt beyond a reasonable doubt. That is a technical
20 term that I will not go into, because the Judge will
21 explain that to you at the conclusion of this case --
22 what beyond a reasonable doubt means.

23 They have to prove Ramona's guilt beyond a
24 reasonable doubt. That burden of proof is always with
25 the Government. It never shifts. At no point in time

1 during this trial should you ever look at Ramona Gales
2 and ask her to prove some allegation or disprove some
3 allegation that the State has made.

4 If you do that, in course, that important
5 principle, those important principles I told you about
6 in which our judicial system is based on is that they
7 will have been violated. Then, in course, that justice
8 may not be served.

9 She's not required to prove anything. She's not
10 required to prove her innocence. They have to prove her
11 guilt, and they have to prove it beyond a reasonable
12 doubt.

13 As Mr. Porter says -- Mr. Porter told you that
14 she is being charged with a criminal offense and what
15 that criminal offense is. That criminal offense has
16 elements. They have to prove proof beyond a reasonable
17 doubt on every single element of that offense.

18 If that offense has three elements -- and I'm
19 just using this as an example. If it has three elements
20 or four elements and, in course, if they prove three of
21 those elements but not the fourth one or they prove
22 three beyond a reasonable doubt but not the fourth one
23 and you're not quite certain whether or not you're there
24 beyond a reasonable doubt and you still have concern,
25 they failed in that burden. They failed in that burden.

1 You have to do your duty at that time by saying
2 that the Government has not met its burden, in course,
3 in proving her guilt beyond a reasonable doubt, and then
4 must find and acquit her. Find and acquit her. That's
5 going to be your job during the course of this trial.

6 There's one other important principle that I want
7 to tell you, too, and it's really important. That is
8 that the role of us lawyers -- all of us have a role in
9 this courtroom. The Judge has a role. You have a role
10 in the process. The attorneys have a role.

11 Well, our role is to present this case to you in
12 an orderly way, in a way that, hopefully, you can digest
13 the information that's being presented to you, and then
14 be able to, at the conclusion of this case, make a
15 determination as to whether or not that burden has been
16 proven.

17 Please understand that our role -- we're just
18 facilitators. We're just here to help present the
19 evidence or either -- or either identify the likelihood
20 rough. That's our role. Anything that we say is not
21 evidence. So at no point in time, you know, are you to
22 say: Remember what the prosecutor says. This point was
23 proven because the prosecutor said this. This point was
24 proven because the prosecutor said that.

25 We're not witnesses. We're just facilitators.

1 We're just here to help present this case to you. The
2 witnesses -- the evidence will come from witnesses from
3 the stand, and the evidence will come from documents.
4 They will come from no place else.

5 So don't be confused. Don't be confused. Some
6 of us lawyers are a little bit more sophisticated than
7 the others. In course, justice is never accomplished if
8 one lawyer is a little bit more sophisticated and sleek.
9 In course, if you like that lawyer just a little bit
10 better or, in course, if you tend to trust him or
11 believe him because of that.

12 Another thing that I will tell you before I sit
13 down is -- in course, the Judge will explain this to
14 you. I have kind of mentioned to you just a little
15 bit -- and is the last thing I will say to you.

16 During the course of this trial, I might say
17 something or I make expressions. If I say or do
18 anything that displeases you, don't take that out on my
19 client. Don't hold that against her.

20 I imagine the same is said for Mr. Porter, the
21 State. Don't take the conduct of the lawyers or
22 anything that we say and hold that against our client.
23 Because, again, if you do that, you will not be properly
24 applying the principles. If you don't understand and
25 properly apply the principles, then our judicial system

1 just doesn't work, and it's just like any other system.

2 So I implore you to listen very carefully. At

3 the conclusion of this case, the Judge will instruct you

4 with respect to the law. And then, in course, at that

5 time you will be asked to make a determination as to

6 whether or not the State has proven its case beyond a

7 doubt on each and every element of the offense.

8 Thank you very much.

9 THE COURT: Thank you, Mr. Brooker.

10 Mr. Porter, call your first witness.

11 MR. PORTER: Thank you, Your Honor. State calls

12 Sergeant Rayford Ervin to the stand.

13 * * *

14 RAYFORD ERVIN, JR.,

15 called as a witness by and on behalf of

16 the State to testify, being first duly

17 sworn was examined and testified as follows:

18 * * *

19 DIRECT EXAMINATION

20 BY MR. PORTER:

21 Q. Good afternoon. Would you please state your name

22 for the record.

23 A. Rayford Ervin, Jr.

24 Q. What's your present occupation?

25 A. My present occupation -- I work for the York

1 Police Department. I am assigned to the York County
2 Multi-Jurisdiction Drug Enforcement Unit.

3 Q. How long have you worked for that unit?
4 A. Since 1999.

5 Q. Do you have any prior law enforcement experience
6 prior to that?
7 A. Yes. I worked the road in Clover, South Carolina
8 for 17 years.

9 Q. Do you recall becoming involved in an
10 investigation into the Defendant?
11 A. Yes.

12 Q. Can you please state how that occurred.
13 A. Officer Todd contacted me by radio and advised me
14 that he had received some information from CMPD.

15 MR. BROOKER: Just objection to hearsay, Your
16 Honor, as to what Officer Todd said.

17 MR. PORTER: It's not being offered --
18 THE COURT: Overruled.

19 MR. BROOKER: I apologize, Your Honor.

20 BY MR. PORTER:

21 Q. You may answer the question.
22 A. That he had received information from
23 Charlotte-Mecklenburg Police Department about Ms. Gales.

24 Q. What did your unit do at that point?
25 A. At that time we located her and started setting

1 up surveillance at 105 Ben Casey Drive, Fort Mill, South
2 Carolina, which runs off 160 in Fort Mill, County of
3 York.

4 Q. Is that within of your jurisdiction as a member
5 of the Drug Enforcement Unit?

6 A. Yes, sir.

7 Q. At any point did you observe the Defendant there
8 at 105 Ben Casey Drive?

9 A. Yes.

10 Q. Please describe how your interaction proceeded.
11 Did you approach her at some point?

12 A. Yes, sir. She came out of the dentist's office.
13 Officer Todd and Officer Holland approached her. Then a
14 short time later, I made contact with her.

15 Q. When you arrived, were they already speaking with
16 her?

17 A. Yes.

18 Q. What did you observe Investigator Todd do at that
19 point?

20 A. At that point, while I had a small talk with her,
21 Investigator Todd retrieved his K-9, MJ, from the back
22 of his patrol vehicle, which is trained and certified in
23 detecting illegal narcotic drugs. MJ did a dog sniff at
24 that point on the vehicle.

25 Q. Did the Defendant make any statements to you at

1 that time?

2 A. When Officer Todd started up the passenger's side
3 of the vehicle and the dog was starting to alert, she
4 advised me that she had some cocaine in the car.

5 Q. Was that in response to any question you may have
6 had?

7 A. No, sir.

8 Q. Did she state it voluntarily?

9 A. Yes, sir.

10 Q. Do you see the person that you came into contact
11 with that day here in the courtroom today?

12 A. Yes, sir.

13 Q. Where are they seated?

14 A. She's sitting right there (indicating).

15 Q. Please describe what she's wearing for the jury.

16 A. It looks like kind of a black shirt -- or
17 something like that -- right there. Her hair is put in
18 kind of like a ponytail.

19 Q. At any point was she advised of her Miranda
20 warnings?

21 A. Yes.

22 Q. Did you observe that occur?

23 A. Yes, I did.

24 Q. Who read those Miranda warnings?

25 A. Officer Atwell read the Miranda warnings in the

1 presence of me.

2 Q. Did she appear to understand those warnings?

3 A. Yes, she did.

4 Q. Did you get any indication that she had any

5 trouble understanding them?

6 A. No, sir.

7 Q. Did she appear to be intoxicated in any way that

8 would have made it difficult for her to understand?

9 A. No, sir.

10 Q. Did Investigator Todd locate anything inside the

11 vehicle?

12 A. Yes, he did.

13 Q. What was that?

14 A. He located some cocaine.

15 Q. Did the Defendant make any statements after being

16 read Miranda in your presence about any cocaine in the

17 vehicle?

18 A. She made a statement on video about how much,

19 approximately, the cocaine weighed.

20 MR. BROOKER: Your Honor, we would just preserve

21 our objections for the record.

22 THE COURT: Thank you. I note your prior

23 objections. They're noted for the record.

24 MR. BROOKER: Thank you, Your Honor.

25 MR. PORTER: No further questions for this

1 witness, Your Honor.

2 THE COURT: Thank you.

3 Mr. Brooker.

4 MR. BROOKER: Thank you, Your Honor.

5 * * *

6 CROSS-EXAMINATION

7 BY MR. BROOKER:

8 Q. Investigator Ervin -- I'm sorry. Sergeant Ervin?

9 A. Yes, sir.

10 Q. I think you said you're an officer with the York
11 County Police Department?

12 A. York City Police Department.

13 Q. York City Police Department?

14 A. Yes, sir.

15 Q. At that time you were working with the
16 Multi-Jurisdictional Drug Enforcement Unit?

17 A. Yes, sir. I'm assigned to that unit.

18 Q. You testified that on that day, you received some
19 information, allegedly, about Ms. Gales that brought you
20 to the location where you eventually found her; is that
21 correct?

22 A. That's correct.

23 Q. I think you testified to the fact that after a
24 search was performed of the vehicle in the parking lot
25 that you presumed to be hers -- you said that cocaine

1 was found within the car?

2 A. Correct.

3 Q. Just for the record, are you a chemist?

4 A. No, sir.

5 Q. Did you test what was found in the car?

6 A. I didn't, no, sir. We sent it to the lab.

7 Q. Right now -- in course, the lab will testify.

8 Right now, you're not qualified to testify with

9 respect to what was taken out of the car; is that

10 correct?

11 A. Correct.

12 Q. You're not trying to tell this jury you

13 chemically analyzed it. In course, you can certify to

14 the Court this is what taken out of the car; is that

15 correct?

16 A. That's correct. She admitted to me that there

17 was cocaine in the car.

18 Q. I understand she said that. Still, all the drugs

19 have to be chemically identified; is that correct?

20 A. That's correct.

21 Q. In course, you didn't chemically identify

22 whatever substance was taken from the vehicle; is that

23 correct?

24 A. No.

25 Q. I'll ask you, just for the record -- you tell me.

1 Did you run the license plate on the vehicle that I
2 think you purported to be Ms. Gales'?

3 A. No, sir. I didn't.

4 Q. Did you take any documentation from that car that
5 purports who is the owner of that car?

6 A. I did not take nothing out of the car. I spent
7 my time having a small talk with Ms. Gales at the time.

8 Q. Let me ask you a question. Were you wearing a
9 bodycam?

10 A. No, sir.

11 Q. Does your employer -- does your department have a
12 bodycam law?

13 A. The City has a bodycam policy, yes, sir.

14 MR. BROOKER: If you can indulge me for just a
15 second, Judge. I want to make sure I don't have any
16 further questions for this witness.

17 THE COURT: Take your time.

18 MR. BROOKER: No further questions, Your Honor.

19 THE COURT: Any redirect?

20 MR. PORTER: I have a matter of law we would like
21 to discuss.

22 THE COURT: Lawyers approach.

23 (Whereupon, a bench conference was held off the
24 record and out of the presence of the court reporter.)

25 THE COURT: Any redirect, Mr. Porter?

1 MR. PORTER: No, sir, Your Honor.

2 THE COURT: Sergeant Ervin, you can step down.

3 (Whereupon, the witness exited the witness stand.)

4 THE COURT: Call your next witness.

5 MR. PORTER: Certainly. State calls Investigator

6 Ray Atwell.

7 * * *

8 EVERETT RAY ATWELL, JR.,

9 called as a witness by and on behalf of

10 the State to testify, being first duly

11 sworn was examined and testified as follows:

12 * * *

13 DIRECT EXAMINATION

14 BY MR. PORTER:

15 Q. Good afternoon. Would you please state your name

16 for the record.

17 A. Everett Ray Atwell, Jr.

18 Q. Where are you presently employed?

19 A. Fort Mill Police Department. I'm attached to the

20 York County Drug Unit.

21 Q. How long have you worked in that role?

22 A. Since February of 2016.

23 Q. Do you have any prior law enforcement experience

24 prior to that 2016 hire date?

25 A. Yes, sir. I started my career at the Chester

1 County Detention Center in 2003. Then I went to Chester
2 City in 2005. Then back to Chester County Sheriff's
3 Office in 2008. Then I was hired with the Fort Mill
4 Police Department in January of 2010.

5 Q. Do you recall becoming involved in the
6 investigation into Ramona Gales on January 31, 2018?

7 A. Yes, sir.

8 Q. Do you see Ramona Gales seated in the courtroom
9 today?

10 A. Yes, sir.

11 Q. Would you please point her out for the jury.

12 A. (Indicating).

13 Q. Now, what was your role in that investigation?

14 A. Initially, I was on the perimeter in case -- once
15 the other investigators approached her, if she were to
16 run and they would have chased her, they would have
17 forced her to come in my direction.

18 Q. Did she do that?

19 A. No, sir.

20 Q. Did you approach her at any point?

21 A. I did approach her. Once the other investigators
22 were already in the general area of her, I went up to
23 the other investigators and I read the Miranda rights to
24 her.

25 Q. Who else was present when you read the Miranda

1 warnings?

2 A. Sergeant Ervin.

3 Q. How did you read her the Miranda warnings?

4 Investigator Atwell, I'm showing what has been

5 marked for identification as State's Exhibit 1. Can you

6 please tell the jury what that is.

7 A. A copy of my Miranda card and a photocopy of

8 Ms. Gales' driver's license from North Carolina.

9 Q. Did you receive that identification from her?

10 A. Yes, sir.

11 Q. Did it match the person who is seated here in the

12 courtroom here today?

13 A. Yes, sir.

14 Q. Could you please read the card, as you read them

15 that day, to the jury.

16 A. You have the right to remain silent. Anything

17 you say can and will be used against you in a court of

18 law.

19 You have the right to have an attorney present.

20 If you cannot afford an attorney, one will be appointed

21 to you before any questioning, if you desire.

22 You can decide at any time to exercise these

23 rights and not answer any questions or make any

24 statements.

25 Q. Did she appear to understand those warnings?

1 A. Yes, sir.

2 Q. Did she appear to have any -- did she appear to
3 be intoxicated in any way that would make it difficult
4 for her to understand what you were saying to her?

5 A. No, sir.

6 Q. Did she ask you any questions about those rights?

7 A. No, sir.

8 Q. Did she invoke her rights at any point?

9 A. Not at that time, sir. I asked her if she
10 understood them. She said, yes. That's the only thing
11 I ever asked her.

12 Q. Is that a true and accurate copy of the scanned
13 copy that you made?

14 A. Yes, sir.

15 MR. PORTER: Your Honor, I ask to enter State's
16 Exhibit 1 into evidence.

17 THE COURT: Mr. Brooker?

18 MR. BROOKER: No objection.

19 THE COURT: State's Exhibit 1 is into evidence
20 without objection.

21 (PLF. EXH. 1, Copy of Miranda Warning, was
22 entered into evidence.)

23 MR. PORTER: Thank you, Your Honor.

24 BY MR. PORTER:

25 Q. Just going on, I want to make sure that she

1 understood. Did she appear to have any mental or
2 physical disabilities that would make it difficult for
3 her to understand the warnings?

4 A. No, sir.

5 MR. PORTER: No further questions for this
6 witness.

7 THE COURT: Thank you.

8 Mr. Brooker.

9 MR. BROOKER: Just briefly, Your Honor.

10 * * *

11 CROSS-EXAMINATION

12 BY MR. BROOKER:

13 Q. Investigator Atwell, I won't spend a whole lot of
14 time on this. Correct me if I'm wrong.

15 My understanding is you just testified on direct
16 examination that you watched Ms. Gales from the
17 distance. She was on the outer perimeter of this, I
18 guess, perimeter that you-all had set up; is that
19 correct?

20 A. I was sitting in my car in the parking lot that
21 Ms. Gales was parked in, which was on Ben Casey Drive.
22 There was another road down from that parking lot. Down
23 a hill, there's a building there.

24 I was actually parked alongside the road in front
25 of the building that was -- if you were looking at the

1 front of her car, it would have been down a hill. There
2 would have been a building. I would have been on the
3 other side of it in my vehicle.

4 Q. I think you said you were parked there just in
5 anticipation of if she were to run?

6 A. Yes, sir.

7 Q. You said that she certainly did not run; is that
8 correct?

9 A. Correct.

10 Q. She made no attempt to evade law enforcement or
11 get away from you; is that correct?

12 A. Not that I noticed.

13 Q. Your testimony is that you read her her Miranda
14 Rights; is that correct?

15 A. Yes, sir.

16 Q. In course, I think that that's the form that was
17 just entered into evidence as State's Exhibit 1; is that
18 correct?

19 A. Yes, sir. It's not a form. It's just a
20 photocopy of my Miranda card and a photocopy of her
21 driver's license.

22 Q. Just to the point, the question is, in the
23 department that you work with, you don't have Miranda
24 forms? Waiver? Miranda waiver forms?

25 A. The detectives in the division do, yes, sir.

1 Q. How long have you been working with law
2 enforcement?
3 A. Since 2003.
4 Q. What was your capacity at that time?
5 What capacity did you work in at that time?
6 A. In 2003?
7 Q. No, no. At the time in which we're discussing
8 right now.
9 A. Narcotics investigation.
10 Q. You're in narcotics investigation?
11 A. Yes, sir.
12 Q. In course, you didn't have a Miranda form with
13 you?
14 A. No, sir.
15 Q. Ever carry them around?
16 A. I personally do not, sir.
17 MR. BROOKER: Please indulge me for just a
18 second, Your Honor.
19 THE COURT: That's fine.
20 MR. BROOKER: No further questions, Your Honor.
21 THE COURT: Any redirect?
22 MR. PORTER: No, sir, Your Honor.
23 THE COURT: Thank you.
24 Investigator Atwell, you can step down.
25 (Whereupon, the witness exited the witness stand.)

1 THE COURT: You can call your next witness.
2 MR. PORTER: State calls Investigator Josh Todd.
3 * * *
4 JOSHUA TODD,
5 called as a witness by and on behalf of
6 the State to testify, being first duly
7 sworn was examined and testified as follows:
8 * * *
9 DIRECT EXAMINATION
10 BY MR. PORTER:
11 Q. Good afternoon. Would you please state your name
12 for the record.
13 A. Joshua Todd.
14 Q. What is your current occupation?
15 A. I work for the Fort Mill Police Department. I am
16 currently assigned to the York County Multi-Jurisdiction
17 Drug Enforcement Unit.
18 Q. How long have you worked in that role?
19 A. Approximately eight years.
20 Q. What are your duties in that position?
21 A. To investigate drug complaints and utilize
22 confidential informants to make controlled purchases of
23 narcotics.
24 Q. Do you recall receiving information regarding the
25 Defendant in this case on January 31, 2018 by CMPD?

1 A. Yes, I do.

2 Q. What did you do based upon that information?

3 A. Myself and Investigator Holland drove in my
4 vehicle to 105 Ben Casey Drive where Ms. Gales was.

5 Q. Is that within York County?

6 A. It is.

7 Q. Is that within your jurisdiction?

8 A. Yes, sir, it is.

9 Q. Were you able to locate -- first of all, do you
10 see the woman who you know as Ramona Gales in the
11 courtroom here today?

12 A. I do.

13 Q. Where is she seated?

14 A. At the defense table.

15 Q. Were you able to locate her at Ben Casey Drive at
16 any point?

17 A. Yes, sir.

18 Q. Please describe for the jury how that process
19 went about.

20 A. I received information over the radio that
21 Ms. Gales had exited a business at 105 Ben Casey. As
22 she walked out of the business, she was at the driver's
23 door of her vehicle. Then me and Investigator Holland
24 approached her and began speaking with her.

25 Q. Did you at any point deploy your K-9 -- are you a

1 K-9 narcotics officer?

2 A. I am.

3 Q. Please describe to the jury what that means.

4 A. I have a certified narcotic detection dog.

5 Q. What does that dog do?

6 A. She is trained to smell the odors of four

7 narcotics.

8 Q. Did you deploy that dog after speaking briefly

9 with Ms. Gales?

10 A. I did.

11 Q. How long have you worked as a K-9 handler?

12 A. Approximately four years.

13 Q. What is the name of your K-9 partner?

14 A. MJ.

15 Q. How long has MJ been in service?

16 A. Approximately four years.

17 Q. Where does MJ live while not in service?

18 A. At my house.

19 Q. How old is she?

20 A. Approximately -- she'll be six in June of this

21 year.

22 Q. What breed is she?

23 A. She is a black lab.

24 Q. I think you said -- what law enforcement function

25 does she perform?

1 A. Narcotic detection.

2 Q. Specifically, does she detect actual drugs or the
3 odor of narcotics?

4 A. The odor of narcotics.

5 Q. Prior to January 31, 2018, what training had you
6 and MJ received?

7 A. I went through approximately 120 hours, three
8 weeks, of training on how to handle her. Also, we try
9 to train at least eight hours a month on narcotic
10 detection, as well as, I re-certify with her every year.

11 Q. Would you please describe to the jury what a
12 typical training day would look like.

13 A. Typically, there's myself and three other
14 handlers in the county. We train together. We'll take
15 turns hiding the four different kinds of odors of
16 narcotics. Then we'll deploy our dogs to find those
17 odors.

18 Q. What are the four odors of narcotics that she's
19 trained to detect?

20 A. Marijuana, heroin, cocaine, and methamphetamines.

21 Q. In a training session, do you know where the
22 hides are?

23 A. Not always, no.

24 Q. Approximately how many times would you know where
25 they are?

1 A. Like I said, it's between three and four
2 handlers. We usually take turns hiding, so one in four.
3 Q. Moving to how many training sniffs she had done,
4 approximately how many training sniffs had she done
5 prior to January 31, 2018?
6 A. Somewhere around 60, 65.
7 Q. How many times did you deploy her in the field
8 for the purposes of narcotics detection?
9 A. Probably around 15 times.
10 Q. Have you found her to be reliable in the
11 detection of the odor of narcotics?
12 A. I have.
13 Q. Do you have any certifications from Custom Canine
14 with respect to MJ and yourself?
15 A. I do.
16 Q. Are you certified by any other organizations?
17 A. The South Carolina K-k Association.
18 Q. What is required to be certified by the K-9
19 Association?
20 A. That's my yearly re-cert where they got four
21 odors, and she has to alert on the four odors of
22 narcotics as well as what is called a blank room, which
23 is a room that does not have dope in it.
24 Q. When you say identify, how would she identify the
25 blank room?

1 A. By not showing me any changes of behavior or any
2 alerts.

3 Q. You just mentioned changes in behavior. What are
4 you looking for while you're performing a search with
5 MJ?

6 A. I'm looking for a change in her behavior, a
7 change in her breathing pattern, and her final alert
8 which is to sit.

9 Q. Is that based on your training and your
10 experience working MJ?

11 A. It is.

12 Q. Is a lab a breed known for an acute sense of
13 smell?

14 A. Yes, sir.

15 Q. In fact, how many of the drug dogs that operate
16 out of York County -- how many of those are labs?

17 A. Three out of four.

18 MR. PORTER: Your Honor, we move to qualify
19 Investigator Todd as an expert for the purposes of K-9
20 narcotics detection.

21 THE COURT: Mr. Brooker?

22 MR. BROOKER: May we approach?

23 THE COURT: You may.

24 (Whereupon, a bench conference was held off the
25 record and out of the presence of the court reporter.)

1 THE COURT: We are at the point where,
2 Mr. Porter, you have tendered Officer Todd as an expert
3 in -- state it again.
4 MR. PORTER: K-9 narcotics detection.
5 THE COURT: Mr. Brooker, your response?
6 MR. BROOKER: We object, Your Honor.
7 THE COURT: Thank you. I note your objection.
8 For the record, I'm going to overrule the objection. I
9 will find that -- let me give you a little instruction,
10 ladies and gentlemen.
11 Normally, a person cannot give opinion testimony.
12 Normally, when a person testifies, they must testify
13 either whether -- as to what they saw, heard, or sensed
14 by smell, or something of that nature.
15 However, there is an exception when someone is
16 qualified because of education or experience. They are
17 permitted to give their opinion in certain areas and the
18 Court qualifies them that way.
19 This witness will be qualified in the area of an
20 expert in K-9 narcotics detection. He will be able to
21 give opinion testimony in that area. That does not mean
22 that you must accept the opinion. It is evidence for
23 you to use in any way you see fit and give it the weight
24 and credibility you believe is appropriate.
25 Mr. Porter.

1 MR. PORTER: Thank you, Your Honor.

2 BY MR. PORTER:

3 Q. Investigator Todd, did you perform a free-air

4 sniff upon the vehicle there at Ben Casey Drive?

5 A. Yes. I did.

6 Q. Before we get into that, when you approached, did

7 you observe the Defendant near that vehicle?

8 A. I did.

9 Q. Did you observe anything particular about her at

10 that point?

11 A. She had -- she was carrying a bag which, I

12 believe, was from the dentist's office. That was when

13 she was approaching the driver's door of the vehicle.

14 Q. Did she have anything in her hand that indicated

15 that she was attempting to get into the vehicle?

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

17 Q. Where was she located when you initially

18 approached her?

19 A. Right near the driver's door of the vehicle.

20 Q. Were there any other cars near that vehicle?

21 A. I can't recall.

22 Q. Did she walk directly to that vehicle?

23 A. Yes, sir.

24 MR. BROOKER: Your Honor, I'm going to object, at

25 least for leading.

1 THE COURT: I'll overrule the objection.

2 Go ahead.

3 MR. PORTER: Thank you, Your Honor.

4 BY MR. PORTER:

5 Q. Please walk the jury through how the free-air
6 sniff worked.

7 A. I retrieved my K-9 partner MJ from the back of my
8 vehicle, which is where her kennel is located. I put
9 her on a lead. I took her to a grassy area in front of
10 Ms. Gales' vehicle. I broke my dog, which is a term
11 that we use for letting the dog use the rest room.

12 When she finished up with that, I then brought
13 her to the front passenger's side of the vehicle where I
14 gave her the term, find it, which she knows to be to
15 find the odor of narcotics.

16 She then searched the front of the vehicle, down
17 the driver's side of the vehicle, across the back of the
18 vehicle and then up the passenger's side of the vehicle.

19 My dog then got in between the front driver's
20 door or the front passenger's door and the rear
21 passenger's, door where I noticed a change in her
22 behavior. I can tell she was getting excited because of
23 her tail wagging and, also, I noted that her breathing
24 had changed. She would start breathing through her nose
25 very heavily.

1 Then at that point, she put her nose between the
2 two doors and sat down, giving me a positive alert.

3 Q. What did you believe was present based upon that
4 behavior from your -- from MJ?

5 A. The odor of narcotics.

6 Q. Investigator Todd, I'm showing you what's been
7 marked for identification as State's Exhibit 3.

8 Can you please tell me what that is.

9 A. It's my body camera video.

10 Q. Was it recording? Was your body camera recording
11 that day?

12 A. Yes, sir.

13 Q. Have you reviewed the contents of that disk?

14 A. I have.

15 Q. Is it a true and accurate depiction of the events
16 as they occurred that day?

17 A. It is.

18 MR. PORTER: Your Honor, we ask that State's
19 Exhibit 3 be entered into evidence.

20 THE COURT: Mr. Brooker.

21 MR. BROOKER: Your Honor, we don't object to the
22 portions of that video that is not offensive to our
23 client.

24 THE COURT: Lawyers approach.

25 (Whereupon, a bench conference was held off the

1 record and out of the presence of the court reporter.)

2 THE COURT: All right. State's Exhibit 3, which

3 is ID'd as a bodycam video that Investigator Josh Todd

4 is -- the Court is overruling the objection, and it will

5 be admitted as evidence in this case.

6 (PLF. EXH. 3, DVD, was entered into evidence.)

7 MR. PORTER: Permission to publish, Your Honor?

8 THE COURT: Yes, you may.

9 Ladies and gentlemen, we're in a new world of

10 technology. This is a new courthouse that you-all have

11 paid for. We hope that you're going to be able to see

12 this on a monitor directly in front of you. If you

13 cannot, raise your hand and let us know.

14 I'm with you. I can't see on mine either. She's

15 trying to set that up right now.

16 MR. PORTER: May we publish?

17 THE COURT: Yes, you may.

18 Does everybody have something on their screen?

19 Can everybody see it?

20 Okay. All of us are set. Is it the 25-minute

21 one?

22 MR. PORTER: Yes, sir, Your Honor.

23 THE COURT: Does everybody want to sit here for

24 25 minutes, or do we need to take a short break before

25 we look at the 25-minute video?

1 Everybody is okay? Okay. At any time if you need
2 to take a break in the 25 minutes, just raise your hand.
3 Mr. Porter, you may proceed.
4 MR. PORTER: Thank you, Your Honor.
5 (Whereupon, State's Exhibit 3 was published to
6 the jury for their review.)
7 BY MR. PORTER:
8 Q. Investigator Todd, what did we just watch?
9 A. MJ's sniff of the suspect vehicle.
10 Q. Did Investigator Ervin just tell us something?
11 A. Yes.
12 Q. What did he tell you?
13 A. That she had told him there is some cocaine in
14 the vehicle.
15 Q. Based on all of that information, what did you do
16 next?
17 A. I searched the vehicle.
18 Q. How did you go about searching the vehicle?
19 A. I started -- I believe I received information
20 that there was some cocaine in a black cup in the
21 vehicle. I immediately went to the front passenger's
22 glove compartment black backpack. I opened it up, and
23 cocaine was inside of it.
24 Q. And did you find any other container outside of
25 that container?

1 A. I did.

2 Q. What was that container?

3 A. There was also a white plastic container. I

4 can't recall which order I found them in. I don't

5 recall if I found the black one first or the white one.

6 The white one initially was opened.

7 Q. Investigator Todd, I will show you what has been

8 marked for identification as State's Exhibit 2. Tell me

9 what is contained in this bag.

10 A. That would be two containers located inside the

11 vehicle, which both contained cocaine.

12 Q. Have those two containers been in your custody

13 and control since January 1, 2018?

14 A. They are. They have.

15 Q. Are those the same containers that were inside

16 the defendant's vehicle?

17 A. Yes, they are.

18 Q. Specifically, is this the white cup that you had

19 difficulty opening?

20 A. It is.

21 MR. PORTER: Your Honor, I apologize. I would

22 ask State's Exhibit 2 be entered into evidence.

23 THE COURT: Mr. Brooker.

24 I will rule on the objection. State's Exhibit 2

25 is now introduced into evidence.

1 (PLF. EXH. 2, White cup, was entered into
2 evidence.)
3 MR. PORTER: Permission to publish?
4 THE COURT: Yes, you may.
5 (Whereupon, State's Exhibit 2 was published to
6 the jury for their review.)
7 BY MR. PORTER:
8 Q. Investigator Todd, you mentioned the white
9 container had a key; is that correct?
10 A. It did, yes.
11 Q. How were you able to locate that key?
12 A. Ms. Gales advised me that it took a key to open
13 it. I located the key in the vehicle.
14 Q. Did she tell you how to open it?
15 A. She did.
16 Q. Did she tell you where the key was?
17 A. She did.
18 Q. Did you take any pictures during the search of
19 the vehicle?
20 A. Yes, I did.
21 Q. Investigator Todd, I am showing you what has been
22 marked for identification as State's Exhibits 4, 5, 6,
23 7, 8, and 9.
24 Please tell the jury what is depicted on those
25 pages.

1 A. These are pictures of the containers that I
2 located inside Ms. Gales' vehicle.

3 Q. Are these true and accurate depictions of the
4 pictures that you took and what you observed on that
5 day?

6 A. They are.

7 MR. PORTER: I would ask that State 4 through 9
8 be moved into evidence.

9 THE COURT: Mr. Brooker.

10 MR. BROOKER: Subject to our previous objections,
11 Your Honor.

12 THE COURT: Thank you. I will note your
13 objection.

14 State's Exhibits 4 through 9 were introduced into
15 evidence.

16 (PLF. EXH. 4, Photograph, was entered into
17 evidence.)

18 (PLF. EXH. 5, Photograph, was entered into
19 evidence.)

20 (PLF. EXH. 6, Photograph, was entered into
21 evidence.)

22 (PLF. EXH. 7, Photograph, was entered into
23 evidence.)

24 (PLF. EXH. 8, Photograph, was entered into
25 evidence.)

1 (PLF. EXH. 9, Photograph, was entered into
2 evidence.)

3 MR. PORTER: Permission to publish?

4 THE COURT: Yes. You may.

5 (Whereupon, State's Exhibits 4 - 9 were published
6 to the jury for their review.)

7 BY MR. PORTER:

8 Q. Investigator Todd, showing you on the screen
9 there what has been marked for identification as State's
10 Exhibit 4. Can you please tell the jury what that is.

11 A. The black cup I located in the vehicle that had
12 cocaine in it.

13 Q. What is depicted there to the left of the cup?

14 A. I believe it's the keys to the vehicle.

15 Q. I am showing you State's Exhibit 5. Please tell
16 the jury what that is.

17 A. That is the black bag I located on the front
18 passenger's floor of the vehicle, which contained two
19 containers.

20 Q. State's 6.

21 A. A money bag containing, I believe, \$280.

22 Q. State's 7.

23 A. That is the white container that I located
24 containing the cocaine.

25 Q. Can you please describe how that white container

1 works for the jury.

2 A. There is a key on the bottom of it. You have to

3 insert the key to unlock it. Then you push down and it

4 turn the top portion. The plastic part you see there,

5 it kind of like pops out of that portion.

6 Q. State's 8. What are we looking at there?

7 A. The contents of the white container.

8 Q. What did you believe the thing in the bag there

9 to be based on your training and experience?

10 A. Cocaine.

11 Q. Finally, State's Exhibit 9. Please tell the jury

12 what that is.

13 A. That is a picture of both the cups with the

14 contents in front of them, as well as the money.

15 Q. Where did you locate all of that?

16 A. In a black bag on the front passenger's

17 floorboard.

18 Q. Of what vehicle?

19 A. Ms. Gales' vehicle.

20 MR. PORTER: Your Honor, permission to continue

21 publishing State's Exhibit 3.

22 THE COURT: Yes, you may.

23 BY MR. PORTER:

24 Q. Investigator Todd, we just watched Investigator

25 Ervin throw you something. What is that?

1 A. My cell phone.

2 Q. What was in your hand just now?

3 A. Keys to the vehicle.

4 Q. The keys. That is what I am talking about. Did

5 Investigator Ervin throw you the keys to the vehicle?

6 A. Yes.

7 Q. Where would he have received them from?

8 A. I believe he would have gotten them from Ms.

9 Gales.

10 MR. BROOKER: Objection. Calls for speculation.

11 THE COURT: I will sustain the objection.

12 MR. PORTER: Your Honor, may we approach?

13 (Whereupon, a bench conference was held off the

14 record and out of the presence of the court reporter.)

15 THE COURT: Ladies and gentlemen, we are going to

16 take just about a five-minute break to allow you to

17 refresh yourselves so the technical difficulties can be

18 cleared up. So we will send you back to the jury room

19 to refresh yourselves. Then we will finish this

20 witness' testimony today.

21 However, I do charge you that when you go back to

22 the jury room, do not discuss the case at all. Anything

23 you have heard so far is off limits for any discussion.

24 With that, I will allow you to go back to the jury

25 room and refresh yourselves, and we will have you back

1 in here in no later than 10 minutes. Again, we will
2 finish this witness' testimony and that will end it for
3 the day.

4 Everyone remain seated while the jury panel is
5 excused.

6 (Whereupon, the jury exited the courtroom.)

7 THE COURT: All right. Thank you. We will be at
8 ease for about 10 minutes.

9 (Whereupon, a recess was held.)

10 (Whereupon, the following proceedings were
11 held in open court. The defendant was
12 present with her attorney, along with
13 counsel for the State.)

14 THE COURT: Where are we, Mr. Porter?

15 MR. BROOKER: Your Honor --

16 THE COURT: Do we have to watch the rest of the
17 25-minute video to know what we need to redact?

18 MR. PORTER: Yes, sir. I was trying to go over
19 with Mr. Brooker to see where we have problems. We're
20 probably on agreement on redactions. I have 12 more
21 redactions that need to be taken out at minute 17:49,
22 and we're not even done.

23 The other problem is, this is in evidence now.

24 THE COURT: I can reverse my decision on its
25 admissibility. I'm shocked that we're here in the trial

1 and the Court has now been told that there are at least
2 10 and counting redactions that should or could have
3 been made. That's something that should have been done
4 before we got to this point. We have this jury sitting
5 here. You-all had -- this is a two-year-old case.

6 So you don't know what on the remainder of the
7 video what needs to be redacted or what doesn't need to
8 be redacted.

9 MR. PORTER: Your Honor, I've made redactions
10 from -- we took out what I believe would be Crawford
11 issues about what North Carolina states. Mr. Brooker
12 stated he has an objection to anything that Investigator
13 Grimsley said and anything Investigator Holland stated
14 based on the Court's ruling. So this has changed the
15 game a little bit.

16 THE COURT: What's on the video that you would
17 like for the jury to see?

18 MR. PORTER: The only other thing at this point
19 would be her statement when Investigator Todd
20 approached.

21 THE COURT: What did she say?

22 MR. PORTER: She said there's approximately two
23 ounces of cocaine. That's in the video.

24 THE COURT: What is your position, Mr. Brooker?

25 MR. BROOKER: Your Honor, with respect to the

1 statements that he's talking about with respect to
2 Grimsley -- and I think there is another officer who is
3 at the scene that did not testify. In course, I think
4 that would present Crawford issues. In course, there is
5 obviously, I guess, at the last minute a decision was
6 made --

7 THE COURT: You-all need to educate me on the
8 Crawford issue. Normally, Crawford is in the context of
9 the co-defendants. What's the Crawford issue?

10 MR. PORTER: The State's position is that none of
11 the statements that Investigator Grimsley or
12 Investigator Holland in were testimonial. Investigator
13 Holland, I think, makes the statement that she said 7 or
14 8 grams, but that was also testified to by two other
15 officers.

16 THE COURT: Tell me how Crawford applies.

17 MR. PORTER: I think he's objecting to whether
18 the hearsay is testimonial. It's not testimonial,
19 because it isn't establishing a fact that's prejudicial.
20 They are just statements that are unrelated to what's
21 going on in this case here.

22 THE COURT: All right. Here's what we're going
23 to do. We're going to bring the jury back in. I'm
24 going to excuse them for the evening. You-all look at
25 the video. You-all be prepared to do what you need to

1 do with the video before tomorrow morning.

2 All right?

3 MR. PORTER: Thank you, Your Honor.

4 THE COURT: Let's have Investigator Todd back on
5 the stand.

6 (Whereupon, the witness entered the witness
7 stand.)

8 THE COURT: Let's bring the jury in.

9 Hold on just a minute. Ms. Penny, let them go
10 back to the jury room.

11 THE BAILIFF: Yes, sir, Your Honor.

12 THE COURT: Let me state this for the record.
13 I'm not sure what I really need to do. Here we are in
14 the midst of a trial. There has been no agreement on
15 the video. Yes, it has been admitted into evidence;
16 however, the Court's not going to allow anything on
17 there -- the Court could admit it into evidence, and
18 that would be error.

19 Certainly, if there's information on there that
20 should not have been admitted, then there would be a
21 mistrial at some point or the Court could be reversed.
22 You-all could not agree on what should have been
23 redacted or not. The Court certainly doesn't know
24 what's on there.

25 My options are, one, is to wait and see if

1 you-all can agree on it. My other option is simply to
2 allow what has been presented so far -- obviously, it's
3 in evidence. You've shown that. If you have got a
4 statement on there that you want to get in, I'll let
5 that portion in, but then I'm not going to let anything
6 else in on the video.

7 MR. PORTER: Your Honor, I've made several
8 attempts to get a consensus on what would be admissible
9 and what should be redacted and what wasn't. I did not
10 receive any response that I recall. I actually sent the
11 time stamps to Mr. Brooker through email about what I
12 was going to redact.

13 I was kind of flying blind here as to what to
14 redact. When we spoke in this first call in front of
15 Judge Newman -- we attempted to call it. At that time,
16 I thought we had a consensus. We should have had a
17 redactions conference. That should have happened. I
18 apologize for not bringing that to the Court's
19 attention.

20 I think this can be cured with redactions --
21 since Investigator Todd is still on the stand -- to find
22 some way to introduce another copy with the redactions
23 on it that we agree to. I've done everything that I can
24 to get what I think should be --

25 THE COURT: Well, I assume that what -- it seems

1 like what you're trying to deal with is statements from
2 Investigator Holland and who else?
3 MR. PORTER: Grimsley.
4 THE COURT: Well, Holland is a York County
5 officer.
6 MR. PORTER: Yes. We could call him.
7 THE COURT: You could have. That's your call.
8 Certainly Grimsley, anything Grimsley said from
9 Charlotte-Mecklenburg.
10 I'm going to bring them in. You-all can discuss
11 it. I'm going to reserve ruling on what I'm going to do
12 until tomorrow morning.
13 Let's bring the jury in.
14 (Whereupon, the jury entered the courtroom.)
15 THE COURT: Ms. Penny, we'll allow the jurors to
16 sit wherever they wish to sit. They can change anytime
17 they wish, except the alternates. Whenever they come in
18 or out, they are free to pick wherever they want to sit.
19 THE BAILIFF: Yes, sir.
20 THE COURT: Thank you.
21 Ladies and gentlemen, we have a number of
22 potential -- we have an issue with electronics that we
23 can't get resolved until in the morning, so I'm going to
24 allow you to go home for the rest of the evening.
25 Don't discuss the case whatsoever. Enjoy your

1 evening. Don't do any research on any electronic
2 devices of people, places or anything else that might be
3 remotely related to this case.

4 Be back and ready to go tomorrow morning. If
5 you'll be back at 10:00. We have work to do before
6 10:00. I don't want you to think we're not working. Be
7 back ready to go at 10:00 tomorrow morning.

8 With that, everyone remain seated. We're going
9 to allow this jury to be excused.

10 (Whereupon, the jury exited the courtroom.)

11 THE COURT: Which brings us to, Investigator
12 Todd, we have interrupted this case during your direct
13 examination, which means you're still under oath. You
14 will remain under oath throughout the evening until we
15 finish your testimony tomorrow.

16 That means you cannot talk about this case with
17 your attorney -- with the State's attorneys or among any
18 of the other officers in your department. That would be
19 improper and a potential basis for a mistrial if you
20 have any conversation with anybody about this case.
21 You're still under oath.

22 Do you understand that?

23 THE WITNESS: Yes, sir.

24 THE COURT: Thank you. I'll allow you to step
25 down.

1 THE WITNESS: Thank you.

2 (Whereupon, the witness exited the witness stand.)

3 THE COURT: We're going to be at ease until
4 tomorrow morning. You-all be ready to go at 9:30. I'm
5 going to decide what I'm going to do about the video
6 then. You-all can do what you think is appropriate,
7 and we'll talk about it then in the morning.

8 MR. PORTER: Thank you, Your Honor.

9 * * *

10 END OF VOLUME I

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P R O C E E D I N G S

* * *

THURSDAY, JANUARY 30, 2020

YORK, SOUTH CAROLINA

* * *

THE COURT: We are back on the record in the matter of State v. Ramona Gales. This is a jury trial on Indictment Number 2018-GS-46-03573.

We were at the point where Officer Todd was under oath. We are in the middle of direct examination. We had some issues with the video. We are going to talk about that in a minute. I think they are resolved.

So at this point, Officer Todd, if you would return back to the stand. You are still under oath.

* * *

JOSHUA TODD,

called as a witness by and on behalf of the State to testify, being previously duly sworn was examined and testified as follows:

* * *

THE COURT: Now, is the State ready to proceed?

MR. PORTER: Yes, sir, Your Honor.

THE COURT: Is the defense ready?

MR. BROOKER: Yes, Your Honor. If we can take up one small matter.

1 THE COURT: Let's take care of the issue with
2 the video first. Let's make sure we are clear on that.

3 We were at the point where, I believe, State's
4 Exhibit 3 had been introduced into evidence subject to
5 objections that were based on Jackson v. Denno issues.

6 I had ruled on those prior to the start of the
7 trial. I have noted that those objections were properly
8 raised at the time.

9 Once we started showing the video, there appeared
10 to be -- there may be some material that needed to be
11 redacted, that needed to be discussed between the State
12 and the defense over the redaction of the remainder of
13 State's Exhibit 3.

14 The Court gave the parties an opportunity to try
15 to resolve that overnight.

16 Where are we, as far as State's Exhibit 3,
17 Mr. Porter?

18 MR. PORTER: Your Honor, the State went over the
19 video with the defense last night. We have agreed on
20 the redactions. I have a new copy of State's Exhibit 3
21 that has redacted the portions that needed to be removed
22 based on the Court's rulings. We would ask that it be
23 substituted for the video entered into evidence.

24 That video that was entered into evidence through
25 Investigator Todd will remain Court's Exhibit 4. The

1 new video has been marked by the court reporter as
2 State's Exhibit 3.

3 I will ask Investigator Todd at the conclusion
4 of the video -- just out of an abundance of caution --
5 if it truly and accurately depicts the events as he
6 observes them today just as an additional layer of
7 authentication.

8 We have reviewed the video prior to today, and we
9 have agreed on the redactions. So everything should be
10 good to go.

11 THE COURT: As we talked in chambers,
12 Mr. Brooker, that was the agreement that you had reached
13 on behalf of your client; is that correct?

14 MR. BROOKER: Yes, Your Honor. We went through
15 the video with respect to the redactions. The course is
16 that our objections will still apply as it relates to
17 previous pretrial motions and objections.

18 THE COURT: I will note the objection, and the
19 Court does find that any objections made as far as the
20 introduction of State's Exhibit 3, that that certainly
21 is part of the timely raised objections to what is now a
22 cleaned-up copy of State's Exhibit 3. So let me ask you
23 that.

24 What have we done practically? State's Exhibit
25 4, have we removed the State's Exhibit 3 sticker off of

1 that or at least covered it up?

2 MR. PORTER: Yes, Your Honor. It has been
3 removed. I have State's Exhibit 3 on the new container
4 that will have State's Exhibit 3 inside of it.

5 It's removed from Court's Exhibit 4.

6 THE COURT: No. It is still Court's Exhibit 4;
7 correct?

8 MR. PORTER: Yes, sir.

9 THE COURT: Court's Exhibit 4 then also became
10 State's Exhibit 3. That sticker, State's Exhibit 3, has
11 been removed from that. So we have a video that simply
12 has Court's Exhibit 4 on it. That was admitted as part
13 of the pretrial motion to suppress; correct?

14 MR. PORTER: Yes, sir, Your Honor.

15 THE COURT: Now we have State's Exhibit 3, which
16 is the redacted, agreed-upon video.

17 MR. PORTER: Yes, sir, Your Honor.

18 THE COURT: Okay. I think we are clear on
19 that.

20 MR. PORTER: For purposes of the record, nothing
21 objectionable was shown to the jury prior to the end of
22 the proceedings yesterday.

23 THE COURT: All right. Anything else from the
24 State?

25 MR. PORTER: No, sir, Your Honor.

1 THE COURT: From the defense?

2 MR. BROOKER: The only issue I would like to
3 address, Your Honor, is that I went and talked with
4 Ms. Gales, prior to court, in course. She is outfitted,
5 I think, with restraints. I think they are iron bars
6 that go all the way up her legs. I am assuming that is
7 to restrain her from being able to run. I think it's a
8 running restraint. The course is that it doesn't allow
9 her to be able to bend her legs.

10 In course, as a result of that, it is going to be
11 tremendously uncomfortable for her to sit for hours in
12 the course and concentrate on her trial with that
13 restraint on.

14 We are asking the Court to consider having that
15 restraint removed, considering the fact that I think
16 yesterday she didn't have that restraint on. It didn't
17 present any problem to the Court. The course, I am
18 assuming, as far as I know of -- she wasn't attempting
19 to create the appearance that she was seeking to evade
20 the custody of law enforcement.

21 I think it's going to be substantially
22 burdensome. It's going to interfere with her being able
23 to concentrate on the trial. The course is to
24 effectively assist me in participating in her defense.

25 THE COURT: All right. Thank you.

1 Generally, I yield to security in the jail about
2 those particular issues. Obviously, they have
3 determined that would be part of their procedure in this
4 case. Deputy Roads, is there any reason why if I order
5 that removed -- is that going to present a security
6 problem?

7 DEPUTY ROADS: I don't believe so, Your Honor.

8 THE COURT: A protocol problem, but not as far as
9 a security problem. I will order that we will take that
10 off of her. Let's take her back there and do what you
11 need to do. Let's not do it right here. Take her back
12 there and take off that brace, and then we will proceed.

13 (Whereupon, a recess was held.)

14 THE COURT: Is the State ready to proceed?

15 MR. PORTER: Yes, sir, Your Honor.

16 THE COURT: Defense ready?

17 MR. BROOKER: Yes, sir.

18 THE COURT: Let's bring the jury in.

19 (Whereupon, the jury entered the courtroom.)

20 THE COURT: Thank you, ladies and gentlemen. I
21 appreciate your patience. When you take your next
22 break, during that break if you would elect a foreperson
23 from among yourselves. The foreperson, again, is simply
24 an individual that the Court can communicate with and
25 make sure that the instructions of the Court are

1 followed in the jury room. The foreperson has no
2 greater say in what occurs, takes place, or decisions
3 made in the jury room. The foreperson is simply the
4 individual the Court needs to be able to communicate
5 back and forth with the jury.

6 So the next time we take a break, if you would
7 select a foreperson from among yourselves. When you
8 came back in after that break, if the foreperson would
9 take the first seat here on the front row. That would
10 be to my left. That will be the foreperson's seat
11 throughout the rest of the trial.

12 With that, I think we are ready to proceed.

13 Investigator Todd is on the stand. We are on
14 direct examination.

15 Mr. Porter, this is your witness.

16 MR. PORTER: Thank you, Your Honor.

17 * * *

18 DIRECT EXAMINATION CONTINUES

19 BY MR. PORTER:

20 Q. Good morning, Investigator Todd.

21 A. Good morning.

22 Q. Could you briefly just tell the jury what we are
23 about to watch here on your body camera?

24 A. The rest of the video is pretty much me
25 collecting evidence from the vehicle.

1 Q. Is it fair to say the search of the vehicle?

2 A. Yes.

3 Q. Is that a truthful and accurate depiction of the

4 events that occurred that day?

5 A. Yes.

6 Q. Where is your body camera mounted on you when you

7 are wearing it?

8 A. It's on my gray vest right in the center of my

9 chest.

10 Q. Anything that was depicted -- were you standing

11 right behind the camera?

12 A. Yes.

13 Q. What did you do with the evidence you recovered

14 from Ms. Gales' vehicle?

15 A. I took it back to the Fort Mill Police

16 Department, where it was placed into the York County

17 evidence dropbox.

18 Q. Could you explain to the jury how that dropbox

19 works.

20 A. It's basically a solid metal locker with several

21 different markers on it. It has a padlock. Once you

22 put the evidence in there, you lock the padlock. Then

23 the evidence techs from York County come and pick the

24 evidence up to bring it back to the Moss Justice Center.

25 Q. Once it's submitted, do you have any further

1 access to that evidence?

2 A. No.

3 Q. Showing you what's been marked as State's

4 Exhibits 10 and 11. Do you recognize State's 10 and 11?

5 A. I do.

6 Q. How do you recognize them?

7 A. 10 is going to be the cocaine that I recovered

8 from the black plastic cup, and 11 is going to be the

9 cocaine that I recovered from the white plastic

10 container.

11 Q. Are you referring to the cups in State's 2?

12 A. I am.

13 Q. Is that the cocaine that we just watched on your

14 body camera being recovered?

15 A. Yes. It is.

16 Q. And did you package that cocaine into those bags?

17 A. Into the bags inside the outer bag, yes.

18 Q. Did you make the markings on the outside of them?

19 A. Yes.

20 Q. Did you sign them?

21 A. Yes.

22 Q. Are they in substantially the same condition as

23 when you entered them into evidence?

24 A. Yes. They are.

25 Q. Is your signature on both of these bags? Is your

1 handwriting and your signature on both of these bags?

2 A. It is.

3 MR. PORTER: Beg the Court's indulgence.

4 No further questions for this witness, Your
5 Honor.

6 THE COURT: Thank you.

7 Mr. Brooker.

8 MR. BROOKER: Thank you, Your Honor.

9 * * *

10 CROSS-EXAMINATION

11 BY MR. BROOKER:

12 Q. Detective Todd, I'm just going to take you back
13 through at least some of the testimony that you gave on
14 direct examination. I think you testified that you
15 received communication that caused you to come out to
16 that area where the vehicle was located; is that
17 correct?

18 A. Yes.

19 Q. That's what you testified to. In course, when
20 you came out to that location, did you see Ms. Gales
21 anyplace when you came out to that location?

22 A. When I initially got there?

23 Q. When you arrived. I'm sorry.

24 A. No, sir.

25 Q. How long was it after -- how long was it that you

1 saw Ms. Gales from the time in which you arrived?

2 A. I can't be exact, but I would say, approximately,
3 30 minutes to an hour. Somewhere in there.

4 Q. In course, roughly 30 minutes to an hour, in
5 course, you see her coming through the parking lot; is
6 that correct?

7 A. I did not witness her with my own eyes. I
8 received -- I don't remember which officer had direct
9 eyes on her, but I received communication that she was
10 walking out.

11 Q. So you learned -- at some point in time you
12 approached her in the parking lot; is that correct?

13 A. I did.

14 Q. When you approached her in the parking lot, were
15 you wearing your bodycam?

16 A. No, sir.

17 Q. During that initial encounter when you came up to
18 her, you were not wearing your bodycam?

19 A. No, sir.

20 Q. In course, my understanding is that there was a
21 -- was there communication -- I'm not asking you what it
22 was. Was there communication exchanged between yourself
23 and Ms. Gales?

24 A. There was.

25 Q. About how long did that interaction last?

1 Roughly, to the best of your recollection.

2 A. I would say three, four, five minutes at max.

3 Q. So between three to five minutes?

4 A. Is my best guess.

5 Q. That's all I'm asking you for. I know you didn't

6 have a stopwatch. I'm just asking you for your best

7 estimate.

8 A. Yes, sir.

9 Q. Between three to five minutes.

10 In course, at that time, I think -- what did you

11 do after that time?

12 A. I retrieved my K-9.

13 Q. Did you do anything before you retrieved your

14 K-9?

15 A. Just speaking with Ms. Gales.

16 Q. At some point in time did you then get your

17 bodycam and put your body camera on?

18 A. I did.

19 Q. You then put your bodycam on. In course, with

20 your employer -- and I think you testified to this.

21 You're with the Fort Mill Police Department. In course,

22 you're assigned to the Multi-Jurisdiction Drug Unit Task

23 Force; is that correct?

24 A. Yes.

25 Q. In course, Fort Mill Police Department -- do they

1 have policy with respect to bodycams?

2 A. They do.

3 Q. What is that bodycam policy?

4 A. I don't know it verbatim.

5 Q. You don't know it verbatim?

6 A. No, sir. I can't recite it word-for-word.

7 Q. Do you know what the -- I know you can't recite

8 it word-for-word, but do you know what that rule

9 requires you to do?

10 A. It requires me to have my body camera on when I'm

11 conducting a K-9 scent of the vehicle.

12 Q. In course, we just saw the video of that bodycam?

13 A. Yes.

14 Q. Is that correct?

15 A. Yes.

16 Q. In course -- you correct me if I'm wrong -- the

17 purpose of wearing that bodycam is --

18 MR. PORTER: Objection, Your Honor. Calls for

19 speculation.

20 THE COURT: I'll overrule the objection.

21 BY MR. BROOKER:

22 Q. The purpose of wearing that bodycam -- if I'm

23 wrong you can say, Mr. Brooker, you're wrong. That is

24 not the purpose.

25 This is the question: The purpose of wearing

1 that bodycam is that so there is an independent,
2 undisputed record of the actual current events; is that
3 correct?

4 A. I'm not really sure what you're asking me.

5 Q. I'll repeat it. I'm sorry. I'm maybe just not
6 asking it correctly.

7 Isn't it true that the purpose of wearing that
8 bodycam is so that there is an independent record of
9 actually everything that takes place; right?

10 A. I don't know.

11 Q. Because that bodycam doesn't rely on your
12 interpretation or rely on your memory, does it? It
13 creates an objective record of everything that occurs;
14 is that correct?

15 A. Yes. After I activate my bodycam, it shows
16 everything I'm doing.

17 Q. It shows everything that you're saying; is that
18 correct?

19 A. To my knowledge, yes.

20 Q. I know that you said that your policy requires
21 you to wear that bodycam when you deploy your K-9. You
22 just watched the video that's just been entered into as
23 State's Exhibit 3; is that correct?

24 A. Yes, I believe it was 3.

25 Q. I think you testified that's an accurate

1 depiction? That video represents an accurate depiction
2 of what took place; is that correct?

3 A. Yes.

4 Q. On that video, at any point in time did we see
5 the dog in that frame? You can't see the dog as you're
6 running the dog around the car; is that correct?

7 A. The whole time the dog is not with me, if that's
8 what you're asking me.

9 Q. Yes. When you're deploying the dog around the
10 car for the free-air sniff, we don't see the dog in that
11 frame, do we?

12 A. Not the whole time, no, sir.

13 Q. We can hear the dog, but we don't see it. I
14 think you testified that the dog alerted; is that
15 correct?

16 A. Yes.

17 Q. That alert -- I think you testified that the dog
18 alerted by sitting; is that correct?

19 A. Yes.

20 Q. In that video, do we see the dog sit?

21 A. I don't believe you do. I don't know how often
22 the dog or -- what portion of the dog you can see at
23 that exact time.

24 Q. So there's not an independent, undisputed record
25 of exactly whether or not that dog alerted; is that

1 correct?

2 From the video. I'm talking about from the video.

3 The video doesn't create an independent record of

4 whether or not that dog sits, does it?

5 A. I'm not sure. That's your opinion, I guess.

6 Q. You testified that the dog's alert sign is that

7 the dog sits; is that correct?

8 A. Yes.

9 Q. Okay. Do you have documentation showing what the

10 dog alerts on?

11 A. Documentation referring to?

12 Q. Any documentation.

13 A. I have a K-9 record for that day.

14 Q. What I'm talking about is -- let me rephrase

15 that.

16 Do you have documentation from the training

17 kennel that shows what the dog's trained alert sign is?

18 A. No. I don't.

19 Q. What you're asking the jury -- correct me if I'm

20 wrong -- is believe me that the dog alerts. You're

21 asking the jury to believe me that the dog's alert sign

22 is to sit; is that correct?

23 A. I told them that my dog's sign of alert is to

24 sit.

25 Q. Yeah. You're asking the jury to just believe

1 your word; is that correct?

2 A. Yeah.

3 Q. Because you don't have independent documentation
4 of it; is that correct?

5 A. I don't have any reason to lie about it.

6 Q. Now, also, we know when we watched that video --
7 I think --

8 MR. BROOKER: If you can give me a second, Your
9 Honor.

10 BY MR. BROOKER:

11 Q. When you said in that video -- correct me if I'm
12 wrong is -- excuse me.

13 You testified, I think, during some point in that
14 video, that Ms. Gales told you something; is that
15 correct? Remember when the prosecutor stopped the video
16 and said: What did Ms. Gales say to you? Remember
17 that?

18 A. I'm sorry. What part of the video are you
19 referring to?

20 Q. I think it was is that -- I want to make sure. I
21 think you said something to the effect that Ms. Gales
22 told you that the key opened the container?

23 A. Yes.

24 Q. Yes. That's what you said. In course, is that,
25 when we listen to the video -- when we listen to the

1 video, we don't hear from that video Ms. Gales telling
2 you that the key opens it; is that correct?

3 A. I don't know if you can hear her or not.

4 Q. You also testified that -- I just want to get a
5 correction. You testified that the substance that you
6 took out of that car is cocaine; is that right?

7 A. Yes.

8 Q. But just for corrections, you're not a chemist,
9 are you?

10 A. I am not.

11 Q. You didn't chemically analyze that substance that
12 you took from that vehicle, did you?

13 A. I did not.

14 Q. You're not telling the jury that you can
15 chemically identify what that substance is; is that
16 correct?

17 A. Chemically, no.

18 Q. You're telling the jury what you believe; is that
19 correct?

20 A. What I believe and what Ms. Gales told me it was.

21 Q. We'll get to that as well, too.

22 You said Ms. Gales told you what it was. What
23 did Ms. Gales say to you?

24 A. I'll correct myself. She didn't say it to me.
25 She said it to Commander Ervin who, in turn, told me.

1 Q. Okay. That's what I want to make sure. I just
2 want what she said directly to you.

3 Did she say anything directly to you?

4 A. Well, that I recall directly about cocaine, no,
5 not directly to me.

6 Q. In course, if she said these things directly to
7 you, you would consider this to be evidence; right? She
8 said these things directly to you -- I think the thing
9 that you said that she said to you, like, how to open
10 the container, I think you said she said that; right?

11 A. Yes.

12 Q. In course, that would be evidence; right?

13 Would you agree with me?

14 A. What would be evidence?

15 Q. What she said to you.

16 A. Yes.

17 Q. Normally, whenever you, you know, are out in the
18 field and, in course, you're collecting evidence, then,
19 in course, you generally memorialize what happened at
20 the scene?

21 A. What do you mean by memorialize?

22 Q. You generate a report?

23 A. I do.

24 Q. In course, the stuff that you just testified to,
25 the stuff that you said Ms. Gales said, that this is how

1 to open the cup -- I think you said that she said that
2 to you and that you memorialized that in your report;
3 correct?
4 A. I'm not sure. I would have to look at it.
5 MR. BROOKER: Do you have any objection to him
6 refreshing his memory, if he needs to?
7 BY MR. BROOKER:
8 Q. Do you have your report?
9 A. No. I don't.
10 Q. If you can indulge me. I would like to refresh
11 your memory.
12 A. Do you want me to read what I wrote about the
13 key?
14 Q. No. I'm just asking you whether or not you
15 memorialized the question I asked you in the report.
16 A. It does state in my report that --
17 Q. You don't have to read me your report. It's just
18 to refresh your memory. I'm asking your testimony.
19 Have you refreshed your memory?
20 A. I have.
21 Q. Now, if you want to respond after you've
22 refreshed your memory. I don't want you to read the
23 report into the record. This is for purposes of just
24 refreshing your memory.
25 Is your memory refreshed?

1 A. Yes.

2 Q. Now, do you have a response to that question?

3 A. I put that she advised me that the key opened the
4 container -- or she advised investigators.

5 Q. But she didn't advise you?

6 A. I heard her say it.

7 Q. You heard her say it. That's not the way you
8 depicted it in your report; is that correct?

9 A. I didn't depict it by just me specifically. I
10 depicted it as investigators.

11 Q. Now, you also testified that when you collected
12 the substance that you took out of the car, I think it's
13 marked as State's Exhibits 10 and 11. This is what you
14 collected from the vehicle; is that correct? That's
15 what your testimony is?

16 A. Yes. I collected it from the container in the
17 vehicle.

18 Q. From the container in the vehicle. Okay. In
19 course, you said that normally it's your procedure that
20 you bag this stuff up. Your testimony was you bagged it
21 up in that bag that it's currently contained in?

22 A. The bag inside of that.

23 Q. The bag inside of that bag?

24 A. I don't believe -- maybe it's in the chemist's
25 bag. I'm not sure.

1 Q. Sure. I'm not trying to trick you up or
2 anything. You bagged it up?
3 A. Yes.
4 Q. In course, you said that normally when you bag it
5 up, you take it to -- I think you testified to -- to the
6 Fort Mill Police Department?
7 A. Yes.
8 Q. Did you transfer it directly from the Fort Mill
9 Police Department from the scene?
10 A. Did I take it from the scene to the Fort Mill
11 Police Department?
12 Q. Yes.
13 A. If I recall, I believe I went directly to the
14 police department. I don't know if I stopped to get a
15 drink or anything that day on the way back. I can't
16 remember that.
17 Q. How do you secure it when you transport it to the
18 Fort Mill Police Department?
19 A. It's in my vehicle.
20 Q. Where at in your vehicle?
21 A. From the video, I secured it in the back seat of
22 my vehicle.
23 Q. I think from that video, if my memory serves me
24 correct, there is a scene of you opening the door to
25 your backseat and putting it in the backseat; is that

1 correct? Do you remember that?

2 A. I believe so, yes.

3 Q. In course, when you open it and put it in the
4 backseat -- I'm assuming your vehicle wasn't locked; is
5 that correct?

6 A. I don't know.

7 Q. So if your vehicle wasn't locked, in course,
8 potentially other people could have had access to it.
9 It wasn't completely secured, was it not?

10 A. You could say that, I guess.

11 Q. So you take it to the Fort Mill Police
12 Department. In course, I think you said you put it in
13 an evidence locker or something like that?

14 A. Yes.

15 Q. You take it and put it in an evidence locker?

16 A. Yes.

17 Q. Then, in course, after that, do you ever see it
18 again?

19 A. Not until we came to trial, and I had to get it
20 out of evidence to take it to trial.

21 Q. I got you. Okay. So when you put it into
22 evidence -- when you put it into that evidence locker --
23 I'm assuming someone gets it from the evidence locker?

24 A. Yes. I would assume that.

25 Q. Do you know the people who work -- do you know

1 all the people who worked in evidence at that time with
2 the Fort Mill Police Department?

3 A. I didn't drop it into Fort Mill's evidence. I
4 dropped it into York County's evidence locker, which is
5 in the Fort Mill Police Department.

6 Q. I'm sorry. You dropped it in the Fort Mill
7 Police Department's evidence locker -- Sheriff's
8 Department's evidence locker?

9 A. Yes. York County Sheriff's Department's evidence
10 locker is located in the Fort Mill Police Department.

11 Q. When you put it in that locker, the Fort Mill
12 Sheriff's County's evidence locker, at that particular
13 bit of time, do you know the identity of who picks it up
14 out of that Fort Mill Police Department's evidence
15 locker?

16 A. I don't know specifically who picked it up that
17 day. I'm assuming we can look on the evidence bag and
18 see who picked it up.

19 Q. In course, I think the next time -- your
20 testimony was that you didn't see it next until when you
21 picked it up out of the evidence locker to bring it to
22 court; is that correct?

23 A. I believe back in October I picked it up for
24 court. Then I dropped it back off in evidence. Then
25 again yesterday.

1 Q. Who did you pick it up from in October?

2 A. I would have to look at the chain of custody.

3 Q. Is it on that -- is it on something that's in
4 evidence? Is it on one of those things that's in
5 evidence?

6 A. It should be.

7 Q. If it is -- I don't mind if you take a look at
8 it. It's already in evidence. Do you need to see one
9 of these?

10 A. Yes, if you want to know who I picked it up from
11 in October.

12 Q. Sure. Is it this one?

13 A. I believe Earl Lee Taylor. Is that correct?

14 Q. I don't know where you're looking at?

15 A. October 24th. Right here (indicating).

16 Q. Are you looking at the phone call?

17 A. I am.

18 Q. In course, then it says here on that same day,
19 October 24th, you delivered it back to whoever's name
20 that is?

21 A. I don't recognize that signature right offhand.

22 Q. Do you know the name?

23 A. I can't read it.

24 Q. I can't either. I can't either.

25 Then, in course, it says on 1-29, it says: From.

1 Do you know who that is?

2 A. Jimmy Stiles.

3 Q. Do you know him?

4 A. I do.

5 Q. In course, you do?

6 A. Yes.

7 Q. All right.

8 MR. BROOKER: If you could indulge me a second,

9 Your Honor. I want to make sure that I don't have any

10 further questions for Detective Todd.

11 THE COURT: Take your time.

12 MR BROOKER: No further questions, Your Honor.

13 THE COURT: Thank you. Any redirect?

14 MR. PORTER: No, sir, Your Honor.

15 THE COURT: Thank you. Investigator Todd, you

16 can step down.

17 (Whereupon, the witness exited the witness stand.)

18 THE COURT: Ladies and gentlemen, this would be

19 an appropriate time for us to take about a 10 to

20 15-minute break, at the most. I'll allow you to go back

21 to your jury room. While you're out in the jury room,

22 if you would elect a foreperson from among yourselves.

23 When you come back to the jury room, the foreperson

24 takes this end seat on the front row here on the left.

25 Again, I instruct you not to discuss the case,

1 any aspect about the case, anything you've heard or
2 anticipate you might hear. Do not discuss anything
3 related to this case while you're out.

4 With that, I'm going to allow you to go back to
5 the jury room. Everyone else remain seated while this
6 jury leaves.

7 (Whereupon, the jury exited the courtroom.)

8 THE COURT: Thank you. We'll be at ease for
9 about 10 minutes.

10 (Whereupon, a recess was held.)

11 (Whereupon, the following proceedings were
12 held in open court. The defendant was
13 present with his attorney, along with
14 counsel for the State.)

15 THE COURT: Is the State ready to proceed?

16 MR. PORTER: State is ready.

17 THE COURT: Defense ready?

18 MR. BROOKER: Yes, sir.

19 THE COURT: Let's bring the jury in.

20 (Whereupon, the jury entered the courtroom.)

21 THE COURT: Thank you, ladies and gentlemen. I
22 appreciate your promptness. I've been handed a note
23 that indicates that Mr. O'Connor, Juror Number 171 --
24 you have been elected the foreperson.

25 THE FOREPERSON: I have.

1 THE COURT: Thank you.

2 State, call your next witness.

3 MR. PORTER: State calls Vincent Holland to the
4 stand.

5 * * *

6 VINCENT HOLLAND,
7 called as a witness by and on behalf of
8 the State to testify, being first duly
9 sworn was examined and testified as follows:

10 * * *

11 DIRECT EXAMINATION

12 BY MR. PORTER:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. Could you please state your name for the record.

16 A. Vincent Holland.

17 Q. How are you employed?

18 A. I am employed with Tega Cay Police Department as
19 an investigator.

20 Q. Are you assigned to any particular unit?

21 A. I am assigned to the York County Drug Enforcement
22 Unit.

23 Q. How long have you been assigned to the Drug
24 Enforcement Unit?

25 A. On and off for about ten years.

1 Q. Can you briefly go over some of your duties and
2 roles with the Drug Enforcement Unit.

3 A. Work informants, work undercover, traffic stops,
4 numerous things pertaining to narcotics.

5 Q. Were you involved in an incident involving Ramona
6 Gales that brings us to court here today?

7 A. Yes, I was.

8 Q. Did you encounter her on that day?

9 A. I did.

10 Q. Tell us how you encountered her.

11 A. Myself and Investigator Todd got a call
12 referencing narcotics.

13 Q. Was she coming out of a building? Did you see
14 her on the street?

15 A. She was coming out of what we think was a
16 dentist's office.

17 Q. What, if anything, did she have in her hands when
18 she came out?

19 A. She had a blue bag. Some type of blue bag. A
20 Dentist's bag. It was like a gift-bag-type thing.

21 Q. Was she alone or was anyone with her?

22 A. She was alone.

23 Q. Did you observe her coming out of there, or were
24 you told she was coming out of the dentist's office?

25 A. I observed her. We observed her walking across

1 the parking lot.

2 Q. Where did she go?

3 A. She was walking toward a vehicle parked in the

4 parking lot.

5 Q. What did she appear to be doing with that

6 vehicle?

7 A. She was walking toward it as if it was hers.

8 MR. BROOKER: Objection; calls for speculation,

9 Your Honor.

10 THE COURT: Overruled.

11 BY MR. PORTER:

12 Q. Did you guys approach her as she was walking

13 toward that vehicle?

14 A. Yes. We did.

15 Q. Who was with you?

16 A. Investigator Todd.

17 Q. Did you-all speak with her?

18 A. Investigator Todd did.

19 Q. At some point, was she placed in handcuffs or

20 arrested or anything like that when you spoke to her?

21 A. No. She was not.

22 Q. At some point, did Investigator Todd go and

23 retrieve his K-9 drug dog?

24 A. Yes. He did.

25 Q. What, if anything, did he do with that K-9 drug

1 dog?

2 A. He instructed the K-9 to conduct an open-air

3 sniff outside the vehicle.

4 Q. Did you observe that open-air sniff?

5 A. I did.

6 Q. What, if anything, did the dog do around the car?

7 A. The K-9 alerted to the vehicle.

8 Q. Which side?

9 A. I do not recall which side.

10 Q. At some point, was a search conducted of that

11 vehicle?

12 A. Yes. It was.

13 Q. This is the same vehicle that the Defendant

14 appeared to be trying to go into?

15 A. Yes. It was.

16 Q. Tell the jury about your involvement with that

17 search.

18 A. Investigator Todd searched the passenger's side.

19 I was standing outside the vehicle and communicating

20 with some other officers. Throughout the search some

21 narcotics was found. A container was found inside the

22 vehicle. We were struggling to get it open.

23 Investigator Todd asked me to attempt to open it.

24 Q. Were you able to open it at that time? The first

25 time that he asked you?

1 A. No. I was not.

2 Q. Were you ever able to open it?

3 A. Yes. We were.

4 Q. Tell the jury how you came to be able to open

5 that container.

6 A. Ms. Gales told us where there was a key that went

7 to the container and told us where the key was at. It

8 was in a bag in the car.

9 Q. Did she tell you where to find that? So she told

10 you it was in a bag?

11 A. In a bag in the car.

12 Q. Was the key found in that bag in the car?

13 A. Yes. It was, by Investigator Todd.

14 Q. As a result of her telling you where and how to

15 open it, were you able to open that container?

16 A. At that time, Investigator Todd was able to open

17 the container.

18 Q. What, if anything, did Investigator Todd recover

19 from that container?

20 A. Cocaine.

21 MR. PORTER: Beg The Court's indulgence.

22 That's all the questions I have for you at this

23 time. Defense can question you.

24 THE COURT: Mr. Brooker.

25 MR. BROOKER: Thank you, Your Honor.

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* * *

CROSS-EXAMINATION

BY MR. BROOKER:

Q. Investigator Holland, I think you said the first time you had seen her was coming across the parking lot; is that correct?

A. Yes, sir.

Q. In course, you said that yourself, along with Detective Todd, approached her?

A. Yes.

Q. About how long was that that you all approached her and had an exchange with her?

A. I'll be honest with you, I couldn't recall. I don't normally time it to know how long an exchange would take place.

Q. Sure. I understand that.

Now, you also said that Ms. Gales told you about a key?

A. Yes, sir.

Q. That fits a cup or something like that?

A. Yes, a container that was located in the vehicle.

Q. Investigator Holland, did you generate an incident report?

A. There was an incident report generated. Whether I was the one that did it, I can't recall that. I don't

1 know.

2 Q. Did you generate an incident report?

3 A. I did not, to my knowledge, generate an incident
4 report. If I did, I would have to see the report.

5 Q. Is there a policy -- is there a policy in your
6 department that law enforcement officers -- that when
7 they're involved in an incident, that those officers
8 generate a report to memorialize exactly what they did
9 and their involvement in the event?

10 A. Yes, sir. We do reports. Whether I generated
11 this report, without seeing the report, I couldn't
12 answer that.

13 Q. I know you do reports. Is there a policy that
14 involves each officer -- I'll rephrase that just in
15 case.

16 Is there a policy in your department that
17 requires each officer who is involved in an incident to
18 generate a report to memorialize the events from that
19 officer's perspective?

20 A. From each individual officer? No, sir.

21 Q. So you don't generate a report?

22 A. No. From my individual self, if you're referring
23 to a report on what I observed, no, sir. I did not
24 generate a report specifically for that.

25 Q. So what you're telling us today, what you're

1 telling the jury today, you're telling it from your
2 recollection?

3 A. Yes, sir.

4 Q. Now, just one more question. I just wanted to
5 make this clear. You're not a chemist, are you?

6 A. No, sir.

7 Q. When you say that drugs was found, I'm assuming
8 that is your opinion; that that is not -- that's not
9 because you chemically analyzed the substance and are
10 able to testify with respect to what it is from any
11 chemical analysis that you performed; is that correct?

12 A. Right.

13 MR. BROOKER: Give me just a second, Your Honor.
14 Let me make sure I don't have any further questions.

15 THE COURT: All right.

16 BY MR. BROOKER:

17 Q. Just one more question. Were you wearing a
18 bodycam?

19 A. No, sir.

20 Q. What law enforcement agency do you work with?

21 A. Tega Cay Police Department.

22 Q. I'm sorry?

23 A. Tega Cay Police Department.

24 Q. TDK?

25 A. Tega Cay.

1 Q. Tega Cay Police Department. Does that police
2 department have a bodycam policy?

3 A. Yes, sir. We do now.

4 Q. Did you have one then?

5 A. If we had one then, I was not issued a bodycam;
6 therefore, I wasn't wearing one, because I wasn't issued
7 one. I can't recall if our policy was in place then or
8 not.

9 Q. You don't know whether or not it was in place
10 then?

11 A. Right.

12 MR. BROOKER: I don't have any further questions,
13 Your Honor.

14 THE COURT: Thank you. Any redirect?

15 MR. PORTER: No redirect.

16 THE COURT: Officer Holland, you can step down.
17 (Whereupon, the witness exited the witness stand.)

18 THE COURT: Call your next witness.

19 MR. PORTER: The State calls Jimmy Stiles.

20 * * *

21 JAMES STILES,
22 called as a witness by and on behalf of
23 the State to testify, being first duly
24 sworn was examined and testified as follows:

25 * * *

1 DIRECT EXAMINATION

2 BY MR. PORTER:

3 Q. Good afternoon, sir.

4 A. Good afternoon.

5 Q. Would you please state your name for the record.

6 A. James Stiles.

7 Q. Where are you presently employed?

8 A. York County Sheriff's Office.

9 Q. How long have you worked for the Sheriff's
10 Office?

11 A. Almost nine years.

12 Q. And what is your current position?

13 A. Evidence technician.

14 Q. What are your duties and roles as an evidence
15 technician?

16 A. To store and collect evidence in a secured
17 location.

18 Q. Does that responsibility include the Fort Mill
19 evidence dropbox?

20 A. That's correct.

21 Q. Can you tell us, how does the Fort Mill evidence
22 dropbox work?

23 A. It's a steel box at the Fort Mill Police
24 Department. It has several doors on it with padlocks.
25 Once the officer puts the evidence in the locker, then

1 they secure it. I'll go down and pick it up every so
2 often and bring it back to the Moss Justice Center.

3 Q. Who has access to that evidence locker?

4 A. Three other people.

5 Q. They are?

6 A. Evidence techs also.

7 Q. Do you know their names?

8 A. Yes. Terrance Robinson, Bobby Trailer, and
9 Lieutenant Pete Mitchum.

10 Q. Showing you what's been marked for identification
11 as State's Exhibit 10 and 11. Do you recognize those
12 items?

13 A. Yes, I do.

14 Q. How do you recognize them?

15 A. From the signature on the bags, drug bag.

16 Q. Whose signature?

17 A. I'm sorry?

18 Q. Whose signature?

19 A. My signature.

20 Q. Where did you receive those items from?

21 A. Fort Mill Police Department, February 8, 2018, at
22 1115 hours.

23 Q. Does it state who dropped them into evidence?

24 A. It does.

25 Q. Who?

1 A. Josh Todd.

2 Q. Once they were taken into evidence, did they

3 remain in your custody and control until you released

4 them to another person?

5 A. Yes, sir.

6 Q. Who has access to the evidence here at the

7 Sheriff's Office?

8 A. Myself and the three others I named.

9 Q. Did you at any point release those items, those

10 two, bags to anyone?

11 A. Yes. I released them to our drug chemist.

12 Q. Who is that?

13 A. Cynthia Mitchum.

14 Q. When did you do that?

15 A. September 23, 2018, 12 o'clock.

16 Q. Do you see her signature on the bag?

17 A. I do.

18 Q. Is your signature on the bag releasing it to her?

19 A. It is.

20 Q. Is that the same for both of those bags?

21 A. It is.

22 Q. Did you ever receive them back into your custody?

23 A. Yes. From Cynthia Mitchum.

24 Q. Did you receive it from Cynthia?

25 A. I did. January 24th.

1 Q. Is that the same for both of those bags?

2 A. It is.

3 Q. When you initially received those bags into
4 evidence, in your training and experience, did you
5 observe them to be tampered with in any way?

6 A. The bags I collected are inside this other bag
7 that Cynthia always has sealed. This is her outer
8 baggie on the evidence.

9 Q. The interior bag -- what is your policy if you
10 observe tampering on the bags that you receive into
11 evidence?

12 A. It's to hold and secure it until notifying the
13 officer who turned it in.

14 Q. Did you do that in this case?

15 A. No, sir.

16 Q. How would you have documented that should you
17 have done that?

18 A. If it had been tampered with, they would re-seal
19 it and re-initial it and date it at that time.

20 Q. Was any of that done in this case?

21 A. No, sir.

22 Q. Were they tampered with in any way prior to you
23 receiving it?

24 A. No, sir.

25 MR. PORTER: I have no further questions for this

1 witness, Your Honor.

2 THE COURT: Cross-examination.

3 MR. BROOKER: Let me check and make sure I have
4 any questions for him. I may not after I check.

5 * * *

6 CROSS-EXAMINATION

7 BY MR. BROOKER:

8 Q. Just a couple questions, Mr. Stiles.

9 MR. BROOKER: If you can indulge me for just a
10 second, Your Honor. I just want to make sure. I may
11 not have any questions. I just want to be certain.
12 I don't have any questions for Detective Stiles,
13 Your Honor.

14 THE COURT: Mr. Stiles, you may step down.

15 THE WITNESS: Thank you.

16 (Whereupon, the witness exited the witness stand.)

17 THE COURT: Call your next witness.

18 MR. PORTER: The State calls Cynthia Mitchum.

19 * * *

20 CYNTHIA MITCHUM,
21 called as a witness by and on behalf of
22 the State to testify, being first duly
23 sworn was examined and testified as follows:

24 * * *

25 THE COURT: Solicitor.

1 MR. PORTER: Thank you, Your Honor.

2 * * *

3 DIRECT EXAMINATION

4 BY MR. PORTER:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. Ms. Mitchum, would you please state your name for
8 the record.

9 A. Cynthia Mitchum.

10 Q. Where are you presently employed?

11 A. I'm employed with the York County Sheriff's
12 Office in the drug analysis laboratory.

13 Q. What are your duties and responsibilities in the
14 drug analysis lab?

15 A. Receive in evidence, and I will analyze the
16 evidence for controlled/noncontrolled substances, and I
17 will report out my results to the officers so they can
18 go forward with their case.

19 Q. How long have you worked in that capacity?

20 A. I've been here at the Sheriff's Office now for
21 almost 20 years. Prior to the Sheriff's Office, I
22 worked in the South Carolina Law Enforcement Division,
23 commonly known as SLED, in Columbia, South Carolina for
24 seven-and-a-half years. I've been doing this for 27
25 years now.

1 Q. Do you have any education or training in the
2 field of forensic analysis of drugs?

3 A. Yes.

4 Q. And could you please tell the jury what that is.

5 A. I have a Bachelor's of Science degree in
6 chemistry, which I received from Winthrop University in
7 1990. Then I've gone through the drug training at South
8 Carolina Law Enforcement Division in their drug analysis
9 department. I've been through various schools through
10 Agilent Technology for instrumentation and through the
11 DEA for the identification of drugs.

12 Q. Have you ever been qualified as an expert in the
13 identification of controlled substances?

14 A. Yes. I have.

15 Q. Approximately how many times?

16 A. In excess of 250 times.

17 MR. PORTER: Your Honor, at this point we offer
18 Ms. Mitchum as an expert in the field of forensic
19 analysis of controlled substances.

20 THE COURT: Mr. Brooker.

21 MR. BROOKER: Your Honor, we would object at this
22 time because we don't believe that the qualifications
23 have at least been established according to the rules.

24 THE COURT: I will overrule the objection. I
25 find that she has testified and she has been qualified

1 to serve as an expert over 200 times. She has
2 sufficient training and expertise.

3 So I find that she is qualified to testify as an
4 expert in forensic drug analysis.

5 Mr. Porter.

6 MR. PORTER: Thank you, Your Honor.

7 BY MR. PORTER:

8 Q. What tools do you use in the analysis of
9 controlled substances?

10 A. The first tool we use is a presumptive test,
11 which is basically a spot test where we will add
12 chemicals to the substance and look for color change.
13 This will give me an idea of what compound I'm looking
14 at.

15 The second tool we use is called a GC Mass Spec.
16 This is an instrument that we will put a portion of the
17 sample in, then it will give us a result. We'll compare
18 that to known and then be able to actually call the
19 substance what it is.

20 Q. Ms. Mitchum, I'm showing you what's been marked
21 for identification as State's 10 and State's 11. Do you
22 recognize those items?

23 A. Yes, I do.

24 Q. How do you recognize them?

25 A. For one, my name is in the chain of custody from

1 when I received them. Also, my initials and "Okay" is
2 at the top where I checked to make sure the bags were
3 sealed.

4 Q. Please describe the process of checking the bags.

5 A. Originally, what I did in both cases is this
6 inside blue filagree bag -- that was the beginning bag I
7 got. What I'll do is check to make sure the top is
8 intact to make sure it's sealed shut and make sure the
9 bottom is intact and sealed.

10 At the top I'll put "okay" and my initials. That
11 lets me know that I have checked the bag. It was
12 intact, and it hadn't been tampered with.

13 Q. Are those bags considered tamper-evident bags?

14 A. That is correct.

15 Q. What would you have done should you had observed
16 evidence of tampering?

17 A. What I would have done in this case, since I got
18 this directly from evidence -- I will check it while I'm
19 getting my evidence from them. I would not have
20 accepted the evidence. They, in turn, would have called
21 the officer in for the officer to check the substances
22 inside the bag to make sure it's what it was supposed
23 to be. Then they would have sealed and initialed if
24 there was anything that needed to be done.

25 Q. Was that required in this case?

1 A. No. It was not.

2 Q. Who did you receive those bags from?

3 A. I received the bags from Jimmy Stiles on
4 7-23-2018.

5 Q. When you received them, where did the drugs
6 remain while they were in your custody?

7 A. While they were in my custody, they remain in the
8 drug evidence laboratory, and I have a filing cabinet
9 that I have the only key for.

10 Q. Does anyone else have access to them while
11 they're in your custody?

12 A. Not in my filing cabinet. No.

13 Q. Moving to the items here. With respect to
14 State's 11, did you perform the testing that you
15 previously mentioned on that?

16 A. Yes. I did my testing on a partial of this
17 evidence.

18 Q. Could you explain to the jury why you did a
19 partial -- first of all, did you analyze a portion of
20 that, what's contained in that bag?

21 A. Yes, I did.

22 Q. What were the results of that testing?

23 A. So State's Exhibit Number 11, which is item
24 Number 2 in this case, was determined to contain
25 cocaine, a Controlled II substance, a total weight of

1 42.31 grams.

2 Q. You mentioned you tested a portion of it. Why
3 did you do that?

4 A. If you look here in the bag, you will have three
5 larger bags with powder substance in it. Then we have a
6 bunch of smaller bags with powder substance. I took the
7 three bags and did them first, because of the weight.
8 There's inferences on the levels that you can have for
9 charges on the weight.

10 These met that inference. The next inference up,
11 I couldn't meet that with any of these bags. So there
12 was no use in me testing those additionally. So I'm
13 just adding more time to me testing.

14 Also, the substance in them was consistent with
15 what's in the bigger bags, too.

16 Q. Would the same be true with respect to what has
17 been marked as State's Exhibit 10?

18 A. Yes. That's correct. The substances in these
19 small Ziplock, they have a little leaf pattern on them.
20 There's a white powder in it. They are consistent with
21 the ones here that also have a small leaf pattern on
22 them. So I didn't do an analysis, because it wouldn't
23 have reached me to the next level either.

24 Q. Again, what was the total weight that you
25 observed that cocaine to be?

1 A. The total weight was 42.31 grams.

2 Q. What do you do with those bags once you completed
3 your testing?

4 A. Once I completed my testing, I then sealed them
5 in this outer bag. That has my initials and the date I
6 sealed them and a heat seal at the bottom. That's still
7 intact today, so it has not been opened since I returned
8 them. I returned it back to Jimmy Stiles of the
9 evidence department on January 24, 2019.

10 Q. Is that the same for both bags there?

11 A. Yes, it is.

12 Q. Tell the jury if you recognize that.

13 A. Yes, this is a report of the findings I made in
14 this case.

15 Q. Is it a true and accurate report that you
16 produced?

17 A. Yes, it is.

18 MR. PORTER: Your Honor, the State would like to
19 enter States 10, 11 and 12 into evidence.

20 THE COURT: Mr. Brooker.

21 MR. BROOKER: Subject to my previous objection.

22 THE COURT: I note your previous objection;
23 however, the Court is admitting State's 10, 11, and 12
24 into evidence.

25 (PLF. EXH. 10, Drugs, was entered into evidence.)

1 (PLF. EXH. 11, Drugs, was entered into evidence.)
2 (PLF. EXH. 12, Report, was entered into
3 evidence.)
4 MR. PORTER: Beg The Court's indulgence, Your
5 Honor.
6 No further questions for this witness, Your
7 Honor.
8 THE COURT: Thank you.
9 Mr. Brooker.
10 MR. BROOKER: Thank you, Your Honor.
11 * * *
12 CROSS-EXAMINATION
13 BY MR. BROOKER:
14 Q. Ms. Mitchum, in course if you need to take a look
15 at this, I can let you do that.
16 A. Okay.
17 Q. What has been marked as State's Exhibit 11 is
18 this, correct?
19 A. Correct.
20 Q. I think that you testified that you first
21 received that on July 23, 2018?
22 A. 9-23-2018.
23 Q. 9-23-2018?
24 A. Correct.
25 Q. You got that from Mr. Stiles?

1 A. That's correct.

2 Q. In course, when you have -- how long did you keep
3 it before you returned it to Mr. Stiles?

4 A. From the date of 9-23-2018 to January 24, 2019.

5 Q. Roughly five months, roughly?

6 A. About four months.

7 Q. I'm sorry. About four months?

8 A. Right.

9 Q. I'll move on.

10 In course, I think you said those four months that
11 you kept it, it was in the -- I don't know. So I will
12 depend on you to tell me.

13 A. Okay.

14 Q. Where was it for those four months?

15 A. This is at the Moss Justice Center, in the drug
16 analysis laboratory in my drug locker that I have the
17 only key for.

18 Q. It was in the drug laboratory inside of your drug
19 locker?

20 A. Correct.

21 Q. In course, the drug laboratory -- how many people
22 have access to the drug laboratory?

23 A. At this time, just three people have access to
24 the drug -- I take that back. Four people have access
25 to the drug laboratory.

1 Q. How many was it at that time between the four
2 months that is identified on that report?

3 A. The same four people.

4 Q. Same four people?

5 A. Correct.

6 Q. The course is that you said that you kept it in a
7 locker?

8 A. Right. It's basically a tall filing cabinet.
9 It's made safety, and it has a lock on the top so it
10 locks. I have the only key to that locker.

11 Q. It's a filing cabinet. I'm assuming that the
12 lock that you're talking about is just the regular
13 filing cabinet lock? Is there a special lock that's put
14 on there to secure it?

15 A. No. It's the regular filing-cabinet-type lock.
16 It's at the very top. It's a four-door filing cabinet.
17 When you turn it, you can't open any of the doors.

18 Q. So just that regular file?

19 A. Yes. That filing cabinet is also within another
20 secure room within the drug laboratory.

21 Q. So a laboratory in the laboratory. Then there's
22 another secure room within the laboratory?

23 A. Correct.

24 Q. In course, the same four people, do they also
25 have access to the other secure room?

1 A. No. Only three people have access to the secure
2 room in the laboratory.

3 Q. Only three people.

4 A. Correct.

5 Q. Normally when you analyze drugs, how long does it
6 take you to do your analysis on drugs?

7 A. It can vary. In this case, because it was more
8 drugs in it, it takes a little bit longer. So it can
9 vary on how long. It just depends on case-by-case on
10 what you have as to how long it takes.

11 Q. Okay. In the course, every technician, drug
12 analyst technician, they have their own filing cabinet
13 that they keep stuff in?

14 A. That is correct.

15 Q. Now, did you perform all the testing on these
16 drugs?

17 A. Yes, I did.

18 Q. That means everything that was done, it was done
19 by you and it wasn't done by anybody else?

20 A. That's correct. The only thing that would have
21 been done is the review of my report itself to make sure
22 everything lined up. As to the analysis and the
23 handling of the substances, that was done by me.

24 Q. Now, I know that you testified -- I want to make
25 sure I understood, because I couldn't see from back

1 there. State's Exhibit Number 11.

2 A. Correct.

3 Q. I think you testified that you tested some, but

4 not everything?

5 A. Correct. The three bags you see, these three

6 bags are in one plastic bag here. There's three bags

7 here. I did an analysis separately on those three

8 bags.

9 The bags in this one here, I did no analysis on

10 because of the weight inference, when you get charged

11 for weight for cocaine.

12 Q. So these three bags, you did testing on all three

13 of those bags?

14 A. That's correct.

15 Q. In the course, you weighed them?

16 A. Yes. I weighed the drugs themselves without any

17 packaging, so the packaging is not included in the

18 weight.

19 Q. If you can indulge me for just a second.

20 I think you testified to fact that those three

21 bags that you just showed me came up to 42.31 grams?

22 A. That's correct, total weight. I weighed each

23 individual bag and then added the weight together.

24 MR. BROOKER: Indulge me for just a second, Your

25 Honor. I want to make sure that I don't have any

1 further questions.

2 BY MR. BROOKER:

3 Q. Almost finished.

4 A. Okay.

5 Q. I think State's Exhibit -- I think Number 10.

6 Was that entered into evidence? Number 10?

7 If you can look at State's Exhibit Number 10.

8 Tell me, when did you pick that up?

9 A. I picked that one up on 7-23-2018.

10 Q. How long did you keep that?

11 A. I returned it back on 1-24-2019. I think that

12 may be a seven on that one and not a nine. I may have

13 looked at the number wrong on the other exhibit. I will

14 have to re-look at it.

15 Q. Sure. You certainly can. There's no problem

16 whatsoever.

17 A. It's a seven, yes. My M is coming down into the

18 seven there, and it makes it look like a nine. That is

19 a seven. 7-23-2018. Sorry about that.

20 Q. That's all right. You picked both of these up.

21 Then, in course, that means that both of them were

22 picked up and --

23 A. That would add two more months on it. Instead of

24 four, it was six.

25 Q. It would have been at the lab a total of six

1 months?

2 A. Right. That's correct.

3 Q. The actual analysis itself, the actual analysis
4 of drugs itself, could you take me through the actual
5 analysis process.

6 What I'm trying to do is figure out is, the actual
7 analysis of the drugs itself, what is the actual time
8 that it takes to do the actual analysis?

9 A. Again, it just depends on how big the case is and
10 when I can get to it, how many cases I have in front of
11 it to do. It could stay in the drug lab that long. It
12 very well could have. I am sure have the date that I
13 actually did the analysis for this when I opened them.
14 11-13-18.

15 Q. 11-13-2018?

16 A. Correct.

17 Q. So, roughly, it stayed in the lab for about four
18 months?

19 A. So four months before I got to the analysis.
20 Yes.

21 Q. Before you got to the analysis?

22 A. That's correct.

23 Q. How long does the analysis take? Is this
24 something that can be done in 24 hours, or a machine
25 does this?

1 A. Yea. An instrument does part of the analysis,
2 and I did part of the analysis on the bench. I have to
3 actually physically take a sample. I would dissolve
4 that in a substance. Then usually when I run it on the
5 instrument, I'll have several samples to run. They're
6 all numbered.

7 Then I will put that on the instrument. The
8 instrument can run overnight, because it's automated.
9 Depending on how many more samples I have and how long
10 it ran, once I take the samples off of the instrument,
11 then I'll do the paperwork for it.

12 Then I will go through a review process where
13 another chemist can review my paperwork. Then I can
14 report out the substance then.

15 Q. How long does it take the machine to do its
16 analysis?

17 A. In the individual run itself, they can take about
18 45 minutes.

19 Q. 45 minutes?

20 A. Correct.

21 Q. That would be if you were doing three separate
22 tests, it would be 45 minutes for each testing if you
23 just have got that one machine?

24 A. That's correct.

25 Q. So 45 minutes. It takes the machine 45 minutes.

1 You said that there is a human component to that, too.
2 You have to actually do some testing.
3 How long does it take you? I'm speaking for just
4 one item now.
5 A. Just one item doesn't take me very long for a
6 spot test. Since this was much bigger, I did more spot
7 tests on it. That took a little bit longer in this
8 case. Time-wise, I couldn't tell you exactly how much
9 time.
10 Q. This is something you can do in one day if you
11 wanted to. If you had the time to do it in one day, you
12 could do it in one day?
13 A. If I did it in one day, no. I wouldn't have
14 time. I have to have someone peer review it.
15 Typically, I don't have somebody right there to peer
16 review it. If I had somebody there to peer review it,
17 in a perfect world, I could probably do one item in one
18 day.
19 Q. A peer review person is not standing right there
20 when you do the analysis?
21 A. No. They're not, no. They're only reviewing my
22 end report and my end results to make sure that
23 everything that I had done lines up with what I'm saying
24 it is.
25 Q. So they don't need to be for your physical

1 analysis?

2 A. No. They do not.

3 Q. They just need to review your work later on?

4 A. Correct.

5 MR. BROOKER: If you can indulge me for just a

6 second, Your Honor.

7 I don't have any further questions for

8 Ms. Mitchum, Your Honor.

9 THE COURT: Any redirect?

10 MR. PORTER: No, sir, Your Honor.

11 THE COURT: Thank you.

12 You can step down.

13 (Whereupon, the witness exited the witness stand.)

14 THE COURT: Call your next witness.

15 MR. PORTER: Your Honor, the State rests.

16 THE COURT: All right.

17 * * *

18 STATE RESTS

19 THE COURT: Ladies and gentlemen, the State has

20 indicated that they are resting. What that simply means

21 is that they do not intend to introduce any other

22 evidence at this point in time. This will be an

23 appropriate time for us to break for lunch.

24 I will allow you to leave, go to lunch, and be

25 back in your jury room ready to go at two o'clock.

1 Again, do not discuss the case. Don't be doing any
2 independent research on your cell phones or iPads or
3 anything else.

4 Don't talk about the case amongst yourselves in
5 the jury room or anywhere else while we're out on a
6 break.

7 With that, I'm going to allow you to go to your
8 jury room and be back ready to go at two o'clock.
9 Everyone remain seated while this panel is excused.

10 (Whereupon, the jury exited the courtroom.)

11 THE COURT: All right. Thank you.

12 Any motions from the State?

13 MR. PORTER: No, sir, Your Honor.

14 THE COURT: From the defense?

15 MR. BROOKER: Yes, Your Honor. The motion we
16 would like to make, Your Honor, I will try to be as
17 brief as possible. It's a motion for directed verdict
18 on the single charge of trafficking that Ms. Gales was
19 charged with.

20 In course, in addition to this motion, there's a
21 culmination -- I won't go through the pretrial motions.
22 It's a culmination of the pretrial motions that we made,
23 coupled with the fact that the State has failed to prove
24 its burden and present evidence on each and every
25 defense underneath the statute.

1 The statute for trafficking cocaine, in order for
2 the State to prove -- in order for the State to present
3 evidence sufficient for a jury to conclude beyond a
4 reasonable doubt Ms. Gales' guilt, they have to prove
5 that -- I'll just read the statute very briefly:
6 Ms. Gales sells, manufactures, cultivates, delivers,
7 purchases, or brings into the State.

8 With respect to that, with respect to sales,
9 there was no evidence that was presented, at least on
10 that particular issue. I don't want to belabor it. I
11 think the officers testified the first time that they
12 encountered Ms. Gales because they received a call and
13 they came out.

14 THE COURT: As far as your motion, the Court
15 concedes there's no evidence of any selling,
16 manufacturing, cultivating, delivering, or purchase.

17 MR. BROOKER: Or bringing into the State.

18 THE COURT: We will talk about that.

19 MR. BROOKER: Okay.

20 THE COURT: I agree. The question would be
21 bringing into this State was knowingly in actual or
22 constructive possession.

23 MR. BROOKER: Your Honor, I was going to get to
24 that first. I wanted to first eliminate these.

25 THE COURT: They're eliminated in the Court's

1 mind.

2 MR. BROOKER: Is bringing into the State -- is
3 that eliminated as well?

4 THE COURT: No.

5 MR. BROOKER: Bringing into the State, they have
6 to present evidence that she brought it into the State.
7 In course, if you can remember, the detective testified,
8 York County detectives, of course -- I specifically
9 asked them when was the first encounter that they had
10 with Ms. Gales.

11 The first encounter they had with Ms. Gales is
12 that they said that they received a phone call about
13 Ms. Gales at that location. That's what brought them to
14 that location.

15 Now, they made no testimony or could not give any
16 direct testimony with respect to where she had come from
17 or how she arrived at that location. They received a
18 phone call. They came to the location. When they got
19 to the location, they waited there. They testified at
20 different times, you know, 30 minutes to an hour. Then
21 she came out.

22 THE COURT: I understand that point. I'll hear
23 the Solicitor in a little bit. I understand your
24 argument. What's before the jury -- there's no evidence
25 from these York officers before the jury. The evidence

1 is they received information that they needed to be
2 involved, and then they responded.

3 For purposes of this motion, the Court
4 understands that as well.

5 MR. BROOKER: Sure. In course, I think the
6 specific elements that Your Honor was talking about;
7 that is, the actual or constructive possession. In
8 course, obviously, I think for actual possession,
9 there's no evidence. Actual possession, I think, from
10 what I read from the case law requires physical
11 possession, which means they found it on your person.

12 In course, there's no testimony that she was in
13 actual possession of anything that is in evidence that
14 is on that table.

15 The whole issue comes down to constructive
16 possession, I believe. In course, the question then
17 would be -- constructive possession, as Your Honor
18 already knows, means that they have to prove that she
19 had dominion and control over the instrument in which
20 the substances were found; meaning, they have to prove
21 that she had dominion and control over that vehicle.

22 Now, they have presented evidence sufficient
23 enough for the jury to find that beyond a reasonable
24 doubt. There's been no evidence with respect to
25 ownership of that vehicle, which means no one testified,

1 no officer testified: I ran the -- I asked whether the
2 officers -- that may have been a pretrial motion. I
3 can't remember if I asked them that during the trial.

4 There's no testimony that those officers ran the
5 tag on that car to see whether or not that car was
6 registered to Ms. Gales or in any way connected to
7 Ms. Gales. None whatsoever. None of the officers
8 testified that they had ran a check on that vehicle to
9 see whether or not it was registered or either connected
10 to Ms. Gales.

11 I think the officers testified, I think Detective
12 Holland and also Detective Todd testified, that when
13 Ms. Gales came out of the dental office, that she walked
14 into the direction of her car. In course, she was next
15 to the car, and that is when they approached her when
16 she was next to that vehicle.

17 In course, I think during cross-examination --
18 excuse me, Your Honor. On direct examination, Assistant
19 Solicitor Porter asked Detective Todd: Did you see
20 anything else in her hand? I know what he was
21 referencing. He was referencing the keys to the car.
22 He said he couldn't recall seeing anything. I think the
23 only thing he said is that he saw that dental bag or
24 something like that. In course, he didn't go as far --
25 I marked that in my notes. He didn't go as far as to

1 say that he saw her with the keys.

2 In course, they didn't wait for her to activate
3 the car. They then testified: We think it was
4 connected to her, because we saw her put the key in the
5 car or we saw her unlock the car or we saw her activate
6 the car.

7 Their testimony is that they saw her walk towards
8 this car. She was standing right next to it. In
9 course, they then reached the assumption that it was
10 hers.

11 Now, the officers testified also that during the
12 search of the vehicle, after they had actually got to
13 the point where they searched the vehicle and that
14 Ms. Gales said that there was cocaine in the vehicle.

15 THE COURT: They didn't ask her for permission
16 to search the car before they went to the car.

17 MR. BROOKER: They did ask her for permission to
18 search the car. The course is that she declined
19 permission. Again, that still goes back to the same
20 premise; that is, that they didn't give an explanation
21 as to why she declined the car. They didn't say, well,
22 she declined the car.

23 She admits the car was hers, and she said, you
24 can't search my car or she declined the search of the
25 car because she's saying that it doesn't belong to me.

1 THE COURT: I understand.

2 MR. BROOKER: They didn't give an explanation for
3 the denial. Just that she says no, is what their
4 testimony is. It still doesn't get to ownership and
5 possession.

6 I think the only thing closest to that is, they
7 said after they got in the car and started searching the
8 vehicle then, in course, they asked her questions. Then
9 she provided information to them. She said that there
10 was drugs in the car, I think is what one of the
11 officers testified to. The other officer said the
12 little cup that's in evidence --

13 THE COURT: This is a motion for directed
14 verdict.

15 MR. BROOKER: Yes.

16 THE COURT: This is not an opportunity for giving
17 closing arguments.

18 MR. BROOKER: Sure.

19 THE COURT: I'll be glad to hear you on the
20 issues related to whether -- taking the evidence in the
21 light most favorable to the State, why this motion
22 should be granted.

23 MR. BROOKER: Yes, sir. So there is no evidence
24 that they presented to prove that she exercised dominion
25 and control over that vehicle. I think, Officer Holland

1 was asked -- and I think this was something else that
2 went to that particular issue. Officer Holland was
3 asked as to whether or not they saw anyone else other
4 than Ms. Gales.

5 In course, they testified that, no, they didn't see
6 anyone else but Ms. Gales. So they still have to prove
7 that she exercised dominion and control over the
8 vehicle.

9 I think they testified that she had knowledge of
10 what was in the vehicle. They testified to that because
11 they said she said there are drugs in the vehicle. That
12 is what they testified to. I think the jury could
13 conclude that, A, she knew what was in the vehicle.
14 There is still no testimony respect as to how she knew
15 what was in the vehicle. They didn't make the
16 connection of ownership or make the connection of
17 control over the vehicle. That connection has not been
18 made.

19 There's no evidence in which the jury could reach
20 that conclusion, other than to speculate. In course, on
21 a directed verdict motion, I think the law says that if
22 the jury has to speculate with respect to an issue and
23 it hasn't been proved beyond a reasonable doubt then, in
24 course, the Court cannot permit that speculation and has
25 to grant a directed verdict.

1 So I think the Court is going to have to
2 speculate -- I mean, the jury is going to have to
3 speculate with respect to dominion and control of that
4 vehicle.

5 THE COURT: Thank you.

6 Mr. Porter. I'll be glad to hear what you have
7 to say.

8 MR. PORTER: Your Honor, in the light most
9 favorable to the State, the State has presented evidence
10 that Ms. Gales had extensive knowledge of what was
11 inside the vehicle. She was there present at a
12 dentist's office. She had to have gotten it somewhere.
13 She approached the vehicle.

14 Investigator Holland stated that she was walking
15 up to that vehicle. She walked specifically to that
16 vehicle, from which the jury could make that
17 determination, yes, that is indeed her car.

18 In addition, the body camera. Commander or
19 Sergeant Ervin throws the keys from the car that the
20 officers used to operate to get into the car to
21 Investigator Todd. That alone would be sufficient to
22 establish that the car was in her possession.

23 Furthermore, Investigator Todd stated that she
24 was around towards the driver's side and was walking
25 towards that vehicle. That establishes, in the light

1 most favorable to the State, that that car was indeed
2 hers.

3 In addition, we have her statements regarding the
4 key, her statements about how to operate that box. That
5 shows she exercises dominion and control over what is in
6 State's 20. Her knowledge of how much cocaine was in
7 the car. There's no one else there in the parking lot
8 around that vehicle.

9 In the light most favorable to the State, Your
10 Honor, the State has presented ample evidence in this
11 case to the jury with respect to her knowledge and her
12 exercising dominion and control in instructing the
13 officers as to how to get to the cocaine.

14 In addition, Your Honor, the requirements of the
15 trafficking statutes, simple possession over an
16 amount -- we have 42 grams. We have over 42 grams of
17 cocaine. That was testified to by Cynthia Mitchum.
18 Your Honor, we ask you to find there is, indeed, enough
19 to go forward.

20 THE COURT: Thank you. I deny the motion for
21 directed verdict. The evidence has been presented in
22 the light most favorable to the State, the moving party.
23 There is sufficient evidence for each of the elements of
24 this offense, which questions in fact that the jury
25 could sufficiently raise and by which the jury can make

1 a determination on the ultimate issue.

2 I deny the motion for directed verdict.

3 Anything else from the defense?

4 MR. BROOKER: None that I am aware of.

5 THE COURT: Anything else from the State?

6 MR. PORTER: No, sir, Your Honor.

7 THE COURT: Let's do this, Mr. Brooker. Have you

8 talked to your client about whether she's going to

9 testify or not?

10 MR. BROOKER: I will talk to her about that, Your

11 Honor.

12 The COURT: I'm not going to ask her to do that

13 now. When we come back after lunch, I will go through

14 what I'm required to ask her about her decision about

15 testifying, whether to testify or not. She doesn't have

16 to state that now.

17 Do you intend to present any evidence?

18 MR. BROOKER: I don't intend to present any

19 evidence, Your Honor.

20 THE COURT: We will be at ease until 2:00. When

21 we come back at two o'clock, I'll have Ms. Gales brought

22 around. We'll talk to her about her right to testify or

23 not and her decision on that.

24 MR. PORTER: Would Your Honor care to have a

25 charge conference or discussion?

1 THE COURT: Let's just be back at quarter to
2 2:00, and we'll go over the charge.

3 MR. BROOKER: Thank you, Your Honor.

4 (Whereupon, a luncheon recess was held.)

5 (Whereupon, the following proceedings were
6 held in open court. The defendant was
7 present with her attorney, along with
8 counsel for the State.)

9 THE COURT: Is the State ready to proceed?

10 MR. PORTER: Yes, sir, Your Honor.

11 THE COURT: Is the defense ready?

12 MR. BROOKER: Yes, sir, Your Honor.

13 THE COURT: Mr. Brooker, have you had plenty of
14 opportunity to talk to your client about whether she
15 wishes to testify or not?

16 MR. BROOKER: We did, Your Honor.

17 THE COURT: Let's bring her around here and have
18 her sworn in and let me talk to her a little bit.

19 * * *

20 RAMONA MONTEAL GALES,
21 called as a witness by and on behalf of
22 the Court to testify, being first duly
23 sworn was examined and testified as follows:

24 * * *

25 THE COURT: You are Ramona Monteval Gales; is

1 that correct?

2 MS. GALES: Yes, sir.

3 THE COURT: Ms. Gales, at this time I need to
4 explain to you a very important right that you have. If
5 you don't understand anything I say, then you need to
6 please let me know.

7 We have now reached the stage of the trial where
8 you may present your defense. You have the right to
9 claim the protections given you by the Fifth Amendment
10 of the Constitution. And it states in part: No person
11 shall be compelled in any criminal case to be a witness
12 against himself. This means that you cannot be required
13 to testify in this case.

14 You have the right to testify on your own behalf;
15 however, no one can make you testify. It's a personal
16 right, and no one can waive this right except you.

17 If you decide to testify, you will be subject to
18 the same rules that govern other witnesses. You may be
19 examined and cross-examined on any relevant issue in
20 this case.

21 In addition, if you have any convictions
22 involving dishonesty or false statements or crimes
23 punishable by imprisonment for more than one year and
24 the Court determines that the probative value of
25 admitting this evidence outweighs its prejudicial effect

1 on you, the Solicitor will be able to introduce your
2 record to attack your credibility.

3 If you decide to testify, this decision on your
4 part must be freely, voluntarily, and intelligently made
5 with the knowledge of the protections given to you by
6 the Fifth Amendment and the consequences of your
7 decision to testify.

8 If you decide not to testify, I will instruct the
9 jurors that they cannot give the fact that you did not
10 testify any consideration whatsoever. There's to be
11 absolutely no prejudice to you because you did not
12 testify.

13 It's left entirely up to you whether or not you
14 testify. You can talk with your attorney, your family
15 or friends, or anyone else, but the final decision will
16 be left entirely up to you.

17 Ms. Gales, do you understand what I've explained
18 to you about your right to testify or present any
19 evidence?

20 MS. GALES: Yes.

21 THE COURT: Do you have any questions?

22 MS. GALES: No.

23 THE COURT: And have you had plenty of time to
24 talk to Mr. Brooker about whether or not you should
25 testify?

1 MS. GALES: Yes.

2 THE COURT: Do you need any more time with him?

3 MS. GALES: No.

4 THE COURT: Do you wish to testify?

5 MS. GALES: No.

6 THE COURT: Thank you. You can return to your
7 seat.

8 Mr. Brooker, does the defense intend to present
9 any evidence?

10 MR. BROOKER: No, Your Honor.

11 THE COURT: Is there anything we need to take up
12 before we talk about the jury charge?

13 From the State?

14 MR. PORTER: No, sir, Your Honor.

15 THE COURT: From the defense? We are going to
16 talk about charges now?

17 MR. BROOKER: No, sir, Your Honor.

18 THE COURT: We had a charge conference in my
19 chambers before we came out. It appears that I have
20 presented the State and the defense a copy of the charge
21 that I intend to give to the jury.

22 Are there any objections to the charge from the
23 State?

24 MR. PORTER: No, sir, Your Honor.

25 THE COURT: From the defense?

1 MR. BROOKER: Your Honor, our only objection will
2 be that we are requesting a charge of possession; that
3 the jury will be charged on possession, simple
4 possession of cocaine, and possession with intent to
5 distribute.

6 THE COURT: Thank you. We had that discussion in
7 chambers. I did instruct Mr. Brooker and the State that
8 we're bound by the evidence that's presented in the
9 case. There has been, in this Court's view, no evidence
10 at all to charge a simple possession or a possession
11 with intent to distribute. I denied that request to
12 charge simple possession or possession with intent to
13 distribute.

14 Anything else?

15 MR. BROOKER: Very quickly, Your Honor. I think
16 on Page 19 of the requested charge, I think Your Honor
17 indicated that Your Honor will read the entire language
18 of the trafficking statute.

19 THE COURT: I think that's back on Page 16.

20 MR. BROOKER: 16, I'm sorry.

21 THE COURT: My page 19 is about possession.

22 MR. BROOKER: You're right. I apologize, Your
23 Honor. In course, we object to the entire language of
24 the trafficking statute to be read. Specifically, we
25 think the elements to be read should be limited to

1 coincide with the evidence that has been presented.

2 There's been no evidence that has been presented
3 on the issue as far as selling, manufacturing,
4 distribution, purchasing, or bringing into the State or
5 financial assistance, providing financial assistance,
6 aiding, abetting, attempting, or conspiring to
7 manufacture, deliver, purchase, or bring into the State,
8 because there has been no evidence presented on those
9 potential elements in which a jury could find guilt.

10 We think it may present confusion to the jury;
11 that the jury might think that those elements are
12 available to them; that they could find on one of those
13 elements.

14 THE COURT: Thank you. I deny that request as
15 well. I'm going to charge the wording of the statute.
16 In fact, in this particular case, I'm also going to send
17 my charge back to the jury. I believe the language
18 certainly delineates all the "ors" in it, so it's not
19 confusing and should be clear to the jury.

20 So I deny that request. I'm going to charge the
21 entire language of the statute.

22 Anything else?

23 MR. PORTER: No, sir, Your Honor.

24 THE COURT: From the defense?

25 MR. BROOKER: The only thing, Your Honor, is do

1 you want to address the verdict form right now as well
2 so we don't have to deal with it later?

3 THE COURT: Yes. Questions about the verdict
4 form.

5 MR. PORTER: Every trial I have ever had, not
6 guilty comes first, Your Honor, but I'm fine with it.

7 THE COURT: Is there an objection to it?

8 THE COURT: What's your request on the verdict
9 form?

10 MR. BROOKER: My only objection, Your Honor,
11 would be that it does not include the options of
12 possession and, in course, possession with intent to
13 distribute.

14 THE COURT: We've addressed that in the charge.
15 It's clear that the verdict form only has the language
16 for either not guilty of trafficking in cocaine or
17 either guilty of trafficking in cocaine. I have not
18 included any lesser-included offenses as possible a
19 option on this verdict form.

20 MR. BROOKER: Other than that, I have no other
21 objections.

22 THE COURT: All right. Let's bring the jury out.
23 I'm going to tell them that they've heard all the
24 evidence in the case.

25 Mr. Porter, you will be given the opportunity to

1 give your closing, and then, Mr. Brooker, you can give
2 your closing.

3 Any idea about how long you intend to argue, Mr.
4 Porter?

5 MR. PORTER: I hope 20, 25 minutes, Your Honor.

6 THE COURT: Mr. Brooker?

7 MR. BROOKER: Right around the same, 25, 30
8 minutes.

9 THE COURT: Thank you. With that, let's bring
10 the jury in.

11 (Whereupon, the jury entered the courtroom.)

12 THE COURT: Thank you, ladies and gentlemen. We
13 appreciate your patience. Mr. Brooker, are you going to
14 call any witnesses?

15 MR. BROOKER: The defense rests, Your Honor.

16 THE COURT: Thank you.

17 * * *

18 DEFENSE RESTS

19 THE COURT: The defense has indicated by resting
20 that they do not intend to present any witnesses. We're
21 now at the point where you will have an opportunity to
22 hear closing arguments from both the State and the
23 defense.

24 Once they have finished their closing arguments,
25 then I'm going to charge you on the law. I'll talk to

1 you about that when we get that point. So I'm going to
2 ask you to listen very closely and give your attention
3 to these attorneys as they address you.

4 Mr. Porter, you can give your closing argument.

5 MR. PORTER: Thank you, Your Honor. May it
6 please the Court.

7 * * *

8 CLOSING ARGUMENT BY MR. PORTER

9 MR. PORTER: Good afternoon, ladies and gentlemen
10 of the jury. We're here today because of the actions of
11 the Defendant, Ramona Gales. The statements that she
12 made and the cocaine that she possessed.

13 I want to go through with you all of the evidence
14 that has been presented to you. It's not lost on me
15 that she stated there are two ounces of cocaine inside
16 her vehicle. Trust me, that's not lost on me.

17 What I want to make sure is that you go through
18 each piece of evidence, see how the direct and
19 circumstantial evidence matches up and proves that she
20 was, indeed, telling the truth, which she also told you
21 she was doing on the bodycam.

22 What does trafficking in cocaine 28 grams or more
23 require? You're going to hear a lot of language from
24 the Judge, a lot of verbs. I want you to pay close
25 attention to the "ors." There's several different ways

1 a person can be convicted of trafficking cocaine in
2 South Carolina.

3 In this case, the Defendant is guilty based upon
4 a possession theory. Specifically, the statute says: A
5 person who is knowingly or in actual or constructive
6 possession or who knowingly attempts to become in actual
7 or constructive possession of 28 grams or more of
8 cocaine or any mixtures thereof, is guilty of
9 trafficking in cocaine. That's in the statute. That
10 will be read to you by the Judge. Please don't get that
11 confused.

12 The law is clear about what trafficking means.
13 You come into this with your common experience. You may
14 have watched movies like Bad Boys and seen cigarette
15 boats with trafficking -- people bringing large amounts
16 of drugs into the United States.

17 In South Carolina, trafficking is simply
18 possession over a certain weight. It doesn't require
19 proof of selling. It doesn't require proof of movement.
20 It doesn't require any proof of, like I said, shipping
21 containers, cigarette boats, anything like that. All it
22 is is possession over a certain amount.

23 Now, I want to talk to you -- I mentioned direct
24 and circumstantial evidence. Direct evidence -- these
25 are equal under the law. To the extent that we rely on

1 circumstantial evidence, it has to be consistent. The
2 State's case is consistent here.

3 Direct evidence is something that directly proves
4 the facts. So when you go outside, it's raining. You
5 know it's raining. You watched it rain.

6 You go to bed at night. You go to sleep. The
7 next morning you wake up and everything is soaking wet.
8 You can infer, based on everything being soaking wet,
9 that it rained outside. Nobody went back out there and
10 hosed down your entire yard and everything around it.
11 That's circumstantial evidence.

12 I imagine the defense is going to talk a
13 substantial amount of time about reasonable doubt.
14 Reasonable doubt is not proof beyond all doubt. It is
15 not proof to a mathematical certainty; two plus two
16 equals four. Although, I would argue this case is that
17 good.

18 The State has simply met the burden if you are
19 firmly convinced that the defendant possessed 28 grams
20 or more of cocaine. That's all that we have to prove.

21 If you go back into your jury room and you sit
22 down and you know that she possessed 28 grams or more of
23 cocaine, she's guilty. Do not let reasonable doubt
24 stand in your way. It's simply if you are firmly
25 convinced, if you do not hesitate to act upon that

1 information.

2 Let's go through it in plain English. Any
3 person, who in South Carolina, particularly York County,
4 possesses cocaine, more than 28 grams, is guilty of
5 trafficking in cocaine.

6 So let's first talk about did she possess it.
7 There's two types of possession. There is actual
8 possession, and there is constructive possession.
9 Actual possession. I have this in my actual possession
10 right now. It's in my hand.

11 If I set this down and I walk away from it,
12 nobody here in the courtroom would come up and take that
13 away from me, because they know that it's mine. It's in
14 my constructive possession. I have dominion and control
15 over it. Moving to this case, I'm holding cocaine in my
16 hand.

17 Constructive possession. I leave my cocaine in
18 the car, and nobody better come and take it because it's
19 my cocaine.

20 Let's start breaking down how we know it was Ramona
21 Gales'. Well, all the officers identified Ramona Gales
22 here in the courtroom that it was indeed her there.
23 You saw her on the body camera. You saw how that person
24 is seated here in the courtroom today.

25 Investigator Atwell took the initial step of

1 getting her driver's license and making sure when he
2 read her her Miranda rights, he put that on there.
3 That's State's 1 here in evidence. This will be back
4 with you in the jury room. You can review it, if you
5 would like to.

6 Her identification. He states Ramona Gales. He
7 identified her.

8 Investigator Todd also received information and
9 confirmed that she was there at 105 Ben Casey Drive in
10 Fort Mill. That was established by Investigator Todd
11 and Investigator Atwell, and the other investigators for
12 that matter.

13 Did she possess cocaine? Did she possess the
14 substance that the officers believed to be cocaine on
15 the side of the road? Well, when Investigator Todd is
16 walking around with his drug detection K-9, she tells
17 Investigator Ervin that there's cocaine in the car. She
18 has knowledge of the cocaine in the car.

19 Also, I'll get to that point in a second.
20 Investigator Todd finds cocaine inside the car that she
21 had walked up to and was about to get into.

22 Investigator Holland also testified that she
23 walked specifically, directly to that car.

24 Investigator Todd is told by the Defendant how to
25 get the key to get into this container, State's 2. She

1 told him -- we'll watch the video in a second. I know
2 that there was some confusing testimony about that. We
3 will watch the video where she states, I have a key.
4 She tells Investigator Todd how to get into this
5 container. She tells him how to open the container.
6 She states at the end of the video that she has
7 knowledge of how much cocaine is inside the car. She
8 says approximately two ounces.

9 Ladies and gentlemen, you can look at this. You
10 heard the chemist testify about this cocaine here. She
11 knows that this is cocaine. This is State's 11. She
12 tested that, 42.31 grams. She also testified that this
13 was all consistent as well.

14 She stopped testing the cocaine, because we
15 weren't going to get to the next inference level. We
16 were over 28 grams. What do we need? More drugs? We
17 were already at 28 grams.

18 As I was saying, how do we know that she
19 possessed what was in that car? We are about to watch a
20 video where you're going to see Sergeant Ervin throw a
21 set of keys to Investigator Todd.

22 Ladies and gentlemen, it appears I have
23 technical difficulties here. I am not going to be able
24 to play this clip for you, but it is in evidence. The
25 body camera is in evidence. I would point you directly

1 to the time stamps of 1:45 to approximately two minutes.
2 You're going to see Sergeant Ervin throw a set of keys
3 to Investigator Todd. Immediately thereafter, there's a
4 set of keys in his hand as he steps into the vehicle.

5 (Whereupon, video was published for the jury's
6 review.)

7 MR. PORTER: Now, again, I talked about
8 reasonable doubt. Where do those keys come from? You
9 don't have to check your common sense at the door. Ms.
10 Gales walked towards that vehicle. She appeared as
11 though she was about to get into the vehicle. Those
12 keys came from Ramona Gales. That's how Investigator
13 Todd got into that vehicle.

14 You can see that there on the camera. You saw
15 him throw it. You can see it again, if you want to
16 watch the video again.

17 Next, we're going to watch a clip where the
18 defendant tells investigators that she has a key to get
19 into the locked container in State's 2.

20 (Whereupon, video was published for the jury's
21 review.)

22 MR. PORTER: What did the Defendant just say?
23 "I have a key. I have a key to open it. It's in the
24 bag."

25 We just watched Investigator Todd pull that key

1 out of the bag inside the defendant's car.

2 Now, again to possession. We're about to watch
3 her state there's approximately two ounces of cocaine
4 inside the car.

5 (Whereupon, video was published for the jury's
6 review.)

7 MR. PORTER: "If I could remember what's in
8 there, probably about two ounces."

9 What's she referring to? Prior to this she has
10 told Investigator Ervin there's cocaine in the car.
11 She's clearly talking about cocaine. She's clearly
12 talking about two ounces of cocaine. She's clearly
13 talking about this cocaine, State's 10 and 11.
14 Specifically State's 11, the one that was tested.

15 Finally, as to her credibility.

16 (Whereupon, video was published for the jury's
17 review.)

18 MR. PORTER: She was completely honest. She was
19 completely honest about the key. She was completely
20 honest about how to get into the container. She was
21 completely honest about how much cocaine was in the car.

22 Was the substance cocaine? I'm going to try to
23 speed through this. Investigator Ervin states that
24 Gales tells him that's cocaine in the car; that there
25 was cocaine in the car, which proves to be true.

1 Investigator Todd finds the cocaine; stated it was in a
2 car that she was standing beside when they approached
3 her. She states on body camera: "It's two ounces of
4 cocaine."

5 Jimmy Stiles ensures that the evidence is the
6 same evidence that the officers took off the roadside.
7 You heard us go through the painstaking testimony about
8 how Investigator Stiles takes it out of the lock box.
9 He takes it over here to the Sheriff's Office, and it's
10 held until Cynthia Mitchum takes it out.

11 Also, MJ alerted, the K-9 officer -- everybody
12 remembers the K-9 officer. The K-9 officer alerted to
13 the presence of the odor of narcotics. She's trained on
14 cocaine. That's another piece of evidence that there
15 was cocaine inside the vehicle, and that it was, indeed,
16 cocaine.

17 Cynthia Mitchum testified. She is certified as
18 an expert. She's been qualified over 250 times in
19 forensic chemical analysis of narcotics. She testified
20 that she performed tests on it and was able to confirm
21 that each of the bags, the three bags that you saw
22 Investigator Todd collect, contained cocaine and the
23 weights of each of them. The total weighed up 42.31
24 grams.

25 She also testified that she stopped testing,

1 because all of the powder was consistent with cocaine,
2 because we had met the 28-gram inference level.

3 Again, Jimmy Stiles kept custody and control of
4 that evidence at all times when it wasn't in the
5 possession of the drug chemist or wasn't in possession
6 of Investigator Todd.

7 That's cocaine, ladies and gentlemen. Those
8 pictures are in evidence. That right there is on the
9 roadside. You see that on the body camera.
10 Investigator Todd took that picture, as well as the
11 picture of the containers and the spread. The
12 individual baggies, you can see how those are packaged.
13 Those are weighed at more than 28 grams.

14 Gales states that she has two ounces of cocaine
15 inside the car. That proves to be true. You saw it on
16 body camera. It's in State's 3. Cynthia Mitchum
17 confirms that the weight that she tested was 42.31
18 grams. I don't feel like I have to say this, but 42.31
19 is more than 28.

20 So what do we have? We have got the direct
21 evidence. Gales admits to two ounces of cocaine being
22 in the car. She tells investigators how to get into the
23 container that has the drugs in State's 11. She tells
24 investigators where the cocaine is located in the car.
25 It's inside the little coffee cup there inside of

1 State's 2.

2 She has these drugs in a locked container. If
3 that's not dominion and control, ladies and gentlemen, I
4 don't know what is. If she possesses a key that she has
5 got her drugs locked up in, she is exercising dominion
6 and control over those drugs all day long.

7 She's the only person around the car when the
8 investigators approached. She's exiting the business
9 and about to get into the car. It's in a backpack in
10 the passenger's seat right where she would have been
11 seated had she been able to get into the vehicle.

12 The Judge is going to instruct you about an
13 inference, a permissible inference, based upon finding
14 narcotics inside a conveyance that is under the control
15 of a person. If narcotics are found in a vehicle under
16 the control of somebody, you can infer that they
17 possessed it. It doesn't take it out of your
18 consideration. It's just an inference that you can use.
19 It's your common sense that if something is in my car,
20 it's probably mine.

21 Again, the elements are simply this: Any person
22 who in South Carolina possesses cocaine, more than 28
23 grams. Ramona Gales at 105 Ben Casey Drive, Fort Mill,
24 South Carolina possessed and admitted to possessing at
25 least, 43.21 grams of cocaine. For sure, on body

1 camera, it happened.

2 Ladies and gentlemen, we're here at trial. The
3 State and the defense have a right to a trial, and we've
4 given it to you. Some things aren't any more than what
5 they appear. In this case, it's clear cut. The
6 defendant knew and she possessed that cocaine inside of
7 her vehicle.

8 She's guilty of trafficking in cocaine 28 grams
9 or more. Thank you.

10 THE COURT: Thank you.

11 Mr. Brooker.

12 MR. BROOKER: Thank you, Your Honor.

13 * * *

14 CLOSING ARGUMENT BY MR. BROOKER

15 MR. BROOKER: I'll ask you, ladies and gentlemen,
16 are you ready to do your duty? The reason why I ask you
17 whether or not you're ready to do your duty is that --
18 if you can remember at the beginning of this trial, I
19 talked about our legal system. I talked about
20 principles that were just absolutely important to our
21 judicial system.

22 In course, if you can remember, I said to you,
23 that in order for our judicial system to work, in order
24 for it to work, in order for us to have the greatest
25 judicial system in the world, then you, the jurors, have

1 to understand those principles and then have to apply
2 them correctly.

3 In course, if you the jurors then understand the
4 principles and apply them correctly and then reach a
5 decision based upon the correct understanding and the
6 correct application of those principles, then our
7 judicial system has worked the way it is supposed to.

8 Let's review those principles very quickly again.
9 In course, one is the presumption of innocence. The
10 Judge is going to explain to you that as Ms. Gales sits
11 there, she still has the presumption of innocence. She
12 still has that presumption of innocence. She has that
13 presumption of innocence until you go back into the jury
14 room and you have reached a conclusion beyond a
15 reasonable doubt that that innocence should be removed
16 from her. So she's innocent right now.

17 Then you go back and you weigh all the evidence,
18 you say, okay, I think it's appropriate to remove that
19 innocence, because the State has met its burden of
20 proof.

21 What is the burden of proof the State has to
22 meet? Proof beyond a reasonable doubt. Proof beyond a
23 reasonable doubt. In course, the Judge is going to
24 explain what proof beyond a reasonable doubt means. I
25 will say to you -- if I say anything that conflicts with

1 the Judge or if Mr. Porter says anything that conflicts
2 with the Judge with respect to what the law is, you
3 listen to the Judge. That's his role. He will tell you
4 what the law is.

5 I think I've explained to you earlier in opening
6 remarks what our role is. We are not witnesses. We are
7 facilitators in this -- in the presentation of this
8 trial.

9 So what is reasonable doubt? It's been described
10 in multiple ways. In one way it says, it's been
11 described as a type of doubt that pauses a person to
12 hesitate. In course, Mr. Porter described it to you in
13 another way. It's been described as the type of
14 evidence that leaves you firmly convinced.

15 Regardless of the way in which you define it, it
16 is a high standard. It is the highest standard that we
17 have in our judicial system. Nothing's higher than the
18 burden of proof beyond a reasonable doubt in a criminal
19 case.

20 The reason why there is nothing higher than that
21 is because this is the most serious type of trial that
22 any citizen can be involved in. It's a type of trial in
23 which the Government says: I am seeking to take
24 something away from you. I am seeking to take one of
25 the most important things or property that a person

1 possesses. I consider one's freedom as property. It
2 belongs to me.

3 When the Government seeks to take it away, that
4 burden is very high, and it should be. You are going to
5 decide today whether or not they reached that high
6 burden. That's what you are asked to decide beyond a
7 reasonable doubt.

8 Now, let's talk about what the law is. In
9 course, Mr. Porter discussed that with you. Ms. Gales
10 is charged with trafficking 28 grams or more. In
11 course, there's multiple ways in which you can prove
12 that, but the element that is important in this
13 particular case, the elements in which the State, the
14 Government has says they have proven is that they are
15 saying that they have proven that Ms. Gales was in
16 possession of 28 grams or more. That's what they are
17 saying they have proven. She's in possession of 28
18 grams or more.

19 Like Mr. Porter said to you, there are two types
20 of possession or two ways in which to possess something.
21 Actual possession and constructive possession. Actual
22 possession. Actual possession means that it's
23 physically on you. I am in actual possession of this
24 cell phone. It's in my hand or it's in my jacket. I'm
25 in actual possession of it. That is the best way to

1 determine whether or not someone has ownership of
2 something.

3 It would be hard for me to argue to you that I'm
4 not in possession of this phone. It's would be folly
5 for me to even attempt, because you can look and see
6 it's in my hands. It's the best proof in the world.

7 That's not the case that we have here. The case
8 that we have here in which the Government is attempting
9 to prove is constructive possession. Now, constructive
10 possession is a little bit trickier. The reason why is
11 that constructive possession means that you don't have
12 the object on you -- which is the best proof, like we've
13 established -- but that object is in some structure that
14 I have dominion and control over. It is in some
15 structure in which I have dominion and control over.

16 So if it's in some structure that I have dominion
17 and control over then, in course, the Government says,
18 therefore it must be yours. Therefore, it must be
19 yours.

20 Right now, if I went to your house and I find a
21 pair of sneakers in your closet; therefore, those
22 sneakers must be yours. That's the theory, but it's not
23 that clear cut. The reason why is that you can have a
24 pair of sneakers in your home that doesn't belong to
25 you. They could belong to a friend that came to your

1 house and visited and left those sneakers. They could
2 belong to a relative that lives in the house with
3 you.

4 There are many logical explanations as to why
5 someone else's shoes might be in your home. That is the
6 problem with constructive possession.

7 Now, the question is, have they even proven
8 constructive possession? In course, I would submit to
9 you that they have fallen short of proving constructive
10 possession beyond a reasonable doubt.

11 Let's talk about why. Their theory is that the
12 instrument in which they found these drugs in, that that
13 instrument was in the constructive possession of
14 Ms. Gales. That's the vehicle. That's what you see in
15 the video.

16 Now, what evidence have they presented to you
17 that the vehicle was in Ms. Gales' constructive
18 possession? Then what evidence did they fail to present
19 to you that would have proven constructive possession?

20 Let's talk about the things that they didn't do
21 to prove constructive possession. One of the most
22 powerful pieces of evidence of constructive possession
23 is title. My vehicle outside is titled in my name.
24 That is strong evidence that it's mine.

25 My home is titled in my name. That's strong

1 evidence that it is mine and that I exercise dominion
2 and control over it.

3 The evidence that is absent in this case is that
4 they presented no evidence with respect to the
5 ownership of that vehicle. Did that vehicle belong to
6 Ms. Gales? Did you hear any evidence that that vehicle
7 belonged to Ms. Gales, from law enforcement? Did you
8 hear testimony from any officers or the presentation of
9 any documents? The answer is no. Not at all. There
10 was no evidence with respect to the ownership of that
11 vehicle.

12 Now, would that have been hard? No. Run a DMV
13 check. They have the technology in their vehicles.
14 They do it all the time when they stop someone on the
15 side of the road. They get on and run a check on that
16 vehicle and find out who it's titled to in less than
17 five minutes. Did they do that? No.

18 They assumed. They made an assumption and
19 they're asking you -- they're asking you to make the
20 same assumption. They didn't do their job. They didn't
21 do their job. Because, remember, proof beyond a
22 reasonable doubt is the highest standard that the
23 Government has. They didn't do that. Why? Why?

24 Before the Government can take our property away
25 from us, before the Government can take our freedom away

1 from us, we are entitled, every one of us, to a complete
2 and thorough investigation before you take something
3 away from us. They didn't do it.

4 But they're saying to you: Just overlook that.
5 We made an assumption. We are asking you, the jury --
6 the Government says, we're asking you to make the same
7 assumption.

8 Now, what evidence are they asking you to assume
9 that she had custody and control over the vehicle? Two
10 officers testified -- if you can remember. Officer Todd
11 or Investigator Todd, and Holland. In course, I asked
12 them specifically about their encounter, the first time
13 that they encountered Ms. Gales.

14 They said that they received a call that led them
15 to that location; that they came there. When they got
16 there, in course, that they waited. In course, about an
17 hour, half-an-hour later, Ms. Gales came out of the
18 dentist's office. They said they had seen Ms. Gales
19 walking, and they had seen her walk up to this car.
20 Then they arrested her. They went forward and stopped
21 her.

22 Why was that error? One is the perfect way that
23 they could have determined whether or not she was the
24 sole occupier of that vehicle -- because you don't have
25 title -- they didn't have title. If they had title, in

1 course, we can say, okay, you don't have to go through
2 this extra step.

3 Because they did not identify title, in course,
4 the perfect other way for them to determine whether or
5 not she had sole custody and control of that vehicle is
6 to witness her exercise custody and control of that
7 vehicle. Witness her open the door, get in, put it in
8 drive, and drive away. Just her. Nobody else. Just
9 her. But they didn't do that.

10 They stopped her, and they made an assumption.
11 They made an assumption.

12 Now, are there reasonable alternative theories
13 that is beyond a reasonable doubt? Beyond a reasonable
14 doubt -- I think that beyond a reasonable doubt
15 basically says any other -- I don't want to say any
16 other. Most other rational, alternative conclusions can
17 be eliminated.

18 What are other alternative, rational conclusions
19 that are not eliminated? Could there have been someone
20 else that was with Ms. Gales who was actually the owner
21 and the occupier of that vehicle? Is it possible?

22 The officer said: We didn't see anybody except
23 Ms. Gales. If the true owner and occupier of that
24 vehicle was actually not Ms. Gales and was someone else,
25 and the true owner and occupier comes and steps out --

1 wherever they are -- and they see, you know, half a
2 dozen police officers around the car, they're not going
3 to walk up and say: Excuse me, officer, this is my car.
4 No. They're going to say: Oops. They're going
5 to walk the other way. I know I would. I know I would.
6 They were not there when the car arrived. So
7 when the car arrived in the parking lot, they didn't see
8 everybody who had access to it. At least there's no
9 evidence that came from that stand that they witnessed
10 anybody who had access to that car. They're making an
11 assumption.
12 Now, they said: Okay, we think the drugs belong
13 to Ms. Gales, because Ms. Gales had the keys in her
14 hand. We assumed it belongs to Ms. Gales, because the
15 officer says, we took the keys from Ms. Gales.
16 Just because she's in possession of the keys
17 doesn't mean the car is hers. It doesn't mean what's
18 inside of the car is hers. Even if she had knowledge of
19 that car and what was inside of it, it doesn't mean it
20 belonged to her.
21 Could that belong to someone else? It could
22 have. It could have. It could have belonged to someone
23 else. She had knowledge of it, but it didn't belong to
24 her.
25 Now, what's the best way to determine that maybe

1 it belonged to her? What is another way that they could
2 have conclusively said: Ms. Gales, we got you. It
3 belonged to you, we got you.

4 Another way that they could have done that is
5 they could have said, okay, we don't know who the car
6 belongs to, but she has the keys in her hand. We think
7 the car belongs to her, and we think the contents in the
8 car belongs to her. What is another way in which they
9 could have conclusively proven or at least close to
10 conclusively proven that the drugs belonged to her? We
11 see it all the time on Law and Order.

12 Fingerprints. They could have said: Ms. Gales,
13 we know it was yours. We know that you handled it. We
14 know you had possession of it, because we dusted for
15 fingerprints, and your fingerprints were all over it.
16 Or they could have dusted for fingerprints and found
17 someone else's fingerprints all over it.

18 Did they do that? They didn't. They didn't do it
19 at all. They were too eager. They rushed to judgment.
20 They were too eager and rushed to judgement.

21 Because, remember, the type of proof that you
22 find in a criminal case, that is necessary in a criminal
23 case, is not the same type of proof that sometimes we
24 use in our daily lives. I'm sure you have heard
25 sometimes people say: I know that happened. I'm sure

1 that happened. I bet you he did it. I bet you she did
2 it.

3 In course, we don't have to see evidence of it,
4 but we have a strong belief. We believe it. We may not
5 have conclusive proof, but we believe it. That type of
6 proof that we use in our daily lives, that type of proof
7 that you can see it, it's beyond a reasonable doubt.

8 It's beyond a reasonable doubt here. So you're
9 going to have to say: Is there a reasonable doubt? Did
10 they reach that high burden? Are there other rational,
11 reasonable alternatives that I can eliminate? The
12 answer to that question is yes, then, there are.

13 If you cannot eliminate those other rational,
14 reasonable alternatives, then how can you be sure it's
15 beyond a reasonable doubt? You can't. You might be
16 able to say: Yeah, I bet you those drugs were hers.
17 That's the type of logic that we use at home. Sometime
18 with my wife, she will say: I bet you, you did that.
19 Honey, you didn't see me do it.

20 In course, we are using the logic that we use at
21 home with our kids and friends and that sort of stuff:
22 I strongly feel that you did that. We don't have the
23 proof beyond a reasonable doubt. That is the proof
24 needed here.

25 If you go back there and say, you know, I think

1 she did it, I bet you she did it, that's what I think,
2 but you don't have the evidence beyond a reasonable
3 doubt then, in course, you can't convict her.

4 On the verdict form is guilty or not guilty. I'm
5 close to finishing. Let me explain what guilty and not
6 guilty means, so that you don't get confused. So when
7 you look at that verdict form, it says guilty or not
8 guilty.

9 What guilty means is that the State has met its
10 burden of proof beyond a reasonable doubt. The State
11 met the burden of proof beyond a reasonable doubt.
12 That's what guilt means.

13 What does not guilty mean? Not guilty means that
14 the State has not met that burden. You can think it.
15 You can believe it. Maybe she did it, but I don't know
16 beyond a reasonable doubt. If you don't know beyond a
17 reasonable doubt, then you have to check not guilty.

18 What not guilty means is that the State has not
19 met that high burden. It has not met that burden in
20 this case. Probably the way the prosecutor presented
21 this case to you, they told you all of this is just a
22 slap-knee-easy case. No complexity to it at all. I'm
23 sorry, but it's more complicated than that. Our justice
24 system should be. It's the best in the world.

25 Because our justice system is supposed to assure

1 us that when we put somebody in jail, when we take away,
2 I believe, one of the most precious things that they own
3 besides their life -- when we take that away from them,
4 we have to be sure we got it right. We can be sure.
5 The Government has to be sure it got it right. That's
6 what the justice system is designed for.

7 If you're not sure beyond a reasonable doubt that
8 you got it right, regardless of the suspicion, you think
9 I have a suspicion that it's her, I have a suspicion
10 that it belongs to her, but I don't know beyond a
11 reasonable doubt, then that's the definition of not
12 guilty. That's why I say to you, the jury, are you
13 ready to do your duty?

14 Are you ready to accept these principles that we
15 talked about? Do you understand those principles and
16 will you apply them, however you may feel? It's all
17 about the application of these principles. Nothing
18 else. It's not about how you feel personally. It's
19 about the application of these principles and the
20 correct application.

21 With that, I'll say thank you. On behalf of the
22 defense and the State, it's often said that, probably,
23 the most important job besides serving in our military
24 service is serving on the jury. That is true. That is
25 true.

1 We don't have to go out and hurt one another. We
2 have an orderly way of settling those disputes. Without
3 you, we couldn't do it. We just couldn't do it. That
4 is what makes us civilized. That is what makes us the
5 best system in the world.

6 Thank you very much.

7 THE COURT: Thank you, Mr. Brooker.

8 * * *

9 JURY CHARGE

10 THE COURT: Ladies and gentlemen, it's now my
11 duty to charge you on the applicable law in this case.
12 In just a few moments when I finish that, you will be
13 able to take that law as I give it to you back to your
14 jury room and combine it with the facts that you
15 determine to be in this case and then deliberate on your
16 verdict.

17 Charging of the jury really is simply reading
18 through the law. I will ask you to listen very
19 carefully as I read you what I'm required to tell you
20 in this particular case.

21 I remind you that during this trial, you and I
22 have certain duties to perform. As the Trial Judge, it
23 is my responsibility to preside over the trial of this
24 case. I also have the duty to rule on the admissibility
25 of the evidence offered during the trial.

1 You are to consider only the competent evidence
2 before you. You are to consider only the testimony
3 which has been presented from this witness stand, any
4 exhibits which have been made a part of the record, and
5 any stipulations of Counsel.

6 I have the additional duty to charge you the law
7 applicable to this case. As the Presiding Judge, I'm
8 the sole Judge of the law of this case, and it is your
9 duty as jurors to accept and apply the law as I give it
10 to you. If you have any idea as to what the law is or
11 what the law ought to be and it does not agree with what
12 I now tell you the law is, you must abandon this idea,
13 because you are sworn to accept the law and apply the
14 law exactly as I state it to you.

15 In every case tried in this Court before a jury,
16 the jury becomes the sole and exclusive judge of the
17 facts in a case. A trial judge cannot intimate, state,
18 comment on, or make any statement to a trial jury about
19 the facts in the case. Since you the jury are the sole
20 judges of the facts in this case, you are not to infer
21 from what I have said during the progress of this trial
22 and ruling upon the admissibility of evidence or
23 otherwise or anything that I say now during the course
24 of this instruction to you, that I have any opinion
25 about the facts in this case. The law does not allow me

1 to have an opinion about the facts in this case. This
2 is a matter solely for you, the jury, to determine.

3 As jurors, it is your duty to determine the
4 effect, value, weight, and truth of the evidence
5 presented during the trial.

6 The indictment in this case charges the defendant
7 with trafficking in cocaine, 28 grams or more. I remind
8 you that the fact that the defendant was arrested,
9 charged, and indicted in this case is not evidence in
10 this case and cannot be considered by you as evidence of
11 guilt in this case, nor does it create any presumption
12 or inference of guilt. The indictment or this document
13 is simply the formal written instrument which contains
14 the charges made against the defendant. It is the
15 formal document by which this case is brought into this
16 court.

17 The defendant has pled not guilty to the
18 indictment. That plea puts the burden on the State to
19 prove the defendant guilty. A person charged with
20 committing a criminal offense in South Carolina is never
21 required to prove her own innocence.

22 I charge you that it's an important rule of the
23 law that the defendant in a criminal trial, no matter
24 what the seriousness of the charges may be, will always
25 presumed to be innocent of the crime for which the

1 indictment was issued, unless guilt has been proven by
2 evidence satisfying you of that guilt beyond a
3 reasonable doubt. This presumption of innocence does
4 not end when you begin your deliberations, but it
5 accompanies the defendant throughout the trial until you
6 reach a verdict of guilt based on the evidence
7 satisfying you of that guilt beyond a reasonable doubt.

8 The presumption of innocence is like a robe of
9 righteousness placed upon the shoulders of the defendant
10 which remains with the defendant until it has been
11 stripped from the defendant by evidence satisfying you
12 of the defendant's guilt beyond a reasonable doubt. The
13 presumption of innocence is not mere legal theory. It
14 is not just a legal phrase. It is a substantial right
15 to which every defendant is entitled unless you, the
16 jury, are satisfied from the evidence of the defendant's
17 guilt beyond a reasonable doubt.

18 What is a reasonable doubt in the law? A
19 reasonable doubt is the kind of doubt that would cause a
20 reasonable person to hesitate to act. The State has the
21 burden of proving the defendant guilty beyond a
22 reasonable doubt.

23 Some of you may have served as jurors in civil
24 cases where you were told that it is only necessary to
25 prove that a fact is more likely true than not true,

1 such as by the greater weight or preponderance of the
2 evidence.

3 In criminal cases, the State's proof must be more
4 powerful than that. It must be beyond a reasonable
5 doubt. Proof beyond a reasonable doubt is proof that
6 leaves you firmly convinced of the defendant's guilt.
7 There are very few things in this world that we know
8 with absolute certainty, and in criminal cases the law
9 does not require proof that overcomes every possible
10 doubt.

11 If, based on your consideration of the evidence
12 you are firmly convinced that the defendant is guilty of
13 the crime charged, you must find the defendant guilty.
14 If, on the other hand, you think there's a real
15 possibility that the defendant is not guilty, you must
16 give the defendant the benefit of the doubt and find her
17 not guilty.

18 There are two types of evidence which are
19 generally presented during a trial; direct evidence and
20 circumstantial evidence. Direct evidence directly
21 proves the existence of a fact. It does not require
22 deduction.

23 Circumstantial evidence is proof of a chain of
24 facts and circumstances indicating the existence of a
25 fact. Crimes may be proven by circumstantial evidence.

1 The law makes no distinction between the weight or value
2 to be given to either direct or circumstantial evidence;
3 however, to the extent the State relies on
4 circumstantial evidence, all of the circumstances must
5 be consistent with each other and when taken together
6 point conclusively to the guilt of the accused beyond a
7 reasonable doubt. If these circumstances merely portray
8 the defendant's behavior as suspicious, the proof has
9 failed.

10 The State has the burden of proving the defendant
11 guilty beyond a reasonable doubt. This burden rests
12 with the State, regardless of whether the State relies
13 on direct evidence, circumstantial evidence, or some
14 combination of the two.

15 Necessarily, you must determine the credibility
16 of witnesses who have testified in this case.
17 Credibility simply means believability. It becomes your
18 duty as jurors to analyze and to evaluate the evidence
19 and determine which evidence convinces you of its truth.

20 In determining the believability of witnesses who
21 have testified in this case, you may believe one witness
22 over several witnesses, or several witnesses over one
23 witness. You may believe a part of the testimony of a
24 witness and reject the remaining part of the testimony
25 of that same witness. You may believe the testimony of

1 a witness in its entirety or reject the testimony of a
2 witness in its entirety.

3 You may consider whether any witness has
4 exhibited to you any interest by its prejudice or the
5 motive in this case. You may also consider the
6 appearance and manner of a witness on the witness stand.

7 The Rules of Evidence ordinarily do not permit
8 witnesses to testify to opinions or conclusions. An
9 exception to this rule exists for witnesses we call
10 expert witnesses. A witness who by education and
11 experience has become an expert in some art, science,
12 profession, or calling may state an opinion as to
13 relevant and material matters in which the witness
14 claims to be an expert and may also state the reasons
15 for the opinion.

16 You should consider any expert opinion received
17 into evidence in this case. Like any other evidence,
18 give it the weight you think it deserves. If you decide
19 that the opinion of an expert witness is not based on
20 sufficient education or experience or if you conclude
21 that the reasons given in support of the opinion are not
22 sound or that the opinion is outweighed by the evidence,
23 you may disregard the opinion entirely.

24 An expert witness' testimony is to be given no
25 greater weight than that of other witnesses simply

1 because the witness is an expert.

2 Further, you are not required to accept an
3 expert's opinion, even though it is not contradicted.

4 I instruct you and emphasize the fact that the
5 defendant did not testify is not a factor to be
6 considered by you in any way in your deliberation and in
7 your consideration on the question of guilt or innocence
8 of the defendant. It must not be considered by you in
9 any manner. A defendant has the Constitutional right to
10 remain silent. The assertion of this right must not be
11 considered by you in your deliberations. I repeat.
12 Under your oath, you are to draw no conclusions
13 whatsoever from the fact that the defendant in this
14 case did not testify. The fact that this defendant did
15 not testify should not even be discussed in the jury
16 room.

17 The burden of proof, as I have stated to you is
18 on the State. The defendant is not required to prove
19 her innocence. The burden of proof remains on the State
20 to prove the Defendant's guilt beyond a reasonable
21 doubt.

22 In order to establish criminal liability,
23 criminal intent is required. For example, the mental
24 state required to be proven by the State for a
25 particular crime might be purpose, intent, knowledge,

1 recklessness, or criminal negligence. Criminal intent
2 must be proven by the State beyond a reasonable doubt.
3 Criminal intent is always a matter that must be
4 determined by the jury from the circumstances
5 surrounding the situation. There is no way to prove
6 intent to a mathematical certainty. There is no way
7 medical science can dissect a person's brain and
8 determine what the person had in mind.

9 So the law says that criminal intent may be
10 inferred from the circumstances shown to have existed.
11 This is how you make a determination of whether or not
12 the element requiring intent was present.

13 It is not necessary to establish intent by direct
14 and positive evidence. Intent may be established by
15 inference in the same way as any other fact by taking
16 into consideration the acts of the parties and all the
17 facts and circumstances of the case.

18 Criminal intent is a mental state, a conscious
19 wrongdoing. It's up to you to determine what the
20 defendant intended to do based on the circumstances
21 shown to have existed.

22 Criminal intent can arise from action or a
23 failure to act. It may arise from negligence,
24 recklessness, or indifference to duty or to consequences
25 that is considered by the law to be the equivalent of

1 criminal intent.

2 The defendant in this case is charged with
3 trafficking in cocaine, 28 grams or more. The State
4 must prove beyond a reasonable doubt that the substance
5 involved was, in fact, cocaine; the Defendant had
6 possession of that cocaine, either actual possession or
7 constructive possession; and that there were, in fact,
8 28 grams or more of cocaine involved.

9 A person who knowingly sells, manufactures,
10 delivers, purchases, or brings into this State or who
11 provides financial assistance or otherwise aids, abets,
12 attempts, or conspires to sell, manufacture, deliver, or
13 purchase, or bring into the State, or who is knowingly
14 in actual constructive possession or who knowingly
15 attempts to become in actual constructive possession of
16 28 grams or more of cocaine is guilty of trafficking in
17 cocaine.

18 In order to prove that the defendant knowingly
19 possessed or trafficked any controlled substance, the
20 State is not required to prove that the defendant knew
21 the particular type of controlled substance that was in
22 her possession; only that she possessed some type of
23 controlled substance.

24 Additionally, the State does not need to prove
25 that the defendant knew the weight of the drugs at issue

1 to prove its case. The weight of a controlled substance
2 is calculated by the weight of that substance in pure
3 form or any compound or mixture thereof.

4 So what does possession mean under the law? The
5 law says that cocaine in any form is a controlled
6 substance. Possession means more than simply having a
7 controlled substance in one's possession. It must be
8 knowing possession. The State must prove possession of
9 the cocaine by the defendant and the further fact that
10 the defendant knew she had cocaine in her possession.
11 To prove possession the State must prove beyond a
12 reasonable doubt that the defendant had both the power
13 and the intent to control the disposition or use of the
14 cocaine.

15 Possession may be either actual or constructive.
16 Actual possession means that the cocaine was in the
17 actual physical custody of the Defendant.

18 Constructive possession means that the Defendant
19 had dominion and control or the right to exercise
20 dominion or control over either the cocaine itself or
21 the property on which the cocaine was found.

22 Mere presence at the scene where drugs were found
23 is not enough to prove possession. The Defendant's
24 knowledge and possession may be inferred when a
25 substance is found on the property under the defendant's

1 control; however, the inference is simply an evidentiary
2 fact to be taken into consideration by you along with
3 other evidence in the case and to be given the weight
4 you decide it should have.

5 A statement alleged to have been made by the
6 Defendant has been admitted into evidence in this case.
7 While the Court has determined the statement is
8 admissible, I instruct you that you make the ultimate
9 decision of whether or not the Defendant made the
10 statement.

11 If the Defendant did make the statement, you must
12 determine whether the statement was made by the
13 Defendant voluntarily and of her own free will. This
14 means that the statement was not caused by pressure,
15 force, fear, threats, coercion, or intimidation, or by
16 hope or promise of leniency, or a reward of any kind.

17 In determining whether the statement was
18 voluntary, you should consider both the characteristics
19 of the defendant and the details of the questioning.
20 Some of the factors that you must consider are the age
21 of the defendant, the defendant's education or lack of
22 education, the defendant's mental ability or capacity,
23 the defendant's IQ or intelligence, the defendant's
24 background and environment, the place and length of
25 detention, the nature of the questioning and the advice

1 or lack thereof to the defendant of her Constitutional
2 rights, including but not limited to the right to remain
3 silent; that any statement could be used against her in
4 a court of law; the right to have a lawyer present; that
5 if she cannot afford an attorney, a lawyer would be
6 appointed to represent her without any cost; that she
7 could stop making a statement at any time. You must
8 carefully consider all of the surrounding circumstances
9 before you give any weight to an alleged statement.

10 The State has the burden of proving beyond a
11 reasonable doubt that the alleged statement was
12 voluntary. If you determine it was, you may give the
13 statement any further consideration that you deem
14 proper. You must decide what weight, if any, should be
15 given to the alleged statement. If you determine the
16 alleged statement was not the free and voluntary
17 statement of the defendant, you should not consider the
18 statement at all.

19 Under the Constitution of this State, the jury
20 verdict must be unanimous. Unanimity is mandated.
21 Every single juror must agree on the jury verdict.
22 There cannot be any split or divided vote in any form or
23 fashion, such as 11 to 1, 10 to 2, or 9 to 3.

24 Mr. Foreman, you're going to be required to sign
25 the jury verdict form. I'm going to go over that with

1 you in just a minute and show you what that is.

2 The verdict form in this case simply has two
3 options. The order that I give them to you has no
4 significance. We have to just simply put something
5 first, not guilty or guilty.

6 The order that it appears on the form has no
7 significance. The form simply says: We, the jury, find
8 the defendant not guilty of trafficking cocaine, 28
9 grams or more. If that's your verdict, then,
10 Mr. Foreman, if you would check the appropriate box and
11 sign your name and date it today's date.

12 If on the other hand your verdict is: We, the
13 jury, find the defendant guilty of trafficking cocaine,
14 28 grams or more, you would check the appropriate line,
15 sign your name, and put today's date.

16 Once you reach the verdict, if you would please
17 knock on the door and tell the bailiff that you've
18 reached a verdict. Keep the verdict form in your hand.
19 When you come back out here, I'll ask you if you have
20 reached a verdict. If you have, you will pass the
21 verdict form to the bailiff, who will then pass it up to
22 the Court.

23 I am going to send the instructions that I have
24 read to you back to the jury room with you. You can
25 refer to those instructions to guide your

1 decision-making. You must consider the instructions as
2 a whole and not follow some and ignore others.

3 When you finish, if you would hand the verdict --
4 we're also going to send the pieces of evidence that
5 have been introduced in this case back to you in your
6 jury room.

7 You'll have a verdict form, you'll have the jury
8 charge, and you'll have any evidence that goes back. If
9 at any time you need to take a break or somebody leaves
10 the room to go to the rest room, you are required to
11 stop deliberations. You can only deliberate when all 12
12 jurors are in the room. So if anybody leaves the room
13 for any reason, Mr. Foreman, you must stop deliberations
14 and wait until all 12 are back.

15 If you have any particular questions for the
16 Court, you can write them on the paper that is provided
17 there. Knock on the door and hand that question out to
18 the bailiff, and they will bring it to the Court's
19 attention and we will deal with it.

20 The one piece of evidence that is not going to go
21 back with you to your jury room is the DVD. It will
22 remain here in the courtroom; however, if you would wish
23 to watch any or all or part of that DVD, knock on the
24 door and tell the bailiff that, and we will bring you
25 out and use it on the player in here.

1 As you can tell, with the technology here, it
2 might not even be available back there. If you need to
3 see the DVD, it will be available here. You can come
4 out and watch any or all or part of it.

5 With that, I'm going to allow you to go back to
6 your jury room. When you go back, don't start
7 deliberating until the bailiff brings the verdict form,
8 the charge, and any evidence back there. As soon as she
9 does that and you have that, then you can begin
10 deliberating.

11 I'm going to ask the two alternates if you would
12 please just come down here and step down while the
13 remainder of the jury is excused to the jury room.
14 Everyone else remain seated while this jury exits.

15 (Whereupon, the jury exited the courtroom.)

16 (Whereupon, the court stood at ease while the jury
17 deliberated upon its verdict in the case.)

18 THE COURT: I'm going to ask you two alternates
19 if you would just step right outside the door. They do
20 not go into the jury room. Just step right outside the
21 door, and we will bring you back in here in just a
22 moment. Thank you.

23 (Whereupon, the alternate jurors exited the
24 courtroom.)

25 THE COURT: Thank you.

1 Anything further from the State?

2 MR. PORTER: No, sir, Your Honor.

3 THE COURT: Anything from the defense?

4 MR. BROOKER: No, sir.

5 THE COURT: If you will come up, gentlemen.

6 Let's take a look at the evidence that needs to go back

7 and make sure we agree on that.

8 THE COURT: Ask the alternates to come back in

9 here.

10 (Whereupon, the alternate jurors entered the

11 courtroom.)

12 THE COURT: Thank you-all for serving. It

13 actually is very unusual in today's climate to be able

14 to even go for a day-and-a-half trial and not have to

15 have an alternate take the place of a juror. My

16 experience has been lately that two alternates is always

17 needed, but in this particular case, that didn't occur.

18 You-all are free to go. You can stay if you

19 want. You can talk about the case to anybody that you

20 wish at this point. Sometimes lawyers may call and want

21 to ask questions about particular things about the case.

22 You can talk to them or anybody else, if you want to.

23 On the other hand, you're not required to talk to

24 anybody. You can simply refuse to talk to somebody if

25 they call. That's your prerogative.

1 Thank you-all for serving. You're free to leave.
2 You are through for the week. The bailiff will take
3 you-all out.
4 (Whereupon, the alternate jurors exited the
5 courtroom.)
6 THE COURT: We will be at ease while the jury is
7 out.
8 (Whereupon, the court stood at ease while the
9 jury deliberated upon its verdict in the
10 case.)
11 (Whereupon, the following proceedings were
12 held in open court. The defendant was
13 present with his attorney, along with
14 counsel for the State.)
15 THE COURT: We are back on the record in the
16 case of State v. Ramona Gales. There is a question from
17 the jury about wanting to see the entire video. Present
18 in the courtroom is the defendant and her attorney and
19 the attorneys for the State.
20 We will bring the jury back in. The Court is
21 going to tell them that you're ready to play it.
22 Is that right, Mr. Porter?
23 MR. PORTER: Yes, sir, Your Honor.
24 THE COURT: We have it cued up and ready to go.
25 If at any time they wish to stop the video, they can

1 certainly ask. We can do that. Let's bring the jury
2 in.

3 (Whereupon, the jury entered the courtroom.)

4 THE COURT: Mr. Foreman, we thank you for your
5 question. The last question we received is that you
6 have indicated that you, the jury, would like to see the
7 video that is introduced into evidence in this case.
8 That has been cued up and is ready to be shown in its
9 entirety.

10 If at any point you wish -- I don't know if you
11 want to watch the entire video. You are certainly
12 welcome to do that. If you would prefer and there is
13 someplace that you want to stop the video and you have
14 seen enough, Mr. Foreman, just simply raise your hand
15 and we can accommodate you on that.

16 With that, Mr. Porter, if you can begin the
17 video.

18 (Whereupon, video was published for the jury's
19 review.)

20 THE COURT: Thank you. The jury can return to
21 your jury room and continue your deliberations.

22 (The jury exited the courtroom.)

23 THE COURT: Thank you. We will be at ease.

24 (Whereupon, the court stood at ease while the jury
25 deliberated upon its verdict in the case.)

1 (Whereupon, the following proceedings were
2 held in open court. The defendant was
3 present with her attorney, along with
4 counsel for the State.)

5 THE COURT: All right. Let's bring the jury in.
6 (Whereupon, the jury entered the courtroom.)

7 * * *

8 READING OF THE VERDICT

9 THE COURT: Thank you, ladies and gentlemen. I
10 appreciate your diligence.

11 Mr. Foreman, has the jury reached a verdict?

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

13 THE COURT: If you would, please pass the form to
14 the bailiff.

15 Madam Clerk, if you would, please, publish the
16 verdict.

17 THE CLERK: The State of South Carolina v. Ramona
18 Gales, Indictment Number 2018-GS-46-03573, trafficking
19 cocaine, 28 grams or more. We the jury find the
20 defendant guilty of trafficking cocaine, 28 grams or
21 more.

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

24 Let the record show that all the jurors affirm
25 this verdict.

1 THE COURT: Anything further from the State?

2 MR. PORTER: No, sir, Your Honor.

3 THE COURT: From the defense?

4 MR. BROOKER: No, sir, Your Honor.

5 THE COURT: Thank you. Ladies and gentlemen, we

6 appreciate your diligence. We appreciate the way you

7 have paid attention for the last two days. That

8 concludes your service as jurors. You are free -- the

9 bailiff will show you out. You are free to talk to

10 anyone about the case, if you want to talk to them about

11 it, about the details of the case.

12 Sometimes the attorneys may try to contact you or

13 call you to get input about the case. That is perfectly

14 legitimate or legal for them to do that. You can make

15 the decision about whether you want to talk to them or

16 not. You are not required to. You can refuse to talk

17 to anybody about the case.

18 On the other hand, if they want to talk to you,

19 you are free to talk to anybody or anything about the

20 case that you wish.

21 With that, I will allow you to leave.

22 Mr. Foreman, if you would come right around here.

23 You will need to sign the indictment for us. With that,

24 everyone remain seated while this panel is excused.

25 Let me tell you this. What we do here in South

1 Carolina is that in just a moment, the defendant will be
2 brought around, and we will sentence her today.

3 If you want to stay for that, I will give you the
4 option. If you would like to stay, you can keep your
5 seat or you can go out and the bailiff -- let's do it
6 this way. If you would like to stay for that, go out
7 and tell the bailiff that you want to stay, and they
8 will escort you around here and you can have a seat in
9 the jury room. You are not required to stay, but you
10 are free to stay.

11 Also, security should be present and available to
12 assist you to your vehicles when you go out in the
13 parking lot. With that, the jury is free to leave.
14 Everyone remain seated while this jury is excused.

15 (Whereupon, the jury exited the courtroom.)

16 * * *

17 SENTENCING HEARING

18 THE COURT: Does the State have a sentencing
19 sheet?

20 MR. PORTER: Yes, sir, Your Honor.

21 THE COURT: Pass that up.

22 Mr. Brooker, if you would bring your client
23 around.

24 Solicitor, let me do this. Give me the
25 defendant's prior record.

1 MR. PORTER: Yes, sir, Your Honor. In 2011,
2 assault by pointing a gun in North Carolina. She
3 received a county time sentence of probation.

4 In 2012 she was charged with trafficking 10 to 28
5 grams of cocaine here in York County. She received a
6 three-year sentence on that charge.

7 Your Honor, I have a certified conviction of that
8 to establish this is the second offense. I would like
9 to make that Court's Exhibit 5.

10 (The aforementioned item was marked as
11 Court's Exhibit 5 for identification and was admitted
12 into evidence.)

13 MR. PORTER: In 2014 and 2016, she pled to
14 paraphernalia charges where she was charged with several
15 distribution-level offenses; however, she pled to
16 paraphernalia charges in North Carolina in both of those
17 incidents.

18 I do have a position on sentencing, Your Honor. I
19 believe Investigator Grimsley would also like to be
20 heard.

21 THE COURT: All right. I will be glad to hear
22 from you and anyone else that you would like to present
23 as far as sentencing.

24 MR. PORTER: I would like to call Investigator
25 Grimsley.

1 THE COURT: Investigator Grimsley.

2 Yes, sir. If you would, tell us your name.

3 MR. GRIMSLEY: Matt Grimsley with the
4 Charlotte-Mecklenburg Police Department.

5 THE COURT: Yes, sir, Investigator Grimsley.

6 MR. GRIMSLEY: Since Mrs. Gales' arrest in 2018,
7 we have continued to investigate her as a drug source in
8 Charlotte. Since that time we have made additional
9 purchases from her, including as recently as last
10 November, where 1,800 grams of cocaine was found where
11 she was located.

12 She is a known source of cocaine to
13 Charlotte-Mecklenburg. We just want to make sure that
14 the Court is aware of that.

15 THE COURT: Thank you.

16 Certainly, she may have been charged, but she was
17 not convicted on those, and the Court will not consider
18 that as far as sentencing.

19 MR. PORTER: Yes, sir, I understand that. Your
20 Honor, Ms. Gales has been a problem for both Mecklenburg
21 County and York County throughout the past decade. She
22 has continued to traffic. She received a minimum
23 sentence on the 10 to 28, and she has again trafficked
24 in cocaine here in York County.

25 We would ask for a sentence of 16 to 18 years in

1 order to send a message to her that trafficking in
2 cocaine is not a legitimate way to make money and that
3 she needs to be held accountable for those actions.

4 THE COURT: Thank you.

5 Anything further from the State?

6 MR. PORTER: No, sir, Your Honor.

7 THE COURT: Mr. Brooker, I will be glad to hear
8 from you and your client.

9 MR. BROOKER: Thank you, Your Honor.

10 Your Honor, we would request the Court to
11 consider something that is near the lower end, I think,
12 of the range, the statutory range. The course is that I
13 will try to give you an explanation as to why.
14 Sentences are usually always very difficult. I think
15 it's difficult for the attorneys, and I imagine it's
16 difficult for the Judge.

17 At this particular stage, what normally happens
18 during the sentencing is, the lawyers try to give the
19 Judge some sort of perspective with respect to who the
20 person is that is being sentenced.

21 Obviously, usually, during the course of the trial,
22 the Judge hears usually a small portion of that person's
23 life -- a very small portion of that person's life.
24 Ms. Gales is 45 years old. Of course, at 45 years
25 old -- what you have heard in court probably represents

1 less than 10 percent of who she is and less than 10
2 percent of about what her life is about.

3 I will try explain to you the rest of the story and
4 the rest of her life to give you a greater perspective
5 and to help you try to figure out what is the
6 appropriate range -- and I'm sure I won't do that
7 justice.

8 Like I said, Ms. Gales is 45 years old. She lives
9 in North Carolina. The course is that she is married.
10 She is recently married. She has been married for three
11 years. Of course, her spouse is in the courtroom and
12 has been in the courtroom every day.

13 In North Carolina, she lives in a home with her
14 spouse. She has a 17-year-old son that is in school.
15 The course is that she has her niece that lives with
16 her. My understanding is that she has just graduated
17 from school, and she is in the process of transitioning
18 into the military.

19 She has her mother and her father who are here in
20 the courtroom with her. They live in North Carolina.
21 She has three brothers and four sisters. She graduated
22 from high school in New Jersey. The course is that
23 after high school, she attended St. Peter's College in
24 New Jersey for one year where she studied physical
25 therapy.

1 She also went to Seminole College in Oklahoma.
2 In the course, she studied business for three years.

3 The course is that she put that business degree to
4 some work. She, along with her family, specifically her
5 mother and father, have three businesses. They own
6 Babycakes, which is in Charlotte, North Carolina. I
7 think that is something like a delivery or catering
8 business.

9 They have been in that business -- if my memory
10 serves me correctly -- for over ten years. They also
11 have another business that is called, It's a Sign, which
12 is a mortgage closing business. They have been running
13 that for eight years, her and her family collectively.

14 The course is that her and her brother also have
15 another business that they run that they have been doing
16 for roughly 15 years of her life.

17 She does have some health problems, Your Honor.
18 She has had two surgeries on her right knee. She has
19 had surgery on her left foot where she has hardware in
20 that left foot. The course is that she, I think, had
21 another surgery, but that is her hysterectomy.

22 In addition to that, Your Honor, she has also been
23 active within her community. I should mention this,
24 Your Honor. I mentioned her kids and her family. I
25 didn't mention her three dogs that she loves very much.

1 I think that if she is anything like the rest of us, we
2 consider our animals as part of our family. She has
3 three loving dogs that are a part of that family.

4 Probably the most interesting thing that you would
5 not expect about her from anything you have heard in the
6 courtroom is that she, along with some of her friends,
7 runs a nonprofit. It's called Take a Village.

8 Of course, it's a nonprofit that is dedicated to
9 working with the homeless. That organization provides
10 the homeless with clothing, with food, with shelter.
11 Specifically, it is helping some homeless women with
12 children with whatever accessories or other needs that
13 they have.

14 Her folks are in the courtroom, her mother and
15 father. They are 65 and 70. The reason why I tell Your
16 Honor all of this is that there is a another side to
17 this person. There is a person here who has redeeming
18 values. There is a person here who loves and is loved.

19 So I don't want the Court to get a picture that you
20 are dealing with someone that is of unique character and
21 that this person is some sort of scourge on society. Of
22 course, she is not. There are a lot of wonderful things
23 that she has done in her life.

24 Although the Court has found her guilty here
25 today, and the course is that there have been some

1 charges in her past, it doesn't define everything about
2 her.

3 I think she does have redeeming values. I think
4 that she is a good person. I have had a chance to get
5 to know her since the time that I have represented her.
6 I have talked with her a lot. I just want the Court to
7 know that. I don't know whether or not the Court would
8 give her family a chance to little bit more information
9 about her background that I haven't been able to give.
10 That will be up to Your Honor.

11 THE COURT: If she has a family member that would
12 like to address the Court, I would be glad to hear from
13 you.

14 MR. BROOKER: Certainly. She has her spouse, and,
15 of course, her mother and father. This is her mother.

16 Just state your name for the record.

17 MS. SANCHEZ: Rosalyn Sanchez.

18 THE COURT: Yes, Ms. Sanchez. I will be glad to
19 hear from you.

20 MS. SANCHEZ: I would like to talk about the
21 character of my daughter. Ramona is a beautiful person,
22 as Mr. Brooker said. I hope the fact that they found
23 her guilty -- I hope that you don't judge her solely
24 upon that. This is the most -- she is my daughter, but
25 I have to tell you. This is the best person that I have

1 ever met on this earth, even though I birthed her.

2 This girl right here, all that she does is help
3 everybody. She helps people; old people, young people.
4 She helps people with their children. She takes them.
5 She babysits for them. She takes them to sports. She
6 buys them gifts. She spends her time just feeding into
7 people. This is all she has ever done.

8 She was a basketball star. We refer to her -- we
9 call her the Pied Piper. She can walk in the room, and
10 she commands the room. She has the spirit of God upon
11 her. She is God's messenger. She really is. None of
12 us are perfect, but she is God's messenger.

13 I have seen her throughout her life. As I have
14 said, she has helped people, and she has loved people
15 and nurtured people. She has done wonderful things for
16 older people. She has brought them food and clothing.
17 She has helped pay people's rent. People in our family
18 who are in trouble, she helps. That is what she has
19 done.

20 My husband and I fell onto some hard times, and she
21 helped us. That is all she does with her life. I tell
22 her, you have to stop helping people all the time. You
23 have to help yourself.

24 She tells me the same thing. Mom, I got it from
25 you. This is the best person on earth right here. I

1 have never met anyone like her, and I actually birthed
2 this child. I just wanted you to know that; that she
3 has God in her heart. She is not perfect, but she has
4 God in her heart. That is all she does is help people.
5 That is all she does.

6 THE COURT: Thank you, Ms. Sanchez.

7 MR. SANCHEZ: I would like to just add to that.

8 THE COURT: For the record, you need to tell me
9 your name.

10 MR. SANCHEZ: I said it earlier.

11 THE COURT: I'm sorry. You may have said it
12 earlier, but I didn't hear it.

13 MR. SANCHEZ: John Sanchez.

14 THE COURT: Yes, Mr. Sanchez.

15 MR. SANCHEZ: She has always done things to help
16 people, even when she was a young girl. We lived in an
17 apartment building at one point very many years ago.
18 There was-- how can I put it -- an unsavory character
19 who was trying to talk this girl into doing something
20 that she didn't want to do. He was getting ready to
21 physically abuse her.

22 My daughter must have been about 11. She ran to
23 window. She bangs on the window and tells him to leave
24 this girl alone. I am going to call the cops.

25 I didn't even know. I was in another part of the

1 room, but I heard her screaming. I ran to see what was
2 going on. That is the kind of character she has always
3 had, even from a young girl. She really has this
4 propensity to help people. I can't explain it.

5 As much as I would like to say I help people -- I
6 have worked in the helping profession. She has taken it
7 to a higher level than I have.

8 THE COURT: All right. Thank you, Mr. Sanchez.

9 MR. BROOKER: I will just close by saying that she
10 understands that whenever you break the law in South
11 Carolina -- or even in any jurisdiction -- you have to
12 be punished. In the course, she will be punished. She
13 has anticipated that. We have discussed it, but we are
14 hoping that this information helps Your Honor at least
15 try to figure out what is the appropriate range.

16 I just can't emphasize enough what redeeming
17 qualities that she has, what other good qualities that
18 she has, and all the good things that she has done for
19 her family and that she has done for her community life
20 and nonprofit. So there is a balance there.

21 THE COURT: Thank you, Mr. Brooker.

22 Anything you want to say, Ms. Gales?

23 MS. GALES: Yes, Your Honor. It's a lot to take
24 in; however, I have to accept my punishment for my
25 shortcomings. I made some great mistakes in my life. I

1 really have. However, I come from a background where if
2 you do something and your hand gets caught in the cookie
3 jar, then you have to pay for it.

4 Here I am. I am at that crossroads. It's not a
5 nice place to be, but this is the grave I have dug for
6 myself. The only thing is that -- I have hurt a lot of
7 good people. I let myself down. I know I can redeem
8 myself. I have one of the best mothers ever and dad as
9 well. A great wife. I have great friends. I am 45
10 years old. I think about my parents' age, and how old I
11 will be -- will I be around for them when it comes time
12 to take care of them? That is weighing on my heart.

13 I respect the Judge. I respect the jury's
14 decision. I made a great mistake. I apologize to my
15 family, and I apologize to society. I hope I get a
16 chance to redeem myself. I am still young enough to
17 come out and be a part of society.

18 THE COURT: Thank you, Ms. Gales.

19 How many days was she in jail before she got out
20 on bond?

21 MR. BROOKER: I think it was just one day, Your
22 Honor.

23 MR. PORTER: Your Honor, she was arrested on
24 January 31. I believe she is entitled to two days
25 credit, in fairness to her. She bonded out on the 1st.

1 THE COURT: Well, here is the thing, Ms. Gales.
2 Our Legislatures gives us a range for penalties that the
3 Courts are bound to follow. In this particular case,
4 it's a second offense. It's drug trafficking, 28 grams
5 or more. That carries a minimum of 7 up to 30 years.

6 I am well aware of the discussion we are having in
7 our society about drugs sentencing and appropriateness
8 of drug sentencing. In your particular case, what the
9 Court has considered, though, is that you are not 18.
10 You are not 20. You are 45.

11 You have been to prison before for trafficking,
12 which makes your situation in the Court's mind a lot
13 different than many others who have done something
14 stupid at a younger age. You are at the age where you
15 should have learned by now.

16 Thankfully, it appears that you have a very
17 redeeming life and you have done really well in life;
18 however, this is a pretty dark part of your life.
19 Certainly by the standards of our community, 42 grams of
20 cocaine is a large amount of cocaine here in York
21 County.

22 Those are all the things that the Court is taking
23 into consideration. I hope you use your time in the
24 Department of Corrections for what you seem to have the
25 ability to do, to help the people that you are there

1 with and take advantage of whatever opportunities that
2 you have there.

3 Taking all of those things into consideration, on
4 Indictment 2018-GS-46-03573, The State v. Ramona Moteal
5 Gales, having been found guilty of trafficking in
6 cocaine, 28 grams or more, second offense, the sentence
7 of the Court is that she be committed to the Department
8 of Corrections for a determinate term of 12 years. She
9 has credit for two days.

10 Thank you.

11 - - -END OF VOLUME II - - -

12 - - -END OF TRANSCRIPT - - -

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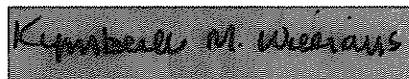
CERTIFICATE OF REPORTER

* * *

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for York County, South Carolina, on the 29th - 30th days of January, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

This, the 9th day of June 2019.

A rectangular box containing a handwritten signature in cursive script that reads "Kymberlee M. Williams".

KYMBERLEE M. WILLIAMS, CSR/RPR