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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2022-000250

THE STATE,

Petitioner,

vs.

VICTORIA LORRAINE SANCHEZ,

Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA

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Appeal from Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

THE STATE

RESPONDENT,

V.

VICTORIA LORRAINE SANCHEZ

APPELLANT

APPELLATE CASE NO 2018-002163

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBITS NOS. 1-3 (PHOTOGRAPHS),
STATE'S EXHIBIT NO. 9 (DASH CAM VIDEO OF TRAFFIC STOP),
STATE'S EXHIBIT NO. 10 (IN-CAR RECORDING)**

STATE OF SOUTH CAROLINA	) COURT OF GENERAL SESSIONS
	)
COUNTY OF GREENVILLE	) THIRTEENTH JUDICIAL CIRCUIT
	)
State of South Carolina	) Case No(s) : 2017GS2310232,
	) 2017GS2310233
Plaintiff,	)
	)
-VS-	) TRANSCRIPT OF RECORD
	)
Victoria Sanchez,	) Volume 1 of 2
	)
Defendant.	)
	)

December 4 - 5, 2018
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

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Records are
taken and
produced via
AudioScribe



APP'X 1

P R O C E E D I N G S

(The Court goes on the record at approximately
9:25 a.m.)

THE COURT: Good morning, Ms. Sanchez.

MS. SANCHEZ: Good morning.

THE COURT: Will you stand? Stand and raise
your right hand for me.

(The defendant is first duly sworn.)

THE COURT: All right. You can put your
hand down. If you want to remain seated though, I
-- I mean, remain standing, I've got something I
want to talk to you about. My understanding is
that you are going to trial. What's the exact
charge?

MS. OWENS: Trafficking in illegal drugs,
more than 28 grams, and unlawful conduct towards
a child, Your Honor.

THE COURT: Okay. And you're saying -- and
my understanding is that the possible sentence
range is a minimum of 25 years up to 40 years; is
that right?

MS. OWENS: That's correct, Your Honor.

THE COURT: Okay. And you have offered the
-- you have offered for her to plead to a charge
with a recommendation from the state of 18 years;

APP'X 2

1 For our purposes right now, an indictment
2 just lists the bare-bones allegations that the
3 state has to prove against the defendant. That's
4 it. I'm going to go through the two indictments
5 in this case to find out if anyone in this jury
6 panel believes he or she knows anything about
7 this particular case.

8 The first indictment is for trafficking
9 heroin. It alleges that Victoria Lorraine Sanchez
10 did, in Greenville County, on or about the 20th
11 day of June 2017, knowingly sell, manufacture, or
12 bring into the State of South Carolina or did
13 knowingly provide financial assistance or
14 otherwise aid, abet, attempt, or conspire to
15 sell, manufacture, deliver, or bring into this
16 state or was knowingly in actual or constructive
17 possession of more than 28 grams of heroin, in
18 violation of the Code of Laws of South Carolina.

19 The second indictment is for unlawful
20 conduct towards a child. That alleges that
21 Victoria Lorraine Sanchez did, in Greenville
22 County, between the 28th of June 2017, while
23 being the legal custodian, parent, or guardian,
24 placed the child, Y.M.O., at reasonable risk of
25 harm, affecting the child's life, physical or

1 mental health, or safety; or, two, unlawfully or
2 maliciously do or cause to be done any bodily
3 harm to the child so that the life or health of
4 the child is endangered or likely to be
5 endangered or willfully abandoned the child in
6 violation of the Code of Laws of South Carolina.

7 Any member of the jury panel believe he or
8 she knows anything about the particular
9 allegations in this case? If so, please stand.

10 (No audible response.)

11 And none are standing.

12 All right. Ladies and gentlemen, you've met
13 the attorneys involved in this case; you met the
14 defendant; you've heard the potent -- all the
15 potential witnesses in this case; you've heard
16 the allegations; you know the nature of the
17 charges in this case. Is there any reason
18 whatsoever that any member of the jury panel
19 could not be a fair and impartial juror in the
20 trial of this case, for any reason whatsoever?
21 And if so, please stand.

22 **THE JUROR:** Yes.

23 **THE COURT:** Yes, sir. Will you -- will you
24 approach for me please?

25 **THE JUROR:** Yes, ma'am.

1 **MR. MARTINEZ:** Yes, Your Honor. We're
2 waiting on Ms. Sanchez.

3 **THE COURT:** Oh, I'm sorry.

4 All right. Ms. Sanchez, we're ready to get
5 started. All right. Do you need a minute or
6 anything to talk to your attorneys one last time?

7 **MS. SANCHEZ:** No.

8 **THE COURT:** I understand. All right. Very
9 well.

10 Yes, sir.

11 **MR. MARTINEZ:** May it please the Court.
12 Michael Martinez on behalf of the defendant.
13 First, Your Honor, we'd ask that witnesses be
14 sequestered throughout this trial.

15 And, second, brief overview of sort of the
16 facts and the basis for our motions here this
17 morning: This case arose when Greenville County
18 Sheriff's Office deputies received a tip from
19 Homeland Security agents regarding a car that
20 they believed left a -- what they believed to be
21 a suspected drug stash house in Atlanta. They
22 notified Greenville County deputies. They could
23 not identify who was in the vehicle or whether
24 anything illegal was in the vehicle. So they
25 contacted Greenville County to conduct a stop of

APP'X 5

1 the vehicle -- car.

2 Deputy Reese stopped Ms. Sanchez for minor
3 traffic violations of following too closely and
4 hitting the white dotted line. Neither of those
5 infractions are captured on the video, the dash
6 cam. Once he stops her, he conducts an unrelated
7 and off-topic questioning of Ms. Sanchez for
8 several minutes and then, ultimately, gains
9 consent to search before handing Ms. Sanchez the
10 warnings that he had prepared.

11 The search goes on for quite a while. It was
12 an extremely baseless search of the vehicle. Our
13 essential bases for our motion is that there was
14 insufficient evidence for probable cause for the
15 stop. Second, there was -- the off-topic
16 questioning conducted by Deputy Reese extended
17 the stop and caused a subsequent unlawful
18 detention, unsupported by reasonable suspicion.
19 The consent to search was obtained as an
20 exploitation of that unlawful seizure. And
21 finally, the search --

22 **THE COURT:** Excuse me.

23 **MR. MARTINEZ:** -- the search exceeded the
24 scope of the consent granted.

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

APP'X 6

1 Ms. Owens, are you ready to proceed?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: All right.

4 MS. OWENS: In response to --

5 Are you --

6 THE COURT: Oh, anything else,

7 Mr. Martinez?

8 MR. MARTINEZ: It's the state's burden to
9 establish probable cause.

10 THE COURT: All right. Very well.

11 MS. OWENS: In an effort to respond to
12 that, Your Honor, I'd like to call Mr. Drew
13 Reese.

14 THE COURT: All right.

15 MS. OWENS: Mr. Reese, if you would, sir,
16 come up and be sworn.

17 ANDREW REESE

18 having first been duly sworn, testifies as follows:

19 THE CLERK: Thank you. You may be seated.

20 Please state your full name for the record.

21 THE WITNESS: My name is Andrew Hunt Reese.

22 DIRECT EXAMINATION

23 BY MS. OWENS:

24 Q Mr. Reese, where do you work right now?

25 A Greenville Tractor Company.

APP'X 7

1 Q Back in 2017, where were you working?

2 A Greenville County Sheriff's Office.

3 Q How long had you been working at the
4 sheriff's office at that point in time?

5 A Three years, four years.

6 Q Do you remember what your specific
7 assignment was?

8 A I was a deputy on the interdiction team on
9 Interstate 85.

10 Q Generally speaking, what are the
11 responsibilities of the interdiction team at the
12 sheriff's office?

13 A To detect, locate, and seize illegal
14 narcotics; monies derived from illegal activities;
15 criminals; basically, anything unlawful that travels
16 along the interstate.

17 Q Did you receive specific training about how
18 to do that task for the sheriff's office?

19 A I have.

20 Q How long did you serve in that specific
21 capacity?

22 A On the interdiction team, I was there a
23 year.

24 Q Now, do you remember whether that was your
25 assignment in June of 2017?

1 **A** It was.

2 **Q** And specifically, with respect to June 28,
3 2017, what was going on? What do you remember?

4 **A** That day we were -- a regular assigned day
5 to work. We were on the interstate. We did get a call.
6 And at approximately 8:00, 8:15 that evening, in
7 the p.m., I made a traffic stop on a silver Kia
8 Sorrento; identified the driver as Victoria Sanchez,
9 subject, based on a Texas identification card.

10 **Q** Before we get into the details of your
11 exchange with the defendant, what initially drew your
12 attention to this particular car?

13 **A** The first thing that I noticed was that she
14 kept crossing over the dotted line to her left. She
15 was in what we will call the number two lane, or the
16 middle lane, traveling northbound on 85. As I came up
17 behind her, she got up against a tractor trailer,
18 18-wheeler tractor trailer carrying automobiles, was
19 following extremely close to that, almost as to try to
20 blend in with the flow of traffic. And then, she ended
21 up going around it on the left side.

22 **Q** Now, were you looking for this particular
23 silver Kia?

24 **A** Yes.

25 **Q** Why?

APP'X 9

1 **A** Because I had received information from the
2 Department of Homeland Security that this particular
3 vehicle had left a house or location in Atlanta,
4 Georgia, which was a hub city for narcotics, that they
5 had been watching. They weren't sure if she could be
6 involved or not be involved, but she had left a known
7 area.

8 **Q** So after you observed what you believed to
9 be these traffic violations, what did you do?

10 **A** I made a traffic stop on the vehicle.

11 **Q** Okay. And how did you -- how did you
12 approach?

13 **A** Well, I approached the passenger side of the
14 vehicle, which we do on the interstate to stay out of
15 the flow of traffic. The way I handle my traffic stop
16 there is speak to the driver; identify the driver;
17 obtain the basics for a traffic stop: license,
18 registration, and insurance; like to check the vehicle
19 to see if there's any other occupants in it or
20 anything within plain view.

21 In doing so, the first thing she did was
22 hand me a Texas identification card. She handed me a
23 registration card, or registration information that
24 was to a gentleman and an insurance card that showed
25 the vehicle was insured in another gentleman's name.

APP'X 10

1 So, obviously, I'm going to question that to figure
2 out whether she has permission or doesn't have
3 permission for the vehicle.

4 She told me that she was buying the vehicle.
5 She had put down a \$4000 deposit on a \$10,000 vehicle.
6 And she gave me, what she called to be, the bill of
7 sale. While I was speaking to her about those things,
8 I noticed some indicators of criminal behavior. I
9 noticed that she had a Red Bull, or energy drink, cans
10 in the vehicle.

11 Q Why was that particularly suspicious to you?

12 A Well, if you're going to -- you got
13 something you've got to haul or go a long way, you're
14 going to get energy. You get something sugar. You got
15 to make a quick trip. You've got to get where you're
16 going.

17 Q Is that a factor that you discussed or been
18 instructed about in any of your training?

19 A Absolutely.

20 Q Okay. What other factors?

21 A I also noticed that the vehicle key -- the
22 only thing on the keychain, other than a clip, was the
23 vehicle key, there were no personal keys, nothing that
24 would link her to that vehicle, which I also found
25 that to be an indicator that something was going on.

1 She had two cell phones, which is not standard for
2 most people. I also found that to be interesting.

3 So based on what I saw on the vehicle, the
4 issue I had with the paperwork that was not consistent
5 or standard with what you would normally see on a
6 traffic stop, I had her step out of the vehicle to go
7 back with me, so that I could speak with her while I
8 issued her a warning and tried to check the status of
9 her driver's license, the vehicle insurance, and what
10 have you.

11 Q Was she ever able to present to you a
12 driver's license?

13 A No, ma'am.

14 Q Generally speaking, what did she tell you
15 about the car? How she acquired it? What the status of
16 its purchase was?

17 A She told me that she purchased the vehicle.
18 There was no legal documents, nothing, as far as what
19 -- you know, the DMV registration or anything like
20 that that we would have in the state of South
21 Carolina. But she told me that she had flown into
22 Atlanta, Georgia, in the recent past, not too long
23 before I stopped her and had met a gentleman that told
24 her about a car for sale, that he was selling for
25 \$10,000; and that she gave him 4000 down -- and I'm

APP'X 12

1 not sure what arrangements were going to be to pay for
2 the rest of it -- and that's how she came about
3 acquiring that vehicle.

4 Q Did she give you any information about her
5 destination?

6 A She was going to -- she had left already
7 Lorado, a week prior, and stayed in Atlanta, with
8 family. And then, she was traveling to New Jersey for
9 maybe two weeks, she thought, to stay with family.

10 Q Was there anybody else in the car?

11 A There was a small child in the vehicle with
12 her, which I did question if that was her child, you
13 know, so I could find out the relationship. And she
14 stated that it was her child, that she was traveling
15 with her; and she had two other children home, in
16 Texas, with her boyfriend.

17 Q After you decided to issue warning citations
18 for these traffic violations, what did you do?

19 A Well, after having spoke with her, while I
20 was issuing the warning, just having normal
21 conversation with her, I got out and explained the
22 warning to her. I wanted to make sure: one, she
23 understood what she did wrong, as to not repeat the
24 process, you know, don't want to cause a collision or
25 anything significant on the interstate; and two, made

1 sure she understood that what I was issuing her was
2 not a traffic citation that had any type of fine or
3 points to go against her license but simply a warning
4 or contact form, as some people would call it.

5 Once she stated she understood all of that,
6 I, then, asked her for consent to search her vehicle.
7 And she replied, "Sure." Well, sure could be "sure,
8 but no" or "sure, but maybe." So I asked her again to
9 get a "yes" or a "no," and she provided a yes.

10 Q Did you perceive any hesitation or
11 reluctance or confusion on her part about that
12 question?

13 A No, ma'am. She was stoic during the entire
14 dealings with her.

15 Q Did she provide any instruction to you about
16 where you could search, as opposed to where you could
17 not search?

18 A No, ma'am.

19 Q At any point during the search, did she
20 express to you that she wished to rescind her consent
21 and, basically, get you to stop searching the car?

22 A No, ma'am.

23 Q Based on your recollection, how long do you
24 believe that the entire stop -- from the point that
25 you made contact with her until she gave you consent

1 to search the car, how long do you think that process
2 took?

3 A Without looking at the video, I would say
4 probably somewhere in the 7- to 10-minute range.

5 Q Okay. Now, after -- after you obtained
6 consent, affirmative consent from the defendant to
7 search the car, what did you -- what did you decide to
8 do?

9 A Deputy Wasserman had pulled up on the scene
10 with me. So I asked her to stand with me and I
11 requested that Master Deputy Harrison respond to the
12 location to assist me in the search. Once he arrived
13 on scene, we did a thorough search of the interior
14 vehicle. He was actually able to locate some things
15 that were not standard in the vehicle, and that led us
16 to looking under the back seat where he located a
17 compartment.

18 Q Specifically in the car, where was this
19 compartment located?

20 A So the rear seat is a bench seat. And if you
21 raise it up, there's a cap there to access the fuel
22 tank or the fuel pump. It was inside of that cap.

23 Q Did you notice anything particularly
24 suspicious about that location before you opened it?

25 A I didn't open the compartment.

1 **Q** Okay.

2 **A** But after -- but seeing what there was,
3 there were bolts that had been placed in the seat.
4 Instead of factory black, they were silver. Once the
5 lid was picked up on, you see the screws that normally
6 hold the lid down had been cut off and screwed in. And
7 things like that were pointed out that Master Deputy
8 Harrison had located during the search.

9 **Q** Okay. Well, what was inside?

10 **A** There were Ziploc bags inside that were --
11 had some brown and clear packaging on them. They were
12 rectangular. And once we removed all the bags, we
13 opened the package up. It was a brown powder substance
14 that I field tested for heroin; and it field tested
15 positive.

16 **Q** Now, you mentioned that before you began to
17 search the car, you contacted Master Deputy Harrison
18 to come out and assist you. How long do you think it
19 took him to arrive?

20 **A** A minute, two minutes. We work a very small
21 stretch of the interstate so that we can get to each
22 other relatively fast.

23 **Q** Okay. And once the search began, how long do
24 you think the two of you searched that car before you
25 ultimately located those packages?

1 **A** Five minutes, at most; somewhere right
2 around in there.

3 **Q** Now, before you asked the defendant if you
4 could search the car, what -- what made you -- what
5 made you want to search the car? Why were you
6 suspicious?

7 **A** From what I found in the vehicle to start
8 with: having the energy drinks; and the single key;
9 and coming out of a hub city, Atlanta, Georgia, which
10 is a known high-drug area; and then being told that
11 she works at Applebee's, but has the funds to be able
12 to go to Georgia and buy a vehicle and go to New
13 Jersey for a couple of weeks for no real purpose; and
14 she's traveling with a kid, but she has two more kids
15 at home that she's just away from; they're not even
16 with the children's father, they were with a boyfriend
17 at that time. And none of that is really standard for
18 anybody that you stop. Usually anybody you stop that's
19 traveling has some sort of itinerary or they have a
20 vehicle that's slam full of luggage or, you know, all
21 of these different factors that made me believe that
22 she was involved in some sort of criminal activity.

23 **Q** Did she reveal to you whether she paid cash
24 for the car?

25 **A** I don't recall if she indicated paying cash.

1 Q Okay. I don't believe I have any additional
2 questions. If you would, answer any questions the
3 other parties may have for you.

4 A Thank you.

5 **CROSS-EXAMINATION**

6 **BY MR. MARTINEZ:**

7 Q So we know that you received a tip from
8 Homeland Security; correct?

9 A Yes, sir.

10 Q And it involved surveillance that had been
11 conducted of a house in Atlanta; right?

12 A A location; be it a house, building.

13 Q And the tip was that they observed a car
14 leave that warehouse --

15 A That's correct.

16 Q -- that house location?

17 A That's correct.

18 Q But they did not know who was driving it?

19 A They did not provide me with a driver
20 identity.

21 Q Or if they contained anything illegal?

22 A That's correct.

23 Q But they wanted Greenville County deputies
24 to keep an eye out for it?

25 A That's correct.

1 Q Stop it, if possible.

2 A If you can find a reason.

3 Q And so you didn't note any of -- anything
4 about the tip in your report.

5 A That's correct.

6 Q That's correct? And like you said, you --
7 if you could find a reason to stop it, that means you
8 knew you needed probable cause to stop the car; you
9 needed some traffic violation?

10 A Sure.

11 Q And so you found the car described in the
12 tip?

13 A That's correct.

14 Q And so you had to wait to pull it over until
15 she violated a traffic law?

16 A (No audible response.)

17 Q Right?

18 A She did make a traffic infraction. That's
19 why I stopped her. Correct.

20 Q Was there a tip about a second car?

21 A No.

22 Q No? You have a dash cam in your patrol car;
23 correct?

24 A That is correct.

25 Q And it was working that day?

1 **A** It was.

2 **Q** And you decide when you -- when to start the
3 recording?

4 **A** I can manually start it; however, we start
5 it when the blue lights are turned on. It
6 automatically turns on it and shows a prerecorded 30
7 seconds.

8 **Q** And again, you -- you wanted to stop the
9 car, and so you needed a reason to stop it; right?

10 **A** Correct.

11 **Q** And so you knew it was important to make
12 sure you had evidence of traffic violations to support
13 the probable cause?

14 **A** Sure.

15 **Q** Okay. Your dash camera was in normal
16 operating condition that day?

17 **Q** Are you asking me that or telling me that?

18 **A** I'm asking.

19 **A** Yes, sir. My dash cam worked.

20 **Q** And it accurately produces and records
21 video?

22 **A** Yes, sir.

23 **Q** And you heard and saw what the video
24 recorded?

25 **A** Yes, sir.

APP'X 20

1 **Q** And when you watched it later, it had
2 accurately recorded what happened?

3 **A** Yes, sir.

4 **MR. MARTINEZ:** Your Honor, we'd ask for the
5 video to be admitted or at least made a Court's
6 exhibit.

7 **THE COURT:** All right. For purposes of this
8 hearing. Any objection to that?

9 **MS. OWENS:** No, I don't object to it. But I
10 -- I don't know if he wants to use --

11 -- your copy and formally admit --

12 -- if the defendant wants to admit this
13 evidence or if the Court's directing the state to
14 admit evidence on behalf of the defendant.

15 **THE COURT:** No. I'm just -- I'm asking if
16 you have any objection to his admitting that.

17 **MS. OWENS:** No.

18 **THE COURT:** All right. And any objection to
19 his using your equipment to publish?

20 **MS. OWENS:** No.

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

22 **COURT REPORTER:** I haven't marked anything.

23 **THE COURT:** We're off the record for just a
24 second.

25 (The Court goes off the record at approximately

APP'X 21

1 11:18 a.m.)

2 (The Court goes on the record at approximately
3 11:18 a.m.)

4 **BY MR. MARTINEZ:**

5 **Q** And this is the video that your dash cam
6 recorded?

7 **A** Yes, sir.

8 (Dash cam video is played.)

9 **BY MR. MARTINEZ:**

10 **Q** All right. So your reason for stopping her
11 was for following too closely?

12 **A** And driving over the left dotted line when
13 she was behind the 18-wheeler. Yes, sir.

14 **MR. MARTINEZ:** I'm sorry, Your Honor. For
15 the record, the video stopped at 20:18:19.

16 **THE COURT:** All right. Thank you.

17 **BY MR. MARTINEZ:**

18 **Q** And the recording that we just saw began
19 after she went past that tractor trailer that you said
20 she was following; correct?

21 **A** That's correct.

22 **Q** And after the hitting -- the alleged hitting
23 the white line?

24 **A** That's correct. The 18-wheeler in question
25 is the vehicle she is beside when the recording

1 starts.

2 Q And she was behind the tractor trailer for
3 at least a mile; right?

4 A Yeah. I would say close to it, maybe.

5 Q That's what you wrote in your report?

6 A Okay.

7 Q And so you were following her for around a
8 mile.

9 A Yes.

10 Q And you can choose when to start recording.

11 A Sure.

12 Q Let's talk about the stop itself, now. You
13 first approached the vehicle and spoke to Ms. Sanchez
14 about a minute and 10 seconds into the video. Does
15 that sound right?

16 A Yes.

17 Q You asked her for her license, registration,
18 insurance; asked if she had been drinking?

19 A That's correct.

20 Q You didn't conduct any field sobriety tests?

21 A I did not.

22 Q You explained why you stopped her?

23 A Yes.

24 Q Told her she needed to be two car lengths
25 for every mile that she was traveling?

1 **A** Yes, sir.

2 **Q** Around three minutes and 30 seconds into the
3 video, you had her accompany you to your patrol
4 vehicle?

5 **A** Okay.

6 **Q** And she was only stopped at this point,
7 again, for following too closely and hitting the white
8 line?

9 **A** That's correct.

10 **Q** How long, on average, does it normally take
11 you to complete a traffic stop for those types of
12 violations?

13 **A** There's no average traffic stop, so I can't
14 put a time on that.

15 **Q** You -- after watching the video, you spoke
16 with her for about 12 minutes from the time you first
17 approached the vehicle. Does that seem correct?

18 **A** Say that one more time.

19 **Q** From the time you first approached the
20 vehicle till the time you requested consent, was about
21 a 12-minute conversation.

22 **A** Okay.

23 **Q** And we heard you ask her a series of
24 questions. She told you about how she learned about
25 the car for sale from her cousin.

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1 **A** Yes, sir.

2 **Q** Right? And she answered each of your
3 questions calmly?

4 **A** Yes.

5 **Q** I think you said she was stoic throughout
6 the entire time?

7 **A** Yes.

8 **Q** And you asked her about, you know, whether
9 there was anything illegal in the car; right?

10 **A** That's correct.

11 **Q** And she answered -- she denied all of those,
12 calmly?

13 **A** Yes, sir.

14 **Q** She wasn't sweating abnormally?

15 **A** Nope.

16 **Q** Hands weren't shaking?

17 **A** Nope.

18 **Q** She didn't seem nervous to you?

19 **A** No, sir.

20 **Q** And you weren't arresting her for driving
21 without a license?

22 **A** No. She received a warning for all the
23 traffic violations.

24 **Q** The car was insured?

25 **A** She had an insurance card. I didn't verify

1 that.

2 Q And it had valid registration?

3 A Not in her name. No.

4 Q But the car was registered?

5 A She has to legally register it in her name.

6 The car -- the vehicle was registered through the
7 state of Georgia.

8 Q All right. And she told you that she
9 purchased the car for 10,000, with a \$4000 down
10 payment on it?

11 A Yes, sir.

12 Q But she didn't have the title yet?

13 A That's correct.

14 Q Would it be possible that she would get the
15 title upon complete payment?

16 A Yeah. I mean, anything's possible. Legally,
17 no. You can't do that. But -- and that was -- you
18 know, somebody's going to give you a car, that you
19 don't know, and expect you to make payments on it?

20 Q And you then got out of the car with her;
21 right?

22 A I was -- I was -- she was out of the
23 vehicle. And then I got out and spoke to her. Is that
24 what you're asking?

25 Q Were you both in your vehicle, at some

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1 point?

2 A No.

3 Q No. And you start to explain the warnings to
4 her; right?

5 A Yes.

6 Q You're still holding the warnings in your
7 hand?

8 A Yes.

9 Q You asked for consent to search the car?

10 A Yes.

11 Q You hadn't fully let go of the warnings yet?

12 A Yes.

13 Q That was about 12 minutes, 10 seconds into
14 the stop?

15 A Yes.

16 Q And you had her stand by with the second
17 officer while you conducted the search?

18 A Yes.

19 Q And you call for Deputy Harrison; correct?

20 A Correct.

21 Q You weren't wearing a body cam during the
22 search, were you?

23 A I don't recall.

24 Q There's no photos or a video of the interior
25 search?

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1 **A** I don't believe so.

2 **Q** You started with the front passenger side
3 door?

4 **A** Yes.

5 **Q** And you started shaking it; right?

6 **A** Yes.

7 **Q** You did that to see if there was anything --

8 **A** Within the door panels.

9 **Q** Within the door panel. And you begin
10 checking the front seat area?

11 **A** I believe she had a purse there. I checked
12 her personal belongings first.

13 **Q** And you looked in the trunk and found some
14 luggage; right?

15 **A** Yes, sir.

16 **Q** You looked through that?

17 **A** I'm sorry?

18 **Q** You looked through that?

19 **A** Yes, sir.

20 **Q** The luggage had contained clothes and other
21 things for a trip?

22 **A** Personal items, I'm sure.

23 **Q** Then Deputy Harrison arrived and started
24 looking at the undercarriage of the car?

25 **A** Yes.

1 Q He takes the child's car seat out of the
2 back?

3 A Yes.

4 Q And this is about nine minutes into the
5 search?

6 A Okay.

7 Q About 24 minutes into the stop and 12
8 minutes into the search, you remove the back seat
9 cushion from the car and threw it on the ground;
10 right?

11 A Yes.

12 Q About three minutes later, Deputy Harrison
13 returned with a crowbar?

14 A Yes.

15 Q And he used that to pry open the fuel pump
16 cover plate?

17 A Yes.

18 Q And that's when you observed this hidden
19 compartment?

20 A Correct.

21 Q Okay.

22 A Or the contents within the compartment. He
23 noticed the compartment from the underside when he
24 told me that he had located it.

25 Q But you needed to pry it open to see what

1 was contained in it?

2 A I'll let him testify to that. I did not pry
3 it open.

4 Q Did you observe him pry it open?

5 A He wasn't -- he thought he was going to have
6 to pry it open. And when I started pulling it out, I
7 realized that the screws were not actually intact.

8 Q And I believe when you -- you asked her for
9 consent to search, you just said, "Can I search your
10 car?" Right?

11 A That's correct.

12 Q You didn't -- you never told her you might
13 be using a crowbar or taking anything out of the --
14 removing anything from the car?

15 A I didn't -- I didn't need to explain that to
16 her. I had found enough prior to removing the seat
17 that I would no longer need her consent at that point.

18 Q All right. No further questions.

19 THE COURT: All right. Any questions? Any
20 follow-up?

21 MS. OWENS: No additional questions for
22 this witness.

23 THE COURT: All right.

24 MS. OWENS: But at this point, I will call
25 an additional witness, Your Honor, very briefly.

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1 **THE COURT:** Of course.

2 Sir, you can step down.

3 **THE WITNESS:** Thank you, Your Honor.

4 **THE COURT:** Thank you.

5 **MS. OWENS:** Your Honor, the state would
6 call Master Deputy Harrison to be sworn.

7 **DAVID HARRISON**

8 having first been duly sworn, testifies as follows:

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

11 **THE WITNESS:** Michael David Harrison, Jr.

12 **DIRECT EXAMINATION**

13 **BY MS. OWENS:**

14 **Q** Master Deputy, what's your current
15 assignment at the sheriff's office?

16 **A** I am a master deputy on the Interstate
17 Criminal Enforcement team.

18 **Q** How long have you served in that particular
19 capacity?

20 **A** Since January 9, 2017.

21 **Q** Before joining the sheriff's office, where
22 were you employed?

23 **A** I spent 17 years with the South Carolina
24 Highway Patrol.

25 **Q** What was your assignment with the highway

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1 patrol?

2 **A** From 2000 to 2004, I was assigned to Oconee
3 County, answering wreck calls, traffic complaints,
4 typical traffic duties. 2004, I began my career as a
5 full-time criminal interdiction officer with the
6 highway patrol. I also did my final three years as a
7 K-9 handler with the narcotics protection dog with the
8 highway patrol.

9 **Q** Now, over the course of your career with the
10 highway patrol and, now, the sheriff's office, have
11 you received specific training about drug trafficking
12 and interdiction traffic stops?

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

14 **Q** Over the course of your career, have you
15 conducted a number of traffic stops related to the
16 objective and the purpose of drug interdiction?

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

18 **Q** Do you participate in any ongoing training
19 about things to look for or indications of the habits
20 or the behaviors or practices of drug traffickers?

21 **A** Yes, ma'am. Typically, at least once a year,
22 I attend some sort of training. Also once or twice a
23 year, I am an instructor with the National Criminal
24 Enforcement Association where I actually teach other
25 officers around the country in criminal interdiction,

1 which is what I refer to it as, not solely drug
2 interdiction. There's way more crime than that that go
3 up and down the roadways.

4 Q Do you remember whether you were working on
5 the night of June 28?

6 A Yes, ma'am.

7 Q Do you remember whether you spoke to anybody
8 employed by the Homeland Security agency?

9 A Yes, ma'am.

10 Q How did that happen?

11 A Basically, that particular day, we had
12 already had one seizure that took us off the road for
13 a while. We were actually headed home to end our
14 shift. I received a call from one of the full-time
15 agents with Homeland Security that works in
16 Greenville. He had received a call from an agent that
17 he used to work with at Homeland Security in Atlanta.
18 Basically, the only information he had was that the
19 agents in Atlanta were watching a particular building
20 or stash house -- what they thought was a stash house
21 -- saw a vehicle there; got the license plate off of
22 it; and once the vehicle left, they followed it.

23 As they saw that the vehicle was getting
24 onto 85 North and it didn't appear that the vehicle
25 was stopping or going anywhere, you know, around the

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1 city, that's when they called us to see if we could
2 possibly intercept it. The only thing is: They had no
3 idea who was driving it, no idea if there was anything
4 in the car. It was basically just a poke and a hope,
5 for lack of better terms.

6 Q Did you share that information with other
7 members of the interdiction team?

8 A Yes, ma'am.

9 Q Were those of you on the team, working at
10 that time, looking for this particular car?

11 A Yes, ma'am.

12 Q Now, we've heard some testimony about how
13 the car was stopped and how we come to be on the side
14 of the road. How did you get involved?

15 A So basically, once the vehicle reached our
16 jurisdiction here in Greenville, we had decided that
17 Deputy Reese would make the stop and see if there was
18 anything to it and we would take it from there. I
19 believe -- I believe he was the first one to see it,
20 but I'm not 100 percent on that. I stayed stationary,
21 where we were sitting at the Greenville/Anderson
22 County line, as did Deputy Wasserman, to wait to see
23 if anything materialized.

24 Q Now, are you in contact by way of radio with
25 the other deputies during the course of this entire

1 event?

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

3 **Q** Okay. At what point, between the time that
4 Deputy Reese leaves your stationary spot to initiate a
5 traffic stop, did you join this roadside location?

6 **A** I stayed back until he called me. I left it
7 up to him to determine, again, if anything was going
8 to materialize. And, obviously, he called me to
9 expedite the search, because we know when we stop a
10 car, the stopwatch begins.

11 **Q** What was happening when you showed up?

12 **A** So when I pulled up, Deputy Wasserman was
13 standing by with the subject, the driver, and a small
14 child. And I saw Deputy Reese at the rear of the
15 vehicle with the hatch open.

16 **Q** Did you have a conversation with him about
17 the status of things, so to speak?

18 **A** I did. I did.

19 **Q** Did he share with you information about his
20 conversation with the defendant?

21 **A** Yes, ma'am. Basically it was a short, sweet
22 conversation about things that he noticed or observed
23 during the stop. And we practice this on all of our
24 interdiction stops, where we kind of let the backup
25 officer know, "You know, hey, this is what I'm seeing;

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1 this is what I'm hearing or smelling." So he ran
2 through the things that he had observed. And I believe
3 I commented, shortly thereafter, that it's most likely
4 going to be an aftermarket hidden compartment
5 somewhere in the vehicle.

6 Q Why would you feel that way?

7 A Basically, through my training and
8 experience working that interstate, dealing with what
9 we deal with; the fact that you've got a newly
10 purchased vehicle that's traveling long distance that
11 has a vehicle license registered to an unknown male,
12 has insurance that's to another male, neither of whom
13 were present; and then, also coming from a source city
14 traveling to another source area to New Jersey; also
15 looking at the vehicle, just doing a rapid assessment,
16 as I am walking up — that type vehicle was a very
17 plain Jane; nothing flashy; nothing fancy; nothing
18 that would stick out; basically, a vehicle that's not
19 going to draw a lot of attention from law enforcement.
20 Even the color being silver, that is a color that's
21 easily able to be blended in with other traffic when
22 traveling on the interstate. I'll probably see
23 hundreds of silver vehicles every day during my shift
24 when I'm working the interstate.

25 Q Now once you actually got up to this car and

1 started to look at it, did you notice anything
2 unusual, immediately?

3 A No, ma'am. Nothing unusual, but it was very
4 clean in appearance. It was clean. It wasn't -- it
5 didn't have road wash all over it and dirty windows
6 and tires and things. It was a fairly clean vehicle.

7 Q Well, suspecting, at this point, that you're
8 looking for a compartment, how did you decide to look
9 for it?

10 A So that type of vehicle, again, in my
11 training and experience, that is a good vehicle for
12 aftermarket compartments. So the locations I typically
13 check on a vehicle, a small SUV like that, is the
14 floor, the floorboard, underneath the vehicle, the
15 rear deck, and also the rear floor that goes over the
16 plastic gas tank. Before I get into this, I would like
17 to testify that I am not a mechanic by any means. I do
18 love cars, that's my hobby, old cars. But these are
19 the areas that I typically check on a car.

20 It's very easy to tell, even laying on your
21 back on an emergency lane of I-85 in Greenville, if
22 something has been modified or is not factory. So
23 again, knowing the type vehicle, knowing what I'm
24 looking for could possibly be -- you know, could
25 possibly find, I lay on my back. I'm looking at the

1 floor, all the undercarriage. I'm looking at the
2 condition. The car had a lot of road wash underneath,
3 which is normal, driving in the rain, driving in the
4 dirt, et cetera, et cetera.

5 Unfortunately, where they made this
6 compartment, they had to lower the factory gas tank to
7 be able to put the metal box above it. So they
8 elongated or lengthened the bolts that hold scraps in,
9 that holds the plastic gas tank in. And there was
10 about that much of a thread showing.

11 Now, car manufacturers, they have strict
12 tolerances. They're not going to turn anything away
13 from the factory like that, nowadays. Everything
14 should be nice and tight. I also notice on the
15 elongated bolts that they had been freshly
16 spray-painted black. Everything had road wash and
17 grime on it, except for where the bolts were at. They
18 were nice and shiny and black, and it caught my
19 attention like that.

20 Matter of fact, I told Drew, I said, "Hey,
21 buddy, you've got an aftermarket compartment." At that
22 point -- I'm sorry.

23 Q So at this point, after just looking at the
24 exterior of the vehicle, what is your conclusion about
25 what was happening with that car?

1 **A** That there was definitely an aftermarket
2 compartment in the vehicle and that, in my opinion,
3 aftermarket compartments are put in vehicles for one
4 reason, and that is to hide or smuggle contraband.

5 **Q** At this point, again, during the exterior
6 evaluation of this car, before even getting inside of
7 the car, was it your opinion, at that point in time,
8 that it was more likely than not that there was
9 something illegal inside of that car?

10 **A** Yes, ma'am. It was also my opinion that even
11 though the sub -- the driver was not technically in
12 handcuffs, that she was not free to go and we were not
13 moving from that interstate until I confirmed or
14 dispelled my suspicious that there was something in
15 that compartment.

16 **Q** Now, after evaluating all of this under the
17 car, what did you do next to get to this compartment?

18 **A** I believe I went back to my car and
19 retrieved a crowbar. I like to refer to it as my
20 master key because we do have to break into a lot of
21 these compartments. When I went to pry the -- we
22 removed the back seat, which was all you do is pull it
23 up and take it out. It's not very intrusive. I see the
24 cover for the fuel pump, where the fuel pump would go
25 down into the gas tank. It's got four screws in it

1 from the factory. I went to pry the lid up or see if I
2 can pry it up, and one of the screws was -- had been
3 sawed off and then glued to the lid to make it look
4 like the screws were still being used.

5 Unfortunately, they had taken a trunk lock,
6 which is what would hold your trunk lid down for your
7 car, and they had welded it inside of the compartment
8 and then welded a small hook to the factory fuel pump
9 cover. And that was the access door for the
10 compartment. When I went to go pry it, it was loose. I
11 turned it. Picked it up. They didn't even bother
12 securing it well for the trip, whoever -- whomever.

13 Q Did you even have to use the pry bar?

14 A No, ma'am. No, ma'am. I think, on the video,
15 you can see me throw it down. But the packages were,
16 as soon as the lid was removed, were evident. I mean,
17 they were -- they were right there.

18 Q Okay. I don't believe I have any additional
19 questions for you. If you would answer any questions
20 that Mr. Martinez has.

21 A Yes, ma'am.

22 **CROSS-EXAMINATION**

23 **BY MR. SARRATT:**

24 Q Master Deputy Harrison, how are you?

25 A Good.

1 **Q** I'm Stuart Sarratt, for the record. I just
2 want to be brief with you here. As you said, you may
3 not have formal -- well, do you have formal training
4 in the mechanics of cars? I know you said you're not a
5 mechanic, per se. But have you had training with
6 highway patrol about that?

7 **A** No, sir.

8 **Q** Okay. But you have experience, from what
9 you're telling me?

10 **A** A lot. Yes, sir.

11 **Q** I could tell. You -- is it fair to say that
12 when you first started searching, you're shaking the
13 doors; you're looking at its seams; you're looking for
14 any kind of panel that might be built into the
15 exterior of the car?

16 **A** Yes, sir.

17 **Q** And you didn't find any from the exterior?
18 I'd say above the wheels, you didn't find anything?

19 **A** No, sir.

20 **Q** All right. And it's not until, really, you
21 get underneath the car that you start to notice things
22 that are out of the ordinary; is that correct?

23 **A** Right.

24 **Q** Okay. And just again, to show how
25 experienced you are, the kind -- the type of things

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1 that you noticed were that the welds were not factory
2 welds; right?

3 **A** Yes, sir.

4 **Q** So you would know enough to tell the
5 difference between a welding that came from someone
6 who was not trained in a factory and somebody who
7 works at a factory?

8 **A** Yes, sir.

9 **Q** And also what length certain screws should
10 be and how many inches the exhaust should be and
11 things like that? I'm sorry. That was a compound
12 question. You noticed things like length of screws not
13 being factory?

14 **A** Yes, sir.

15 **Q** And that the exhaust was lowered a couple of
16 inches beyond what it should've been?

17 **A** As well as the gas tank, yes, sir.

18 **Q** And none of this was apparent, again, until
19 you got underneath the car to take a look at the
20 underside; is that right?

21 **A** Yes. Can I explain that?

22 **Q** Oh, sure.

23 **A** Okay. So we search the undercarriage to all
24 the vehicles that we search when we believe that there
25 is reasonable suspicion of criminal activity going on.

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1 The reason we do that is because people have become
2 ingenious with the way that they hide contraband,
3 going to lengths as using magnets on pelican cases,
4 which are waterproof plastic cases and attaching them
5 to the inside of frame rails of rental vehicles. So
6 the chassis or undercarriage search is typical on all
7 of our vehicle searches. And all of our searches are
8 conducted the least intrusive method. Case in point,
9 we didn't take the door panels off. It's easier to
10 shake the door or use a flashlight to look at the
11 undercarriage.

12 Q Okay. Tell me: When you noticed from the
13 underside that there likely was a compartment, the
14 next thing you did was you took the back seat out; is
15 that correct?

16 A The seat bottom. Yes, sir.

17 Q And did you have to cut or tear into that,
18 or did it just remove from --

19 A No, sir. You lift it up and then take it
20 out.

21 Q Okay. Once you got that seat off, it's my
22 understanding you found a plate there that was not
23 factory; is that correct?

24 A No, sir. It is a factory cover for the fuel
25 pump.

1 **Q** Oh, okay. But you noticed something that was
2 suspicious about it that made you want to inspect it;
3 correct?

4 **A** Yes, a screw that was cut off and then glued
5 to the cap.

6 **Q** Okay. And how were you able to tell that it
7 had been cut and glued?

8 **A** Actually, when we took the seat off and I
9 touched the panel to pull on it a little bit, it
10 popped the screw out.

11 **Q** Okay.

12 **A** And it had a -- it had traces of the
13 silicone on it.

14 **A** I understand. It's at that point that you
15 were able to confirm that there was contraband inside.

16 **A** Once I removed the lid, yes, sir.

17 **Q** All right.

18 **MR. SARRATT:** One moment.

19 **THE COURT:** Certainly.

20 (There is a pause.)

21 **MR. SARRATT:** No further questions.

22 **THE COURT:** All right. Any follow-up?

23 **MR. MARTINEZ:** No, Your Honor.

24 **THE COURT:** Thank you, sir.

25 **THE WITNESS:** Thank you, ma'am.

1 **MS. OWENS:** I have no additional evidence
2 to present, but I'd be happy to argue to the
3 Court. I don't know whether you want to hear from
4 the defendant first or whether you would like to
5 hear from the state about the basis of the
6 motion.

7 **THE COURT:** All right. Anything -- anything
8 you would like to say, Mr. Martinez, at this
9 point?

10 **MR. MARTINEZ:** I believe Mr. Sarratt is
11 going to begin and then I will...

12 **THE COURT:** Sure. All right.

13 **MR. MARTINEZ:** We were going to --

14 **THE COURT:** That sounds good. All right.
15 No. That's fine.

16 **MR. SARRATT:** For my part, on this
17 argument, there -- this Officer Reese lacked
18 probable cause for the traffic stop, the initial
19 traffic stop. I believe the testimony was that he
20 followed the car for a mile and it was, at that
21 point, that he noticed all the traffic
22 infractions of following too closely and touching
23 the dotted line. Unfortunately, that driving
24 conduct was not captured on camera.

25 Once the camera does initiate, however, to

1 my -- my eye, I don't see any traffic; I don't
2 see any bumping up against the line; certainly,
3 no following too closely because she's no longer
4 behind the 18-wheeler. But unfortunately, we're
5 just -- we're left to the officers' testimony and
6 recollection of what he perceived, but it really
7 would have been nice to have video in this case.
8 That's one of the reasons I am presenting this.

9 I'm asking the Court to not only suppress
10 the evidence, but to craft a rule, prophylactic
11 rule. I understand I may be speaking to a higher
12 court here, that in cases where we -- all parties
13 agree there is a pretextual stop, which is
14 allowed under the law, and a traffic camera is
15 installed, that that camera must be activated in
16 order to assure everyone, including judges and
17 attorneys and the public, that there was actually
18 a traffic violation that occurred. It promotes
19 the integrity of the justice system, and we
20 believe that this is a remedy that this court
21 should grant in this case in addition to
22 suppressing the evidence.

23 **THE COURT:** All right. All right. Well, I
24 appreciate your argument in this case, certainly.
25 And if a court higher than I decides to implement

1 that rule, then that certainly is their purview
2 to do that.

3 However, I am, of course, aware of no such
4 rule, and I do find that there was probable cause
5 to stop the car. The deputy spoke to a number of
6 infractions that he viewed; and then, at the
7 point at which he believed that he could stop the
8 car, he did initiate his traffic camera for some
9 period of time and left it running throughout the
10 duration of the stop. So your motion is
11 respectfully denied ---

12 **MR. SARRATT:** Thank you, Your Honor.

13 **THE COURT:** --- but preserved for the
14 record.

15 **MR. SARRATT:** Thank you.

16 **THE COURT:** Thank you.

17 Yes, sir.

18 **MR. MARTINEZ:** Your Honor, the extensive
19 off-topic questioning by Deputy Reese here,
20 unreasonably prolonging the stop resulting in a
21 seizure under the Fourteenth Amendment. In
22 *Rodriguez v. United States*, that site is
23 135 S. Ct. 1609, the Supreme Court United States
24 held that a traffic stop, quote, exceeding the
25 time needed to handle the matter for which the

1 stop was made, violates the Constitution's shield
2 against unreasonable seizures. And a seizure
3 justified only by police-observed traffic
4 violation becomes unlawful if it is prolonged
5 beyond the time reasonably required to complete
6 the mission of issuing a ticket for the
7 violation.

8 Here, the stop was made for following too
9 closely and striking the left white dotted line.
10 The officer had already observed the alleged
11 violations included -- concluded that Ms. Sanchez
12 did not need field sobriety tests, but proceeded
13 to engage in extremely broad off-topic
14 questioning, that included her education, where
15 she's from, her origin, her romantic life, where
16 she works, what her boyfriend does, where her
17 kids are. All of this questioning prolonged the
18 stop beyond the time reasonably required to
19 complete the warnings as explained by Rodriguez.

20 Although that case involved extending the
21 stop while conducting a dog sniff, I believe that
22 the language in that case is broad enough to
23 include all unrelated or off-topic investigation.
24 I realize that our state Supreme Court in *State*
25 *v. Provet* held off-topic questioning during that

1 time don't violate the Fourth Amendment, but that
2 decision was released two years before *Rodriguez*,
3 which made clear that it was a reasonableness
4 inquiry.

5 The state must establish that he did not
6 extend the stop beyond the time needed to
7 reasonably complete the purpose of the stop. The
8 stated purpose was two minor infractions. As we
9 saw from the video and heard from Deputy Reese,
10 she had luggage in the car that contained items
11 for a trip; she had documentation supporting her
12 purchase of this car the day before; she had an
13 itinerary that included traveling to New Jersey
14 to see family who was going to put her up for the
15 time that she was there.

16 You know, the only facts that we would have
17 here are that she was traveling from Atlanta,
18 which was a -- as testified is a drug hub; she
19 had a single key on a car that she had just
20 purchased; and she had Red Bull in the car. I
21 don't believe that is sufficient to justify
22 reasonable suspicion to extend the stop further.
23 The officers questioning her goes far beyond
24 ordinary inquiries incident to a stop, which is
25 checking her license, determining outstanding

1 warrants and inspecting the registration and
2 proof of insurance.

3 The critical question under *Rodriguez* is
4 whether that additional investigation prolonged
5 the stop here. I'd be glad to go to my next
6 ground or if you just --

7 **THE COURT:** Hold on just one second.
8 Let me hear from you on that.

9 **MS. OWENS:** Certainly, Your Honor. I think
10 there are two issues that are kind of pushed
11 together, so I'm going to try to treat them
12 separately. The first is whether there is
13 anything inappropriate about the questioning
14 tactic by Deputy Reese. I certainly -- I think
15 that it's helpful for the Court to consider that
16 during the entire recorded duration of this
17 exchange between the deputy and the defendant, it
18 is evident in the background of this tape that
19 you can hear typing, the clicking of keys.

20 **THE COURT:** Uh-huh.

21 **MS. OWENS:** I think that speaks very
22 clearly to the purpose of what's happening
23 off-camera. We're not even going to see this, but
24 we're able to hear it. So there's no question
25 before this Court that that questioning extended

1 the stop. If anything, it was occupying the time
2 during which the deputy was filling out the
3 paperwork that he had to fill out. There's no
4 evidence on this video that the deputy stopped
5 filling out these documents, stopped conducting
6 reference check inquiries about the status of
7 this defendant's license or any other standard
8 protocol-type records checks that they do during
9 these traffic stops. As the video demonstrates,
10 as soon as that is accomplished, he delivers that
11 paperwork after explaining it to her.

12 So I don't believe there's any evidence that
13 the questioning -- perfectly appropriate
14 questioning did anything to extend the stop. I
15 think it's relevant, too, to consider that the
16 entire duration of the stop, start to finish,
17 before we reach the search, is 11 minutes. It's
18 an extremely quick transaction. With respect to
19 whether the questions extended the stop, I don't
20 believe there's any evidence for the Court to
21 decide that there was anything extended here.

22 Now, separately, the issue is whether,
23 during that exchange, during that 11 minutes,
24 this deputy amounted enough reasonable suspicion
25 to justify asking the defendant to search her

1 car. That's where we get into the dirty details
2 of what was so suspicious about having multiple
3 Red Bull cans, having no driver's license, this
4 other unknown third-party insurance card, which
5 is, arguably, not even viable evidence that the
6 car is insured, and unclear information and, as
7 the deputy testified, suspicious information
8 about the circumstances by which the defendant
9 came to be in possession of the car.

10 He, specifically, mentioned -- both deputies
11 mentioned that they found it suspicious that the
12 defendant indicated she purchased the car for
13 \$10,000 from an unknown person but had only paid
14 \$4000 toward the car before being able to drive
15 away with it from this unknown person. There is
16 certainly something suspicious about conducting a
17 transaction with a perfect stranger and them
18 allowing you to leave with the goods that you've
19 purchased without any consideration toward future
20 payment.

21 So in addition to that, the bizarre
22 insurance situation, the fact that she has no
23 driver's license, in combination with the
24 information we have from HSI, this Court's task
25 is to evaluate the totality of the circumstances,

1 not only their experience and training in dealing
2 with cars that are trafficking contraband and
3 illegal material, but also this credible and
4 reliable tip from the federal government that
5 this car was leaving what the federal government
6 believed to be a stash house for drugs. So in
7 light of the total circumstances surrounding this
8 traffic stop, there's certainly sufficient
9 evidence for these deputies to have asked this
10 defendant for consent to search her car, which
11 she gave.

12 **THE COURT:** Well, I find that the stop was
13 not unreasonably prolonged, in fact, not
14 prolonged from my watching of the video. There
15 was some off-topic questioning, which is
16 certainly permissible. Part of that was prompted
17 by, again -- to use the state's words on this --
18 I think, unusual ownership situation and
19 insurance situation in this case. They certainly
20 had enough evidence to prompt asking for consent
21 to search as has been set forth: Red Bull can; no
22 driver's license is a very big one; the
23 third-party insurance; and unclear ownership of
24 the car. I find under *State v. Culbreath* that the
25 officer's suspicions were further aroused and

1 continued questioning, although it does not seem
2 that the traffic stop was unreasonably lengthy;
3 and therefore, respectfully deny your motion as
4 to that.

5 Yes, sir.

6 **MR. MARTINEZ:** I would just note one thing
7 for the record: As the officer testified to, she
8 -- she did only pay 4000, but she had not
9 received title yet.

10 **THE COURT:** Uh-huh.

11 **MR. MARTINEZ:** I believe that goes to why
12 she had not received title yet. Moving on,
13 Your Honor --

14 **THE COURT:** And I will just -- if I could
15 just highlight one area: the "no driver's
16 license" is certainly a very concerning area and
17 would very much arouse suspicion and would prompt
18 -- might have prompted further action than what
19 happened there at the scene. But all right. Go
20 ahead.

21 **MR. MARTINEZ:** In addition to -- I
22 understand your ruling -- in addition to the
23 off-topic questioning that occurred here, we
24 believe that when Deputy Reese handed Ms. Sanchez
25 the warnings, but did not fully let go of them

1 and requested consent, that based on the total
2 circumstances, he, again, seized her anew without
3 reasonable suspicion to request that consent to
4 search.

5 A person -- reasonable person under those
6 circumstances would not feel free to leave when
7 the officer is still holding the warnings when he
8 requested consent. We know that a roadside
9 consent request to search is unlike a normal
10 field interview. There's already been a seizure
11 ---

12 **THE COURT:** Uh-huh.

13 **MR. MARTINEZ:** --- which enhances the
14 enforciveness of the situation. She had already
15 been pulled over and asked to come back to the
16 patrol car, answered evasive questions about --
17 for nearly 10 minutes; there were two officers,
18 both in uniform, carrying firearms; she had not
19 told that she needed to go; and there was
20 immediate transition from the stop to the request
21 to search that she may not have realized the
22 initial seizure ended. All of these factors, in
23 totality of the circumstances, she was seized
24 again when Deputy Reese requested the consent to
25 search.

1 To separate the issues as well, there was
2 not reasonable suspicion here, unlike in *Provet*,
3 the officer did -- said she was not nervous; he
4 said she was stoic; her hands weren't shaking;
5 she didn't have accelerated breathing. You could
6 tell from the video that she answered all of
7 those questions calmly. Additionally, a
8 third-party, in itself, does not in itself create
9 reasonable suspicion. When -- the search begins
10 12 minutes into the stop and took another 15
11 minutes. She was seized. The consent here was
12 obtained as an exploitation of that seizure. And
13 so the state would bear burden exception of the
14 consent as voluntary and not an exploitation of
15 the stop.

16 **THE COURT:** All right. Well, you know,
17 oftentimes, we don't have a video of the actual
18 consent to search and that becomes more
19 problematic, certainly. In this particular
20 instance, you know, it's clear from the video
21 that the officer was not intending on writing her
22 even a ticket, but rather just wrote her a
23 warning; informed her that he was writing a
24 warning; was -- and appeared to be concluding the
25 stop itself.

1 I think that was the -- definitely, under
2 the totality of the circumstances, the feeling
3 was that the stop would shortly end. When he
4 asked for consent, he asked so in a very casual
5 manner, not a demeaning or threatening manner,
6 certainly didn't tie it to any outcome of the
7 stop. And then, her response was immediate,
8 unequivocal, and at no time did she ever try to
9 limit the search or ask what the purpose of the
10 search even was. She just immediately consented
11 to the search itself. Therefore, I do find that
12 the search was voluntary and that she did not
13 feel any coercion, does not appear to have felt
14 any coercion to have consented to that search.

15 **MR. MARTINEZ:** And just to clarify your
16 ruling -- I believe I know the ruling, but your
17 ruling is that the stop was not extended.

18 **THE COURT:** Right. The stop was not
19 extended. I find that the stop was not extended
20 and that they had enough evidence to request
21 consent to search; was freely and voluntarily
22 given consent to search.

23 **MR. MARTINEZ:** One final ground: the search
24 here exceeded the scope of consent. Under both
25 the United States Constitution and the state

1 constitution, including South Carolina's
2 expressed right to policy, an officer does not
3 have carte blanche to search what they please,
4 even if an individual does not specifically limit
5 the scope of the consent. *Florida v. Jimeno*, 500
6 U.S. 248, United States Supreme Court, as well as
7 *State v. Forrester*, Supreme Court case, 343 S.C.
8 637, the drugs here were found after a 15-minute
9 search and required removal of the back seat and
10 removal of a cover from beneath that seat.

11 This is not a situation where it was just
12 found in the glove compartment or the center
13 console or the back seat. This was a search that
14 far exceeded what a reasonable person would have
15 believed the request to search would have
16 entailed. They would have understood it to be the
17 front seats, the back seats, the compartments in
18 the car, but not removal of any portion of the
19 vehicle.

20 As Deputy Reese here, he specifically said
21 can he search her car. He didn't specifically say
22 that parts would be removed or anything like
23 that. For that reason, we believe that the scope
24 exceeded the consent and we would ask that the
25 drugs be suppressed.

1 **THE COURT:** Well, I do find that the
2 defendant was present for the entirety of the
3 search. As I said, she freely gave consent to
4 search. I will cite to the learned and very
5 esteemed Judge Miller in *State v. Funderburg*,
6 that says that because she did not object or
7 limit the scope of that search at any point in
8 time, that -- that -- that case is practically on
9 all fours with this factual scenario, that he --
10 that the deputy did not exceed the scope of the
11 search and, as noted by the deputy, who -- after
12 extensive training, said he almost from sight,
13 could tell looking underneath the car that
14 something would warrant further search in that
15 area. So based on all of that, again, I
16 respectfully deny your motion, though it is
17 certainly preserved for the record.

18 **MR. MARTINEZ:** Thank you, Your Honor.

19 **THE COURT:** Thank you. Is there anything
20 else?

21 **MR. MARTINEZ:** Nothing from the defense.

22 **THE COURT:** Anything from the state?

23 **MS. OWENS:** Not at this point, Your Honor.
24 We may have some logistical issues before we
25 begin, some statements and some pieces of the

1 video that we may need to discuss in the morning.
2 But there's certainly no reason to deal with that
3 today.

4 **THE COURT:** Okay. All right. All right.
5 Very well. And perhaps with our time this
6 afternoon, maybe some of that, y'all can talk
7 about and see if you couldn't get it situated.

8 **MS. OWENS:** Certainly.

9 **MR. MARTINEZ:** Just one last thing about
10 getting the CD marked.

11 **THE COURT:** Oh, yes. Thank you, and Teresa
12 thanks you. Yes, we'll mark that for purposes of
13 today's hearing as Defendant's Exhibit Number 1.

14 **COURT REPORTER:** Can I think on that for a
15 second?

16 **THE COURT:** You want to think on that?
17 (Pause.)

18 So let me just ask this: The state intends
19 on introducing this video?

20 **MS. OWENS:** Yes, Your Honor.

21 **THE COURT:** Does the defense know of any
22 objection you would have to introduction of this
23 video?

24 **MR. MARTINEZ:** There were maybe a few
25 things that we would ask to be redacted, but

1 overall, no. No objection.

2 THE COURT: Okay. The reason is: We're
3 wondering about marking it and remarking it.

4 MS. OWENS: Let's mark a second copy.

5 THE COURT: Okay. All right.

6 MS. OWENS: That suits me just fine.

7 THE COURT: Okay. Perfect. We'll do that,
8 then. Very well. Thank you so much.

9 MR. MARTINEZ: Thank you.

10 COURT REPORTER: Thank you.

11 THE COURT: Teresa is happy, so I'm happy.
12 All right. Anything else to take up before we
13 break for the day?

14 MS. OWENS: No, Your Honor.

15 THE COURT: All right. Thank you very much.

16 MS. OWENS: Thank you.

17 MR. SARRATT: Thank you, Your Honor.

18 THE COURT: Thank you.

19 (Defendant's Exhibit 1 is marked for
20 identification and admitted into the record.)

21 (The Court recesses for the day at approximately
22 12:33 p.m.)
23
24
25

STATE OF SOUTH CAROLINA	) COURT OF GENERAL SESSIONS
	)
COUNTY OF GREENVILLE	) THIRTEENTH JUDICIAL CIRCUIT
	)
State of South Carolina	) Case No(s) .: 2017GS2310232,
	) 2017GS2310233
Plaintiff,	)
	)
-VS-	) TRANSCRIPT OF RECORD
	)
Victoria Sanchez,	) Volume 2 of 2
	)
Defendant.	)
	)

December 4 - 5, 2018
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

KATRINA OWENS, Esquire
Attorney for the Plaintiff

MICHAEL MARTINEZ, Esquire
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produced via
AudioScribe



P R O C E E D I N G S

(State's Exhibits 1 through 6 are marked for identification.)

(The Court resumes on the 5th day of December 2018, at approximately 9:06 a.m.)

THE COURT: Alrighty. Y'all ready to bring the jury back in?

MS. OWENS: Certainly. We're ready to proceed.

THE COURT: Oh, yeah. Hold on one second until we get Ms. Sanchez in. (Pause.)

MR. MARTINEZ: I don't know that I need to do this, but just renewing my motions from yesterday.

THE COURT: Okay. All right.
(Ms. Sanchez enters the courtroom.)

THE COURT: And you requested that witnesses be sequestered?

MR. MARTINEZ: Yes, Your Honor.

THE COURT: Any objection to that?

MS. OWENS: Well, to the extent that he's not articulated any basis to do so, I'd object.

THE COURT: All right. Well, we'll -- I'll grant your motion to sequester, except, of course, your main witness, or case manager.

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1 Katrina, I don't know if you know it, but --
2 well, I'll say this to everybody that Teresa has
3 been elected president of the national court
4 reporters' association.

5 **MS. OWENS:** What? Put that on the record.

6 **THE COURT:** I know. So we have -- we now
7 address her as La Presidente. Anyway, all right.
8 So we're going to go on the record and you wanted
9 to renew your motions.

10 **MR. MARTINEZ:** Yes, Your Honor, just for
11 the record, just to renew my motion from
12 yesterday to suppress all the drugs on the
13 grounds that we had discussed yesterday.

14 **THE COURT:** All right. And your motions
15 are certainly renewed at this time, and
16 respectfully denied.

17 **MR. MARTINEZ:** Thank you, Your Honor.

18 **THE COURT:** Thank you.

19 (Jury enters at approximately 9:15 a.m.)

20 **THE COURT:** Good morning, ladies and
21 gentlemen. Thank y'all so much for being so
22 prompt this morning. That's very helpful.

23 And I understood that some of you wanted --
24 or requested to take notes. That's perfectly
25 fine. And I'm very appreciative that you all are

1 taking your responsibility very seriously. I will
2 just caution you that some people are better
3 notetakers than others; some people take notes in
4 lieu of listening. If you feel like you are one
5 of those people who would take notes rather than
6 listen and watch the witness on the stand, then
7 I'd encourage you to not take notes, just because
8 I want you to listen to the witness. And a lot of
9 what you have to do is determine credibility.
10 And, of course, a lot of that is from looking at
11 folks on the stand.

12 But some people love to just take some notes
13 to refresh their memory. I think that's a
14 fantastic idea. Then when we get to the end of
15 the trial, I'll give you just a little bit of
16 guidance on how to use those notes, since not
17 everybody is taking notes, in the jury
18 deliberation room. All right.

19 All that being said, we've got one matter of
20 business.

21 Ms. Jan, will you --

22 **THE CLERK:** Ladies and gentlemen, would you
23 please stand and raise your right hand for the
24 oath in this case. Your correct response will be,
25 "I will." You shall well and truly try this case,

1 2017-GS-23-10233, the State of South Carolina
2 versus Victoria Lorraine Sanchez, indicted for
3 trafficking in heroin; and 2017-GS-23-10232 for
4 unlawful conduct towards a child, and a true
5 verdict render according to the law and the
6 evidence, so help you God?

7 (Each juror responds.)

8 **THE CLERK:** Thank you.

9 **THE COURT:** Thank you, ma'am.

10 Mr. Foreperson and the remaining members of
11 the jury, we are now ready to move to opening
12 statements.

13 Yes, ma'am.

14 **MS. OWENS:** Thank you, Your Honor. May it
15 please the Court.

16 **THE COURT:** Yes, ma'am.

17 **MS. OWENS:** Good morning, ladies and
18 gentlemen. As I told you yesterday, my name is
19 Katrina Owens, and I prosecute criminal cases
20 here in Greenville County. Before we begin the
21 trial of this case, I want to very briefly tell
22 you three things: what this case is about; what
23 the state is required and intends to prove; and
24 how we intend to prove it.

25 Every day, drugs of all kinds are shipped,

1 transported, smuggled and delivered to locations
2 across this country. Those drug distribution
3 networks enlist individuals who are willing to
4 personally escort those drugs from one location
5 to the next. This defendant is one of those
6 individuals.

7 On June 28, 2017, deputies with the
8 Greenville County Sheriff's Office stopped this
9 defendant on Interstate 85, right here in
10 Greenville County. After ultimately searching her
11 car, they found inside nearly 7 kilos, more than
12 17 pounds, of packaged heroin.

13 Now, as you've heard from the judge, the
14 defendant is charged with two separate crimes in
15 connection to that June 28 traffic stop. The
16 first of those is trafficking in heroin. Now, to
17 prove that the defendant is guilty of the crime,
18 the state has to prove two things: first, the
19 state has to prove that the defendant sold,
20 purchased, delivered, or brought into this state,
21 a quantity of illegal drugs; or that the
22 defendant provided assistance to -- financial or
23 otherwise -- someone to sell, deliver, purchase,
24 or bring into this state a quantity of illegal
25 drugs; or that the defendant aided, abetted,

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1 conspired, or attempted to sell, purchase,
2 deliver, or bring into this state, a quantity of
3 drugs; or possessed a quantity of illegal drugs.
4 Now, the state must prove that the defendant did
5 any one of those things with respect to more than
6 28 grams of heroin.

7 Now, the defendant is also charged with
8 unlawful conduct towards a child. Again, to prove
9 that ground, the state has to prove two things:
10 first, that the defendant was a parent, guardian,
11 custodian of a child under the age of 18 and that
12 in that capacity as a custodian, a parent, or a
13 guardian, that the defendant did something to
14 place the child at an unreasonable risk of harm.

15 Now, to prove that the defendant is guilty
16 of both of those crimes, you're going to hear
17 testimony from several witnesses. First, you
18 going to hear from the deputies themselves who
19 were part of this traffic stop. Mr. Andrew Reese,
20 who was a deputy at the sheriff's office at the
21 time of this traffic stop in 2017, is going to
22 testify to what about drew his attention to the
23 silver Kia that this defendant was driving on the
24 evening of June 28. He's going to tell you what
25 he saw, what he did, and what made him so

1 increasingly suspicious as this traffic stop went
2 on.

3 You're going to see the video that was
4 recorded for the duration of this traffic stop.
5 You'll be able to see for yourself exactly what
6 happened on the side of the road that day.

7 After that, you're going to hear from Master
8 Deputy David Harrison. Deputy Harrison is going
9 to testify about what was going on when he showed
10 up to help search this car and how they
11 ultimately discovered this enormous quantity of
12 heroin inside.

13 You'll also hear testimony from folks who
14 are responsible for safekeeping the evidence
15 since the time of the traffic stop in June until
16 trial here today. And you will hear from a crime
17 lab chemist, whose job it is to chemically
18 analyze these substances. And you'll hear about
19 what he learned as the result of his analysis.

20 Ladies and gentlemen, the evidence in this
21 case is very straightforward. The trial of this
22 case is likely to be very short. And at the end
23 of the trial, after you've heard all of the
24 evidence and had an opportunity to see for
25 yourself exactly what happened on Interstate 85

1 on June 28, 2017, I'll ask you to return a
2 verdict that this defendant is guilty of both of
3 those crimes. Thank you.

4 **THE COURT:** Thank you.

5 Yes, sir.

6 **MR. SARRATT:** May it please the Court.

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

8 **MR. SARRATT:** Good morning, ladies and
9 gentlemen. Once again, I'm Stuart Sarratt, and I
10 am defending Victoria Sanchez.

11 So as you've heard -- let me take some of
12 the mystery out. Victoria Sanchez was in that
13 Kia, and that Kia did have 17 pounds of heroin in
14 it. Open and shut; right? Not quite. You see, not
15 only does the state have to prove those things,
16 they have to prove that she knew that what she
17 was doing was wrong. The state has to prove that
18 she knew that those drugs were there.

19 Now, what the evidence is going to show is,
20 again, that there are 17 pounds of heroin loaded
21 in this car. Well, how could you not know? I
22 mean, the car must be overflowing with heroin;
23 right? See, what the state is also going to show
24 -- what the evidence will show is that the 17
25 pounds of heroin were hidden in a compartment

1 that was welded between the gas tank and the
2 undercarriage of the car. This was extremely well
3 hidden.

4 The state, and the evidence, is going to
5 show that Victoria was -- this was a new car to
6 Victoria. She had only had possession of this car
7 for a couple of days. The evidence is also going
8 to show that Victoria Sanchez does not have a
9 driver's license and has never had a driver's
10 license.

11 Now, let's talk about what the evidence is
12 not going to show. There's not going to be any
13 evidence of any undercover agents, any
14 confidential informants, any wiretaps. There's
15 not going to be an organizational chart with "El
16 Chapo" Guzman at the top and Victoria Sanchez
17 down here. There's none of that. We have Victoria
18 Sanchez in a car with heroin loaded into a secret
19 compartment. But the issue in this case is: Did
20 she know?

21 After you hear all of the evidence, I am
22 convinced that you will find that she did not
23 know, and that you will find Victoria Sanchez not
24 guilty.

25 **THE COURT:** All right. Thank you.

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1 Yes?

2 MS. OWENS: May it please the Court,
3 Your Honor.

4 THE COURT: Yes.

5 MS. OWENS: The state calls Mr. Andrew
6 Reese.

7 Mr. Reese, would you, sir, please come up
8 and be sworn.

9 ANDREW REESE

10 having first been duly sworn, testifies as follows:

11 THE CLERK: You may be seated. Please state
12 your full name for the record.

13 THE WITNESS: Good morning. My name is
14 Andrew Hunt Reese.

15 DIRECT EXAMINATION

16 BY MS. OWENS:

17 Q Mr. Reese, I'm going to stand way back here,
18 so I can be sure that I can hear you and so that the
19 jury can hear you. Okay?

20 A Yes, ma'am.

21 Q Can you tell the jury where do you work now?

22 A I actually work at Greenville Tractor
23 Company now, here in Greenville, South Carolina.

24 Q How long have you been there?

25 A Just over a year.

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1 **Q** Where were you working back in June of 2017?

2 **A** I worked at the Greenville County Sheriff's
3 Office on our criminal interdiction team.

4 **Q** Just for the jury's understanding, what is
5 the interdiction team at the sheriff's office?

6 **A** The interdiction team is comprised of four
7 deputies who spend the majority of their time on the
8 interstate doing criminal interdiction. What is
9 criminal interdiction? That is looking for the obvious
10 large amounts of drugs, guns, or drugs obtained in
11 U.S. currency. We also look for felons crossing over
12 the state line, whether it be murder, any type of
13 fraud, anything like that. Interdiction isn't just a
14 drug job; it's a combination of anything illegal.

15 **Q** What -- how do you -- does one on the
16 interdiction team go about learning what to look for?

17 **A** We go through some specialized training
18 through -- be it local here -- you know, some of the
19 local agencies will provide it. We also travel to
20 Georgia, Atlanta, specifically, and take national
21 training on what to look for: indicators, criminal
22 behavior.

23 **Q** How long did you serve in that particular
24 capacity at the sheriff's office?

25 **A** On the interdiction team, I served a year.

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1 **Q** Now, do you remember what you were working
2 the evening of June 28, 2017?

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

4 **Q** Generally speaking, where were you?

5 **A** Interstate 85, all day long. That evening, I
6 was on the northbound side, to be exact.

7 **Q** What drew your attention to this defendant's
8 car?

9 **A** We had been a regular day shift that day,
10 wrapping up things that evening. My supervisor called
11 me and said that he had received a phone call from an
12 HSI agent, which is the Department of Homeland
13 Security. They had spoke to someone outside of their
14 Atlanta office who indicated they had observed --

15 **MR. MARTINEZ:** Objection, hearsay.

16 **THE COURT:** I'm going to allow this, just
17 sort of setting the scene, but limitedly. All
18 right.

19 **MS. OWENS:** Yes, Your Honor.

20 **THE WITNESS:** So to summarize, basically, I
21 had been told that a vehicle had left somewhere
22 that they were watching, and asked that we look
23 for the vehicle; and if you could find a lawful
24 reason to stop the vehicle, do so; identify the
25 driver and try to determine if she's involved in

1 any type of criminal activity.

2 **BY MS. OWENS:**

3 **Q** Was that information that you received from
4 agents at Homeland Security?

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

6 **Q** Did they indicate to you whether they, at
7 that moment, were, themselves, watching this car?

8 **A** They were following the vehicle northbound
9 on Interstate 85 from Atlanta, Georgia.

10 **Q** So ultimately, where were you when you saw
11 this car that you were looking for?

12 **A** I located the vehicle as it came into
13 Greenville County on Interstate 85 northbound. If you
14 ever travel along Interstate 85 northbound, and you
15 come along the 42-mile marker, you'll probably see a
16 worn-out spot on the right side or you see patrol cars
17 sitting there all the time. That's where we sit.
18 That's where I observed the vehicle, and that's where
19 I began following the vehicle.

20 **Q** Generally, what did you observe?

21 **A** Traffic was fairly light for 85, that time
22 of night. When she came past me and I got behind her,
23 we were in the number two lane, or the middle lane.
24 There's three northbound lanes on that side of 85
25 there. As we continued northbound from around White

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1 Horse and approaching Augusta, she was -- kept
2 touching the left dotted line. Be it whether she could
3 have been impaired or she was watching me, I wasn't
4 sure.

5 As we continued, she traveled up behind an
6 18-wheeler that was towing vehicles. I refer to it as
7 a car hauler. When she got up behind that, she got in
8 about two car lengths behind it. Then she traveled
9 around it on the left side. When she passed it on the
10 left and got back in front of it, I initiated the
11 traffic stop for both: following too closely and
12 improper lane use.

13 Q Where were you on the interstate when you
14 finally decided to activate your blue lights and stop
15 this car?

16 A I activated on 85 in Greenville County in
17 between White Horse Road and Augusta Road.

18 Q Is that location still inside Greenville
19 County?

20 A That is within Greenville County, as well.

21 Q Now, what did you do as you turned on the
22 blue lights and as this traffic stop began? What
23 happened?

24 A So I activated my blue lights, which does a
25 couple of things: It activates my camera for me and

1 indicates to the driver that I wish for them to pull
2 over. And she did. She immediately pulled to the right
3 side of the road. I positioned my vehicle. I got out
4 and approached the vehicle and spoke to the driver who
5 I, at that time, identified, on a Texas identification
6 card, as a Victoria Sanchez.

7 Q Was she able to present to you any other
8 form of identification?

9 A The only thing she prevented -- presented
10 identification-wise was a Texas identification card.
11 She did not have a valid driver's license with any
12 state in the United States.

13 Q What else do you routinely request, in the
14 ordinary course of a traffic stop?

15 A Sure. So it's basic, just like you see on
16 TV: license, registration, and proof of insurance.
17 Those are the three main things that you know you have
18 to have to operate a motor vehicle.

19 She handed me her Texas identification card;
20 she handed me a registration card, which was in a
21 third-party gentlemen's name; and she handed me an
22 insurance card, which was in a different third-party
23 gentleman's name. Then she handed me a bill of sale
24 where she claimed to be purchasing a vehicle from the
25 gentleman that it was registered to.

1 **Q** Was that particularly of interest to you?

2 **A** It was extremely of interest to me. First
3 and foremost, vehicles do get sold between private
4 parties, and then you can complete a bill of sale. I
5 asked her, you know, where or how she got the vehicle
6 and how much she was paying for the vehicle. There was
7 no -- she did not have the title for the vehicle.

8 The first thing she told me that really
9 caught my interest was that she was purchasing the
10 vehicle for \$10,000 from this unknown male that it was
11 registered to, and she had only paid him \$4000. Well,
12 she has got a \$6000 balance to an unknown male, but
13 she's already taken possession of the vehicle and
14 she's driving, you know, several hours away.

15 **Q** Did she indicate to you where she was going?

16 **A** She was traveling to New Jersey from
17 Atlanta, Georgia, which is a hub city for narcotics.
18 And she -- had just a general conversation with her.
19 I'm no robot. I like to find out who I'm dealing with.
20 I was informed that she had been in Atlanta, Georgia,
21 for about a week, where she had flown to from Laredo,
22 Texas, which is where she claims to be from and live.
23 Had flown in there. Stayed with a relative for about a
24 week in a hotel. Then, she bought this vehicle and was
25 traveling to New Jersey, where she was going to stay

1 for a couple of weeks, no known itinerary, and going
2 to stay with family members up there.

3 Q Was any of that particularly unusual to you,
4 based on your training and experience?

5 A Well, the main thing is: She was traveling
6 between two major hub cities. Not just leaving one,
7 but traveling to New Jersey, which is also a good
8 destination for narcotics. Also, the fact that she
9 didn't have any kind of itinerary of where she was
10 going and she was traveling with a small child. I
11 think that we all know, when we leave to go on
12 vacation or to stay with someone, where we're going;
13 how long we're going to be there; and if you have two
14 other children back home, when you're going to return
15 to see your children that are staying with your
16 boyfriend in Laredo, Texas. So where she was going and
17 why she was going did not make sense and was extremely
18 suspicious to me at that time.

19 Q Now, just narrowing down on the child
20 situation, was there anybody else in the car?

21 A Just the -- just the small child.

22 Q Do you know how old that child was?

23 A I believe she was approximately three. I did
24 ask Ms. Sanchez if the child was hers. She stated that
25 it was her child.

1 **Q** Where was the child, physically, in the car?

2 **A** She was in the back seat on the driver's
3 side in a car seat.

4 **Q** And you mentioned, a moment ago, that you
5 asked about the defendant's other children. Could you
6 explain to the jury again what information she gave
7 you about traveling with this child and what was going
8 on with her other children?

9 **A** She was traveling with this child because it
10 was too difficult to travel with three children. And I
11 agree with that. It is very difficult to travel with
12 multiple children. But she said that she was traveling
13 with this one because the other ones would ask --
14 would bug her about, "Are we there yet?" and things
15 like that. So she left them with her boyfriend in
16 Laredo, Texas.

17 **Q** Now while you were -- while you are speaking
18 to the defendant about all of this, where are you,
19 physically?

20 **A** The first part of my conversation happens at
21 her vehicle, which is where I request the documents.
22 I'm doing a safety scan, you know, kind of rapid
23 assessment of the vehicle, and I'm up there making
24 sure there's no weapons nearby or anybody else in the
25 vehicle. And I -- every vehicle I stop, I'm looking

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1 for indicators of criminal activity. A few that I
2 noticed right off the bat in her vehicle: As soon as I
3 made it to the window, there was an overwhelming odor
4 of air freshener, which is often used as a masking
5 tool to cover up the odor of narcotics. You know, it
6 wasn't just a little air freshener. It was "give you a
7 headache."

8 She had a single key in the ignition. What
9 that tells me is: She's trying to distance herself
10 from ownership of the vehicle. If you go buy a new
11 vehicle, the first thing you do is take your key off
12 your key chain and stick your new one on there with
13 the rest of your keys. She had a couple of energy
14 drinks, Red Bulls, in the vehicle, which tells me that
15 she's trying to make a straight shot or go as far as
16 she can, all at one time.

17 And she had multiple cell phones. She had
18 two cell phones in the vehicle. Most people that we
19 find on the interstate involved in some type of
20 criminal activity have what we call a "burner phone"
21 or an extra phone, a paid phone, something that they
22 are not attached to.

23 Q Do you remember what types of phones the
24 defendant had?

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

1 know one was a flip phone, I believe, and I don't
2 recall what the other one was.

3 Q Now, at this point, after you're having this
4 conversation and you are observing all of these things
5 inside of the car, what do you do next? What do you
6 decide to do?

7 A Well, after seeing some indicators that made
8 me start thinking there's possibly some criminal
9 activity involved, I know that I've got to run her
10 license. I've got to check the paperwork for her
11 vehicle. So I have her step out of the vehicle and
12 come back to my patrol car, where I have access to my
13 MDT and my laptop to run that information. I always
14 get the violator to stand at my passenger window while
15 I sit inside and handle the paperwork, so I brought her
16 back there with me.

17 Then, had her stand on the passenger side
18 while I both -- I checked, you know, her information,
19 the vehicle information and made sure it's not stolen
20 and see if I can figure out why in the world it's
21 registered to somebody and insured to somebody else
22 and being driven by third person and, also, to be able
23 to issue her a warning for the violations.

24 Q Did you continue to engage her in
25 conversation while you were processing that paperwork?

1 **A** Absolutely did. I, you know, like to get
2 along with everybody and find out who I'm dealing
3 with. There are a lot of unique people out there. So I
4 carry on casual conversation. You know, we have air
5 cards in our computers. They're not super fast, so it
6 takes a little while for some things to come back.
7 Believe it or not, I can write and talk at the same
8 time. So why not carry on a conversation with
9 somebody? You know, you can either make a friend or
10 make an enemy; and I choose to try to make a friend.

11 **Q** Now, during that conversation, did you learn
12 anything else from the defendant that affected your
13 impression or perception about what was going on
14 inside of that car?

15 **A** One -- you know, one of the main things that
16 stuck out with me as we carried on the conversation
17 about where she was coming from and where she was
18 going was, you know, that she had worked at Applebee's
19 for a short period of time. But then, basically, the
20 way it sounded was she had the funds to travel from
21 Laredo, Texas, to Atlanta and spend a week; and then
22 buy a vehicle; and then travel to New Jersey to spend
23 another couple of weeks; and then get back to Laredo.
24 Just trying to, from a common sense standpoint,
25 understand how you can afford to do that. Didn't make

1 much sense to me. Then, just not having any itinerary,
2 nothing at all, no reason to travel, also started
3 raising my suspicions.

4 Q Did she give you any information about how
5 she learned about this car for sale?

6 A Her cousin told her about a vehicle he heard
7 was for sale. They went and met this guy that she
8 doesn't know and she bought it.

9 Q Was it your understanding that she flew to
10 Georgia for the purpose of purchasing a car?

11 A No, she just flew to Georgia to visit, and
12 heard about a car being for sale.

13 Q Now after you wrapped up that conversation
14 and ended the records check that you're doing at the
15 same time, what happens next?

16 A So once I made sure that she's not wanted,
17 not have any warrants out anywhere, her license is not
18 suspended, she just simply does not have a license to
19 drive, the vehicle is not stolen that I can tell, I
20 exit my vehicle; go to the front of my vehicle where I
21 speak to her.

22 First off, wanted to make sure she
23 understood what she did wrong and explain to her, you
24 know, why you've got to stay in your lane and, you
25 know, the safe distance to be behind another vehicle

1 in front of you. And once she understood that, I
2 explained to her that I was issuing her what we call a
3 warning or a public contact, just a piece paper saying
4 that I stopped her and why I stopped her, that we are
5 required to issue. And made sure she understood it was
6 not a ticket. Once she understood that, I asked for
7 consent to search her vehicle.

8 Q And what was her response?

9 A She said sure. And just to make sure that I
10 was understanding "sure" was a "yes" answer, I asked
11 her again to get a "yes" or a "no" out of her. And she
12 said yeah.

13 Q Did she express any hesitation about that?

14 A No. No. She was extremely comfortable. You
15 know, during the entire encounter, she was very stoic.
16 She was almost uncomfortably comfortable during the
17 whole event. Extremely calm.

18 Q Did it surprise you that she was so willing
19 to give you consent to search that car?

20 A No, not really.

21 Q Why?

22 A Well, if you have a compartment hidden in
23 the vehicle, you don't expect the average road deputy
24 or officer to be able to locate it.

25 Q During your cursory search of the car, what

1 -- what did you notice? What did you see?

2 **A** So once -- once I gained consent to search
3 the vehicle, once she provided me with a verbal yes,
4 my partner, that I work pretty close with, was already
5 on the scene. I asked him to stand with Victoria. And
6 I asked Victoria to get the small child out of the
7 vehicle. It wouldn't be appropriate to leave her in
8 the vehicle while we were searching it.

9 Then I -- Master Deputy Harrison, who's our
10 supervisor on the interstate, I had him come down
11 there. He's done a lot of my training for me and does
12 a lot of training here in the state and nationally, as
13 well, and is very good with compartments. So I had him
14 come down there. Gave a brief description of why I was
15 searching the vehicle, what I heard from her that
16 didn't make sense, or what I saw upon contact.

17 Then I began searching her personal effects.
18 She had a pocketbook in the front passenger seat and
19 then some luggage -- she a little -- what would be her
20 personal effects in one little bag in the back, and
21 then a suitcase for the child. So I began searching
22 there just to make sure there was nothing obvious
23 right away.

24 Deputy Harrison began looking for a
25 compartment within the vehicle. While I was searching

1 the back hatch where the luggage was, he looked up at
2 me and said, "Yeah. You got a compartment." After
3 that, we went to the back seat.

4 I opened up -- we actually took the back
5 seat and raised it up. It's nothing complicated to get
6 a back seat out of anything, a SUV or a car. He went
7 back and got a crowbar, or what he calls his master
8 key. So what we ended up finding was -- there is a
9 plastic lid underneath the rear bench seat of most
10 vehicles that you can take off and get to your fuel
11 pump that's inside of your gas tank.

12 Once we removed that, I was able to see a
13 Ziploc bag sticking out, which is not factory
14 standard. And we pulled out the contraband, or what I
15 later found to be heroin, from that compartment.

16 Q Did y'all have a particularly difficult time
17 removing that lid?

18 A No, we thought that we were going to have to
19 break it off with a crowbar because of the screws
20 being in there. They were actually glued in. Master
21 Deputy Harrison can really describe that a lot
22 further, because he was the one that actually pulled
23 the lid off. He went back to get his crowbar. And
24 whenever he brought it back up there and went to lift
25 it off with the crowbar, it was already off, for the

1 most part. We just picked it up. The screws had been
2 cut off, so they weren't actually -- wasn't attached.
3 And they had been glued back in to make it look like
4 they were there.

5 Q Did you immediately see these plastic bags?

6 A As soon as we removed the lid, yes, ma'am.

7 Q So at that point, do you start removing them
8 from the compartment?

9 A Absolutely.

10 Q Do you remember how many you retrieved?

11 A Individual bags, I don't recall exactly how
12 many there were.

13 Q Well, what -- what did you do with the bags
14 that you removed?

15 A So the first thing we did is: Make sure she
16 was secured, since we knew we had some sort of
17 contraband. Because you don't go buy a pair of shoes
18 and hide them underneath your back seat from your
19 husband above your gas tank. We knew it was something
20 illegal. Secured her. Put her in the back seat of my
21 patrol car. And then, as we took the packages out, we
22 placed them on the hood of my patrol car, which is
23 still in view of my in-car camera. And then left them
24 there during the remainder of the traffic stop that
25 occurred on the interstate.

1 **Q** I'm going to show you State's Exhibit 1. Do
2 you recognize what's depicted in that photo?

3 **A** It is the bags that we removed from the
4 compartment, and that is on the hood of my patrol car.

5 **Q** Is that photograph an accurate
6 representation of the bags as they were removed from
7 this defendant's car?

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

9 **MS. OWENS:** Your Honor, the state offers
10 Exhibit 1 into evidence.

11 **THE COURT:** Any objection?

12 **MR. MARTINEZ:** No objection.

13 **THE COURT:** All right; so admitted.

14 (State's Exhibit 1 is admitted into the record.)

15 **MS. OWENS:** At this time, I'd like to
16 publish it for the jury.

17 **THE COURT:** Certainly.

18 (There is a pause.)

19 **MS. OWENS:** I apologize, Your Honor. I had
20 this ---

21 **THE COURT:** That's -- no.

22 **MS. OWENS:** --- ready to go.

23 **THE COURT:** It's fine. Sometimes technology
24 does not cooperate.

25 **BY MS. OWENS:**

1 **Q** Okay. Well, in an effort to just keep this
2 moving along, we'll revisit this at a later time. But
3 after you've taken all those packages out of the car
4 and laid them on the hood of your patrol car, do you
5 know, in fact, what you were dealing with?

6 **A** We actually, at first, thought it was
7 currency; money.

8 **Q** Why?

9 **A** When you felt it, it was very hard packed.
10 It felt like rectangular packaging inside of those
11 bags, so we thought it was money. We cut the Ziploc
12 bag, some of the bigger packaging, opened and found
13 that there were what you would call bricks or smaller
14 -- about five smaller packages in each large package
15 that was there. Then we were able to tell that it was
16 some sort of powder or crystal substance. We knew it
17 was probably going to be some type of narcotic, and we
18 needed to do some sort of field test on it to figure
19 out exactly which kind it was.

20 **Q** I'm going to show you State's Exhibit 2. Do
21 you recognize what's depicted in this photograph?

22 **A** I do.

23 **Q** What is that?

24 **A** So that is -- after we moved off the
25 interstate to a secure location, we opened up all the

1 large packages. Took the small packages out of it.
2 That way, we could field test them. That is them
3 opened with a large packaging that we removed off of
4 them and placed just above each package.

5 Q Is this photograph, State's Exhibit 2, an
6 accurate depiction of the contents of each of the
7 plastic bags retrieved from the defendant's car on
8 June 28.

9 A Yes, ma'am.

10 MS. OWENS: Your Honor, the state offers
11 Exhibit 2, at this point.

12 THE COURT: Any objection?

13 MR. MARTINEZ: No objection.

14 THE COURT: All right; so admitted.

15 (State's Exhibit 2 is admitted into the record.)

16 BY MS. OWENS:

17 Q Now anytime you're dealing with what you
18 believe to be drugs, what is the protocol? What do you
19 do during your investigation to determine whether
20 you're dealing with drugs?

21 A We do what we call "field test." We have
22 small plastic packets that have different chemical
23 makeups in them. You take a small Q-tip sample of
24 whatever substance you find; place it in the kit. Some
25 have two or three glass vials within them. You break

1 one at a time. You have pretty clear-cut written
2 directions on the front that if it -- you know,
3 certain things, if it turns blue, it's cocaine; or if
4 it turns purple, it's meth; green, it's marijuana. And
5 things like that to confirm your suspicions of what it
6 may be.

7 Q Now is this test that you're doing different
8 than the final chemical analysis that happens?

9 A Yes, ma'am. I'm not qualified to do a final
10 chemical analysis. This is to give me a basis of what
11 I believe it is. It is pretty much, every time,
12 accurate. But there has to be a qualified person to
13 test it, eventually. So what we do after we field test
14 it, is we secure it in Property and Evidence, and
15 complete a chain of custody, and then submit it for
16 lab analysis to be tested.

17 Q Did you field test some representative
18 portion of the bags that were taken from the car?

19 A I did.

20 Q Do you recall the results of that test?

21 A It field tested positive for heroin.

22 Q I'm going to show you State's Exhibit 3. Do
23 you recognize what's depicted in this photograph?

24 A That is the field test kit.

25 Q Is that the field test kit that you used the

1 night of June 28 to test the samples that were taken
2 from the defendant's car?

3 **A** That is correct.

4 **Q** Is that photograph an accurate
5 representation of the field test and the substance it
6 depicts?

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

8 **MS. OWENS:** All right. At this point, I'd
9 offer State's Exhibit 3.

10 **THE COURT:** Any objection?

11 **MR. MARTINEZ:** No objection.

12 **THE COURT:** So admitted.

13 (State's Exhibit 3 is admitted into the record.)

14 **BY MS. OWENS:**

15 **Q** Now, at this point, once you discover all of
16 these things from the car, what's happening on the
17 side of the road? What do you do next?

18 **A** Once we removed the packages from the
19 vehicle -- what we know and what we can see that's in
20 there -- Ms. Sanchez is secured in the rear of my
21 patrol car. For the time being, and for the child's
22 sake, we placed the child in the back seat of the
23 patrol car with Ms. Sanchez. It's a big ordeal for
24 her. I contact the Department of -- DSS, for the
25 children. So they respond. And I have another deputy

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1 standby with the child to deal with that side of it. I
2 secure the narcotics, or heroin, in my patrol car. And
3 then I transport Ms. Sanchez to the detention center.

4 Once we get to the detention center, going
5 in, I asked her if she had anything illegal on her. It
6 comes a higher charge if you get caught with it -- I
7 shouldn't say higher charge, an additional charge, if
8 you carry something illegal into the jail with you. So
9 for her sake and to try to save her, just in case she
10 did have something on her, I asked if she had anything
11 illegal on her.

12 She said that she has some cocaine in her
13 bra. And I did not want to retrieve that; that
14 wouldn't be appropriate, having a female detention
15 officer there. So I had a female detention officer
16 come out and she pulled a \$20 bill from Ms. Sanchez's
17 bra that had residue on it, of cocaine.

18 **Q** Could you, yourself, see the powder
19 substance on this \$20 bill?

20 **A** Yes, ma'am. It was either a -- what would be
21 a small amount that she was getting ready to use it or
22 the remnants from something she had previously used.

23 **Q** How was the \$20 bill concealed?

24 **A** It was rolled up super, super tight; and it
25 was in her bra. I don't know if it was under her

1 breast or where. I didn't look at any of that; didn't
2 need to. But it looked like she used the bill itself
3 as a way to snort it.

4 Q Now, you testified earlier that on the
5 roadside ---

6 A Uh-huh.

7 Q --- while you were having this initial
8 exchange, that the defendant presented to you a bill
9 of sale to explain her possession of this car;
10 correct?

11 A Yes, ma'am.

12 Q I'm going to show you State's Exhibit 4. Do
13 you recognize this document?

14 A This is the bill of sale she provided me
15 that she claimed shows she was purchasing the vehicle
16 from Mr. Campos.

17 Q Is this a representation of the document
18 that she provided to you that day on the roadside?

19 A Yes, ma'am.

20 MS. OWENS: Your Honor, at this point, I'd
21 offer State's Exhibit 4.

22 THE COURT: Any objection?

23 MR. MARTINEZ: No objection.

24 THE COURT: So admitted.

25 (State's Exhibit 4 is admitted into the record.)

1 **BY MS. OWENS:**

2 **Q** You also testified that she presented you
3 with proof of insurance that didn't bear her name, but
4 the name of some other individual. Do you recall that?

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

6 **Q** I'm going to show you State's Exhibit 5. Do
7 you recognize that document?

8 **A** Yes, ma'am. This is the insurance she
9 provided me for the vehicle. As I stated earlier, it's
10 not bearing her name or the vehicle owner's name.

11 **Q** Was that particularly suspicious to you?

12 **A** It was extremely suspicious.

13 **Q** Why?

14 **A** It's further, in my mind, evidence of her
15 distancing herself from ownership of the vehicle and
16 its contents?

17 **Q** Is it your understanding that an individual
18 has to ensure the car themselves?

19 **A** That is required, yes, ma'am.

20 **Q** So does this insurance comply with your
21 understanding of what a driver's legal responsibility
22 is?

23 **A** No, ma'am.

24 **Q** Was that car even insured?

25 **A** Not that I could confirm.

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1 **Q** Is this, State's Exhibit 5, a photographic
2 representation of what the defendant provided to you
3 on the traffic stop that day?

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

5 **MS. OWENS:** Your Honor, at this time, I'd
6 offer State's Exhibit 5.

7 **THE COURT:** Any objection?

8 **MR. MARTINEZ:** No objection.

9 **THE COURT:** So admitted.

10 (State's Exhibit 5 is admitted into the record.)

11 **BY MS. OWENS:**

12 **Q** Now, you testified a little bit about what's
13 happening on the roadside and what happened when
14 Master Deputy Harrison showed up. What, physically,
15 happened with this silver car that the defendant was
16 driving after she's arrested and DSS is contacted and
17 you've done everything that you need to do during the
18 traffic stop?

19 **A** When I was leaving, everybody was clearing
20 the scene at the same time. What we like to do, if we
21 find anything in the vehicle, is do a secondary
22 search, make sure there's no other compartments or
23 contraband we haven't found; also look at paperwork in
24 the vehicle. To do that, we take it to a safe spot and
25 get off the interstate where people aren't going to be

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1 staring at the blue lights and hit it.

2 So Master Deputy Harrison and agents with
3 the Department of Homeland Security took the vehicle
4 to our service on Keith Drive to do a more detailed
5 search, in-depth search, look around, make sure we
6 didn't miss anything, as well as look at paperwork or
7 receipts or anything that might indicate any other
8 suspects or people that are involved in the crime.

9 Q After you finished your process with the
10 booking at the detention center and placing all of
11 this evidence into Property and Evidence, did you join
12 them at this second location for the secondary search
13 of the car?

14 A Yes, ma'am.

15 Q Okay.

16 A And I -- just to clarify, when I cleared the
17 detention center, I took the narcotics with me back to
18 the service center, as well. That's where the
19 photograph was taken of everything laid out.

20 Q So at some -- so at some point, after you
21 finish this second spot -- the second search spot, you
22 took them back to Property and Evidence?

23 A That is correct.

24 Q Okay. I'm going to show you State's
25 Exhibit 6. Do you recognize this document?

1 **A** Yes, ma'am. That is a another bill of sale
2 that was located in the vehicle she had.

3 **Q** Was this piece of paper inside the silver
4 car that was searched and seized that day, on June 28?

5 **A** Yes, ma'am. That was in the Kia Sorrento.
6 That was not what she presented me, but that is for a
7 different vehicle that was found in her vehicle.

8 **Q** So is State's Exhibit 6 an accurate
9 representation of the other document that was located
10 inside that car?

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

12 **MS. OWENS:** I'd offer State's Exhibit 6, at
13 this point.

14 **THE COURT:** Any objection?

15 **MR. MARTINEZ:** No objection.

16 **THE COURT:** So admitted.

17 (State's Exhibit 6 is admitted into the record.)

18 **MS. OWENS:** Your Honor, can we approach
19 briefly?

20 **THE COURT:** Certainly.

21 (Bench conference is held off the record.)

22 **THE COURT:** Ladies and gentlemen, we're
23 going to take a brief break for just a moment,
24 just to get everything squared away so we won't
25 delay -- delay the trial anymore. If you would

1 step to your jury deliberation room, but please
2 don't discuss the case with anyone. Thank you so
3 much.

4 (Jury exits at approximately 9:57 a.m.)

5 **MS. OWENS:** I'm so sorry.

6 **THE COURT:** No problem. Grace is sitting
7 right behind you, so she can track that down.

8 **MS. OWENS:** I will find an answer
9 immediately.

10 **THE COURT:** All right. Very well. We'll be
11 in recess for 10 minutes. Thank you.

12 (The Court goes off the record at approximately
13 9:57 a.m.)

14 (The Court goes on the record at approximately
15 10:21 a.m.)

16 **MS. OWENS:** I still have no video.

17 **THE COURT:** I didn't even think why we
18 broke. Okay. Yes. You still don't have a video?

19 **MS. OWENS:** I have no idea what is
20 happening.

21 **THE COURT:** Okay.

22 **MS. OWENS:** These discs were finished. I
23 didn't get information until extremely late
24 yesterday afternoon about what needed to be
25 redacted.

1 **THE COURT:** Sure.

2 **MS. OWENS:** So we just haven't had the
3 physical hours to accomplish it. So my paralegal
4 has been working on it since 8:00. I am just not
5 sure.

6 **THE COURT:** Well, if you feel good about
7 your ability to stop it, you know, in those
8 particular portions. I'm fine with that. Of
9 course, it's a risk, but I'm fine with it.

10 **MS. OWENS:** I mean, I know exactly where
11 they are. I think there are two specific spots
12 that they are concerned about. The only remaining
13 issue is that I do not have a physical disc of
14 the second, which is a rear-seat recording. I do
15 not intend to publish that video right now.

16 **THE COURT:** Okay.

17 **MS. OWENS:** I don't think it's necessary,
18 but I do intend to have it identified and
19 admitted into evidence. So I -- I'm missing that
20 physical disc.

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

22 **MS. OWENS:** So like I said, I'm happy to go
23 forward and mute those spots. That suits me just
24 fine. It's not a big deal. Of course, I would be
25 generous in the parts that are -- the volume is

1 removed. But I need to lay hands on the second
2 one so I can properly authenticate it.

3 **THE COURT:** It may be necessary for me to
4 give some instruction to the jury that there are
5 some -- there are some portions that I have asked
6 to be redacted because they just were not
7 relevant to this case.

8 **MR. MARTINEZ:** I'm fine with that,
9 Your Honor, and as long as those portions are not
10 played.

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

12 **MS. OWENS:** Let me see if I can get the
13 second disc here and we can, at least, come up
14 with some actual solution.

15 **THE COURT:** Okay.

16 (Jury enters at approximately 10:21 a.m.)

17 **THE COURT:** Thank you so much for your
18 patience with us. As you know, technology is a
19 beautiful thing, when it works; and the worst
20 thing, when it doesn't. But I think we've moved
21 around a few things and we're ready to start
22 back, so thank y'all.

23 **MS. OWENS:** Thank you, Your Honor. May it
24 please the Court.

25 **BY MS. OWENS:**

1 Q All right. Mr. Reese, we talked at length
2 about the items that were seized from inside
3 Ms. Sanchez's car. I'm going to bring you this sealed
4 package. If you would retrieve something that will
5 help you break the seal on these, so that you can look
6 at them.

7 A (Reviewing.)

8 Q Before we talk about the contents of this
9 box, could you tell the jury a little bit about how
10 you packaged up what you found inside the car?

11 A Everything I found with -- inside the
12 vehicle, was placed into this. (Indicating.)

13 I went with paper. That's all I had that
14 day. These were dropped in it. These are the test kits
15 that I used. Heroin, heroin, and heroin, all heroin.
16 So I placed them in here, taped around it, initialed
17 everywhere it could be opened and placed it in the
18 locker in Property and Evidence.

19 Q Is that the protocol for dropping any
20 evidence into the Property and Evidence facility?

21 A It is, after-hours. During hours, we hand it
22 to a evidence technician.

23 Q You after packaged it up in this paper bag,
24 did you place tape around it?

25 A Yes, ma'am.

1 Q Did you initial the bag?

2 A I did. It looks like they -- no, it's still
3 on here. Yes, ma'am.

4 Q And what's the purpose of that?

5 A To show that I was the last person to be
6 inside of it, to have actual possession of whatever
7 the contents are in the bag.

8 Q Now, since the time that you turned in this
9 paper bag, it has obviously been opened. Do you know
10 what has happened to the bag since you dropped it off
11 at Property and Evidence?

12 A I don't. It would have been secured there, I
13 assume. But I have not had possession of it at all,
14 since then.

15 Q Okay. So when you left it at Property and
16 Evidence on the evening of June 28, 2017, it was taped
17 and sealed?

18 A That's correct.

19 Q Okay. Was it in this box that we now see it
20 today?

21 A No.

22 Q All right.

23 (State's Exhibit 7 is marked for identification.)

24 **THE COURT:** Ms. Owens, you seem like you
25 are controlling this pretty well. If the witness

1 needs to step down and help you with this, that's
2 fine, too.

3 MS. OWENS: Thank you, Your Honor.

4 THE COURT: Okay.

5 BY MS. OWENS:

6 Q Okay. In the interest of keeping everything
7 square, this box that we just cut open is State's
8 Exhibit 7. Now, you've opened this box and you've
9 examined what's inside. Just so that we're all clear,
10 could you describe for the jury what is inside State's
11 Exhibit 7?

12 A That is the packaging that you saw in the
13 picture there of the actual narcotics with, I believe
14 -- I haven't seen what's inside the bag. But it could
15 have the packaging that I removed from the narcotics,
16 as well.

17 Q As well as this test kit?

18 A Those are three test kits.

19 Q Okay. Let's take a look at that bag.

20 A Uh-huh.

21 Q You can cut it open so that you can examine
22 what's inside.

23 A (Reviewing.)

24 Q Just generally speaking, what's inside of
25 this plastic bag that we just cut open here?

1 **A** What we just cut open is all of the
2 packaging. It looks like they've removed -- yeah,
3 that's been removed from the packaging. This is actual
4 narcotics within that.

5 **Q** So is this how it looked when you turned it
6 in to P&E -- I'm sorry, the Property and Evidence
7 division?

8 **A** No. No.

9 **Q** Okay. However, when you dropped it off in
10 the sealed bags, how was -- how was it contained
11 inside the sealed paper bag?

12 **A** Within the packaging that's located in here.

13 **Q** And what were those packagings? What was
14 actually inside of this brown paper bag?

15 **A** Heroin, vacuum-sealed packages, Ziploc bags,
16 duct tape, all things consistent with trying to
17 conceal it enough where the odor wouldn't be detected
18 by a canine.

19 **Q** As best you can tell, is all of that
20 material zip-sealed -- I'm sorry, Ziploc bags, vacuum
21 sealing, the actual substantive drugs, as well as duct
22 tape and the other packaging material, is that all
23 inside this plastic bag?

24 **A** Yes.

25 **Q** Okay. Did you weigh it when you dropped it

1 off at Property and Evidence?

2 A I weighed it as one item. Yes, ma'am.

3 Q As best you can recall, what was the -- what
4 was the weight of what you turned in?

5 A Right at 17 pounds, as a single item.

6 Q At the point that you dropped off the sealed
7 paper bag, containing all of this packaging and all of
8 the drugs, what is the protocol for processing? What
9 did you do next, as your role as the investigator?

10 A As far as with the narcotics?

11 Q That's right.

12 A I don't do anything else with it once I turn
13 it in. It goes -- like I said, I submit the narcotics
14 as it is. I submit a couple of forms: one is a chain
15 of custody form; one is a lab analysis form, where I
16 request what I want it tested for. Based off the field
17 test kits, that's heroin. And from there, lab
18 personnel takes that, test it. And then, as long as it
19 is what we suspected it to be, that's the end of it.
20 If that's not what we suspected it to be, then we're
21 notified that was found to be something different.

22 Q So after completing the lab analysis request
23 and the paperwork documenting who dropped it off and
24 where it's going, do you have any other contact with
25 this item after June 28, 2017?

1 **A** No, ma'am. Once I lock it away, it's gone.

2 **Q** You testified earlier about discovering some
3 cocaine ---

4 **A** Yes.

5 **Q** --- in the defendant's bra?

6 **A** Yes

7 (State's Exhibit 8 is marked for identification.)

8 **BY MS. OWENS:**

9 **Q** I'm going to show you State's Exhibit 8. You
10 can open that envelope and take a look inside. Do you
11 recognize what's inside of State's Exhibit 8?

12 **A** That is a \$20 bill that was located in
13 Ms. Sanchez's bra. It does still contain a significant
14 amount of residue on it.

15 **Q** How do you know that's the same \$20 bill?

16 **A** Well, if you look at it, the larger
17 packaging is done by P&E personnel, but the inside
18 packaging is from me, my initials, case number and
19 date. It's all listed on there, which is -- place
20 something sealed in evidence, it has that three
21 things: case number, initials, and date.

22 **Q** And would you have sealed it that night
23 right alongside this paper bag of suspected heroin?

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

25 **Q** Okay. Was it sealed when you turned it in?

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

2 **Q** All right. Had you had any contact with it
3 since June 28, 2017?

4 **A** No, ma'am.

5 **Q** You testified earlier about what happens
6 inside your patrol when you initiate a traffic stop.

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

8 **Q** Could you tell a little -- the jury a little
9 bit about how the recording system works: where it is,
10 what it records, how it captures, and how it gets
11 started?

12 **A** The recording device that I was using is
13 what we call an Arbitrator system. It is a digital
14 recording device. It's always running. When we
15 activate our blue lights, it is usually set up to
16 record the 30 seconds prior to activating your blue
17 lights onto that video, and then everything after
18 that, until we turn the video off.

19 (State's Exhibit 9 is marked for identification.)

20 **BY MS. OWENS:**

21 **Q** Let me show you State's Exhibit 9. Do you
22 recognize that item?

23 **A** It's a copy of that video.

24 **Q** Have you had a chance to take a look over
25 that video?

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

2 **Q** Is it an accurate depiction of the video as
3 captioned from your in-car camera during the traffic
4 stop on June 28?

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

6 **MS. OWENS:** Your Honor, at this point, I'd
7 offer State's Exhibit 9.

8 **THE COURT:** Any objection?

9 **MR. MARTINEZ:** No objection.

10 **THE COURT:** It's so admitted.

11 (State's Exhibit 9 is admitted into the record.)

12 **MS. OWENS:** With the Court's permission, I
13 would like to attempt to publish it.

14 **THE COURT:** Certainly. Certainly.

15 (State's Exhibit 9 is played, and then stopped.)

16 **MS. OWENS:** Your Honor, I don't think it's
17 necessary to publish any more of this video at
18 this point, if it suits the defendant.

19 **THE COURT:** All right.

20 **MR. MARTINEZ:** Suits us just fine.

21 **THE COURT:** All right. Very well, then.

22 **BY MS. OWENS:**

23 **Q** We saw a lot of different people on this
24 video. Can you describe for the jury, at the point
25 that you're searching the car, who else is on scene

1 that we can't see behind your patrol car?

2 **A** There are agents with the Department of
3 Homeland Security Investigations. They're on scene, as
4 well.

5 **Q** Are those the same agents that followed this
6 Kia from Atlanta?

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

8 (State's Exhibit 10 is marked for
9 identification.)

10 **BY MS. OWENS:**

11 **Q** We have heard some -- obviously, seen the
12 video and heard some testimony about the recording
13 equipment that's in your patrol car. Is there an
14 additional camera recording in your patrol car?

15 **A** It's not always recording. I have a back
16 seat camera that faces the back seat; suspect camera.
17 If you watch the video, you can hear me tell them to
18 click on it and it lights up red and, I think, did
19 some motion like this. I asked Deputy Wasserman to
20 turn it down to record the activity in the back seat
21 of my patrol car. We turn that on: one, to catch what
22 they may say; and two, if they were to have something
23 on their person that they remove and hide in the seat,
24 they can't say that it's not theirs.

25 **Q** So does the view of the camera catch

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1 everything that's happening in the back seat of your
2 patrol car?

3 A Yes, ma'am.

4 Q Okay. I'll drop the disc off of here. It is
5 State's Exhibit 10. Do you recognize that item?

6 A That's the copy from that recording.

7 Q Is that an accurate recording of the
8 activity in your back seat beginning at the time you
9 began the recording during this traffic stop until the
10 defendant left your back seat?

11 A Yes -- yes, ma'am.

12 MS. OWENS: Your Honor, the state offers
13 Exhibit 10.

14 THE COURT: Any objection?

15 MR. MARTINEZ: No objection.

16 THE COURT: So admitted.

17 (State's Exhibit 10 is admitted into the record.)

18 BY MS. OWENS:

19 Q From the view of that back seat -- I'm
20 sorry, let me back up. At what point did you place the
21 defendant in the back seat as opposed to just standing
22 on the grassy shoulder of the interstate?

23 A As soon as Master Deputy informed me that he
24 located a compartment, I had Deputy Wasserman have
25 Ms. Sanchez and her juvenile child sit in the rear

1 seat of my patrol car.

2 Q From that vantage point, was the defendant
3 able to see what was happening with respect to her
4 car?

5 A Yes.

6 Q I don't believe I have any additional
7 questions. Please answer any questions Mr. Martinez
8 may have for you.

9 A Thank you.

10 MR. MARTINEZ: May it please the Court.

11 CROSS-EXAMINATION

12 BY MR. MARTINEZ:

13 Q Deputy Reese, I'm Michael Martinez from the
14 public defender's office. All right. So when you first
15 stopped Victoria, she talked to you about how she
16 purchased this car; right?

17 A In the process of purchasing it, that's
18 correct.

19 Q Right. In the process. She had not received
20 title, is what I think you said?

21 A She did not have a title to present me with.
22 That's correct.

23 Q She did not have a title, but she still owed
24 about \$6000 on the car; right?

25 A According to what she was purchasing the

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1 vehicle for and what she had put down, that was
2 correct.

3 Q And that bill of sale, which has been
4 entered into evidence as State's Exhibit 4, it's
5 notarized; right?

6 A Correct.

7 Q And it reflects the day before you pulled
8 her over; is that right?

9 A Correct.

10 Q And it indicates that an Edwin Campos sold
11 -- was the seller of the car?

12 A That's correct.

13 Q And the purchaser of the car was Victoria
14 Lorraine Sanchez?

15 A Correct.

16 Q These are their signatures here at the
17 bottom?

18 A It appears to be so, yes.

19 Q Okay. And the car was insured; right?

20 A She had an insurance card. I didn't speak
21 with any insurance company to verify.

22 Q And I believe this is State's Exhibit 5 ---

23 A That's correct.

24 Q --- that's been admitted into evidence?

25 A That's correct.

1 Q And it shows a Rigoberto Guzman?

2 A That's correct.

3 Q All right. Do you recall whether the record
4 of the registration -- the record of the registration
5 of the car, who was listed on it?

6 A As far as the tag is concerned, it was
7 Mr. Campos that's listed on the bill of sale there.

8 Q Do you recall whether a Rigoberto Guzman was
9 listed previously as an owner of the vehicle?

10 A Through what I have -- I don't have access
11 to that, unless it's with the state of South Carolina.

12 Q Okay. All right. And again, she did not have
13 a driver's license?

14 A No, sir. She presented me with a Texas
15 identification card.

16 Q And she told you she had flown to Atlanta to
17 visit her cousin; right?

18 A Flown to Atlanta to visit family.

19 Q To visit family.

20 A And saw her cousin while she was there.

21 Q And her cousin told her about someone he
22 knew who was selling the vehicle?

23 A Someone he had heard of that was selling a
24 car.

25 Q And he introduced her to this individual to

1 purchase a car?

2 A She said that he took her there.

3 Q So there is some connection to this
4 individual through her cousin?

5 A Yeah. That's -- yeah.

6 Q And she told you she was traveling to New
7 Jersey to see family?

8 A That's correct.

9 Q And I think you testified that she told --
10 that she had no reason to be traveling; is that
11 correct? Is that what you testified to earlier?

12 A I don't know that I said she had no reason
13 to be traveling, as much she did not have an
14 itinerary.

15 Q But again, she was traveling to New Jersey
16 to visit family?

17 A According to her, she was traveling to have
18 fun and to see family.

19 Q Okay. And in your conversation with her, she
20 answered all of your questions calmly; right?

21 A Absolutely. Extremely stoic.

22 Q Her hands weren't shaking?

23 A No, she was --

24 Q Go ahead.

25 A She was uncomfortably comfortable.

1 Q Uncomfortably comfortable. Okay. She wasn't
2 sweating abnormally?

3 A No.

4 Q No nervousness?

5 A (Shakes head.)

6 Q This bill of sale that we -- that's in
7 evidence and we've discussed, did you conduct any
8 investigation into that bill of sale?

9 A You're going to have to ask me further. What
10 -- what --

11 Q You didn't talk -- you didn't try to reach
12 out to the seller, Edwin Campos, did you?

13 A No, there's no -- I don't have access to
14 phone numbers and stuff, if it's not, you know,
15 listed. If it is, I didn't call him.

16 Q Okay. Is there an address listed on there
17 for Edwin Campos?

18 A Yes.

19 Q And this notary, did you try to speak to
20 this notary?

21 A No, sir. That's -- that's -- you know, I'm
22 going to look to make sure the vehicle is not stolen
23 and -- but I'm trying to take as least amount of time
24 as possible. It's not practical to -- if it's not
25 listed on NCIC, you don't try to track down the notary

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1 or an owner. If it's not listed on NCIC, that
2 information is not readily available.

3 Q Okay. So you have no records that indicate
4 that the sale of this car was not legitimate?

5 A I don't have any records of that, no.

6 Q Let's talk about this -- I believe you
7 described it as another bill of sale, State's
8 Exhibit 6?

9 A Yes, sir.

10 Q It says offer to purchase here at the top;
11 does it not?

12 A That's correct.

13 Q That's from June 21 of last year?

14 A It's dated June 21, 2017.

15 Q And that is before she was pulled over
16 obviously; right?

17 A Correct.

18 Q And it's -- appears to be a car dealership
19 from Laredo, Texas; correct?

20 A Correct.

21 Q So she was looking for cars in Laredo,
22 Texas?

23 MS. OWENS: I object, Your Honor. This
24 calls for speculation.

25 THE COURT: To the extent that he can

1 answer the question, I'll allow him to. If he
2 doesn't know, he doesn't know.

3 **THE WITNESS:** I didn't talk to her in
4 Laredo -- or ask her about her looking for
5 vehicles. She told me that she sold a vehicle in
6 Laredo.

7 **BY MR. MARTINEZ:**

8 **Q** That says it's an offer to purchase; right?
9 Purchase a vehicle?

10 **A** Yeah. It says offer to purchase.

11 **Q** And it's a week before this occurred?

12 **A** Yes.

13 **Q** And there is no amount of payment that has
14 been made indicated on here; right?

15 **A** Not that's indicated on here. No, sir.

16 **Q** So all you know is that there was an offer
17 to purchase a car?

18 **A** Correct.

19 **Q** Not that a car was actually purchased?

20 **A** Sure. Sure.

21 **Q** All right. Let's talk about the search of
22 the car. You were not wearing any body cam that would
23 have captured the search of the car.

24 **A** There is no body cam footage from that stop.

25 **Q** Okay. And you begin at the passenger side

1 front door?

2 A That's correct.

3 Q And begin shaking it?

4 A That's correct.

5 Q To see if there -- to see if there's
6 anything inside; right?

7 A That's correct.

8 Q You looked in the trunk area?

9 A Through her personal effects.

10 Q And she had a suitcase?

11 A There were two pieces of luggage.

12 Q Containing items for a trip: clothing,
13 things of that nature?

14 A Personal effects. I couldn't tell you
15 exactly what was in them. No illegal items.

16 Q And Deputy Harrison arrived at that point;
17 right?

18 A That's correct.

19 Q And he began searching the vehicle, as well,
20 with you?

21 A Yes.

22 Q He checks the front seats?

23 A Yes. You can see in the video, he looks in,
24 starts looking around at different items on the
25 vehicle; looking for anything not factory standard, is

1 what we're looking for.

2 **Q** He then gets on the ground?

3 **A** Correct. Looking underneath the
4 undercarriage, spare tire area.

5 **Q** He, then, takes the child's car seat out of
6 the back seat; right?

7 **A** No, sir.

8 **Q** He does not take --

9 **A** He does, eventually. May I elaborate?

10 **Q** Sure.

11 **A** He notices something under the vehicle,
12 which is the exhaust and the gas tank lowered. Okay.
13 At which point, he looks up at me and says, "You have
14 a compartment." He goes back to his vehicle. He
15 obtains his crowbar -- or somewhere around in there --
16 and then we take the car seat out -- or takes the car
17 seat out and looks in. But before he takes the car
18 seat out, he tells me what he sees and why we're going
19 to remove it.

20 **Q** I believe, in the video, he takes the child
21 car seat out around nine minutes into the search.

22 **A** Sure.

23 **MS. OWENS:** Objection, Your Honor, as to
24 the form of the question.

25 **THE COURT:** Overruled. I'll allow it.

1 **BY MR. MARTINEZ:**

2 **Q** And then, about 12 minutes into the search,
3 per the video, you and Deputy Harrison remove the back
4 seat cushion?

5 **A** Are you telling me that?

6 **Q** You and Harrison removed the back seat
7 cushion; correct?

8 **A** I did remove -- yeah, I removed -- it was --
9 you picked -- we picked up on it to expose the rear
10 hatch. And then, I slid it out of the way.

11 **Q** And underneath that was the fuel pump cover
12 plate that -- you believed?

13 **A** That's what I would describe it is. I don't
14 know what the true term for it is. Sure.

15 **Q** And you needed to remove that to get
16 underneath to see what was underneath there?

17 **A** Correct.

18 **Q** And your -- you are not part of a forensics
19 division; right?

20 **A** No, sir.

21 **Q** So you are not responsible for getting
22 fingerprints?

23 **A** I don't do any fingerprints. No, sir.

24 **Q** DNA?

25 **A** No, sir.

1 **Q** But you can submit requests for those types
2 of tests; right?

3 **A** Yes, sir.

4 **Q** Did you submit any requests for testing for
5 DNA or fingerprints on any of the packages that you
6 recovered?

7 **A** I don't know if lab analysis was submitted
8 for DNA or latent processing without looking back at
9 what was submitted with the narcotics.

10 **Q** Okay. Did you ask for any testing on the
11 cover plate or anything around that secret
12 compartment?

13 **A** No, sir.

14 **MR. MARTINEZ:** One moment, Your Honor.

15 **THE COURT:** Certainly.

16 (There is a pause.)

17 **MR. MARTINEZ:** Nothing further, Your Honor.

18 **THE COURT:** All right.

19 **MS. OWENS:** No redirect from the state,
20 Your Honor.

21 **THE COURT:** Thank you, sir.

22 **THE WITNESS:** Thank you, Your Honor.

23 **MS. OWENS:** Your Honor, at this point, the
24 state would like to call Master Deputy David
25 Harrison.

1 **THE COURT:** All right. Is everybody okay?
2 Does anybody need to take a break? If you do, we
3 can. It might be a good idea to stand and just
4 stretch a little bit. I don't know. Thank you.
5 (Pause.)

6 **MS. OWENS:** Master Deputy, if you would
7 come up and be sworn.

8 **THE CLERK:** Mr. Harrison, please place your
9 left hand on the Bible and raise your right hand.

10 **DAVID HARRISON**

11 having first been duly sworn, testifies as follows:

12 **THE CLERK:** Thank you. You may be seated.
13 Please state your full name for the record.

14 **THE WITNESS:** Michael David Harrison, Jr.

15 **DIRECT EXAMINATION**

16 **BY MS. OWENS:**

17 **Q** David, what's your current assignment at the
18 sheriff's office?

19 **A** I'm currently assigned to the interdiction
20 unit. We work Interstate 85 in Greenville County.

21 **Q** Is that the bulk of your responsibility,
22 just to monitor the interstate here in Greenville
23 County?

24 **A** Yes, ma'am. So we're actually assigned under
25 the traffic team with the Greenville County Sheriff's

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1 Office. Our ultimate goal is to protect the innocent
2 motor and the public.

3 Q How long did you serve in this particular
4 capacity?

5 A With the sheriff's office, since
6 January 2017.

7 Q Where did you work before that?

8 A South Carolina Highway Patrol.

9 Q How long were you with the highway patrol?

10 A My effective start date was July 16, 2000. I
11 was stationed in Oconee County until 2004. Then, I was
12 assigned to the ACE team, which is the criminal
13 interdiction unit for the state, until I came to the
14 sheriff's office last year.

15 Q What does interdiction mean?

16 A Interdiction, basically, is just seeking out
17 criminal -- criminal acts through traffic stops;
18 typically, high-volume traffic stops for all sorts of
19 violations. It can include: drug offenses, bootleg
20 merchandise, people who are wanted. You name it. Any
21 kind of criminal activities.

22 Q As part of your assignment at the sheriff's
23 office and with the highway patrol, did you get any
24 special training about what it means to do the job of
25 traffic interdiction?

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

2 **Q** What is the training like?

3 **A** So basically, it's -- I've had hundreds of
4 hours over my career. It's basically things to look
5 for that are out of the ordinary; that's not normal;
6 it could be something as simple as two or three empty
7 cans of energy drink or multiple bags of fast food in
8 the floorboard of a rental car that was rented by
9 someone who's not in the car.

10 **Q** Over the course of your career, both with
11 the sheriff's office and with highway patrol, have you
12 -- have you searched a lot of cars?

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

14 **Q** Do you search every car you pull over?

15 **A** No, ma'am.

16 **Q** Generally speaking, how often do you find
17 hidden compartments?

18 **A** It's quite regular, in my opinion. I'll
19 explain that. When I first started interdiction, I
20 worked with a trooper who didn't think that we had
21 those type things this far east from the border, which
22 our southern border is typically where we are seeing
23 the bulk of our illegal narcotics and things coming
24 from.

25 I went through some training in Valdosta,

1 Georgia, that was put on by a sergeant with the
2 Maryland State Police. And the entire week, he showed
3 us compartment after compartment after compartment
4 that he and his guys were getting in Maryland. I
5 assumed that if they were seeing that type stuff in
6 Maryland, that we should be seeing it here.

7 And I had a lot of hurdles to overcome,
8 because the trooper that I worked with, he was also my
9 supervisor, so I had to kind of make him happy. But
10 after coming back from Valdosta, my partner who was in
11 that class with me, my other partner, who was our K-9
12 handler, he stopped a minivan and it had a compartment
13 it. From that day forward, I just started thinking
14 compartment, instead of popping the trunk and checking
15 a suitcase and hoping it's there and then moving on.
16 It just really opened my eyes -- that training opened
17 my eyes to the world of aftermarket components.

18 I think, this year, we have had three.
19 Unfortunately, all three that we found had been empty.
20 But we see them out here. They're using our
21 interstates every day.

22 Q Now based on this training that you
23 received, but also your day-to-day experience, since
24 looking for these things, do you have a system or a
25 checklist or a list of things that you look for to

1 locate these compartments or indicators that a
2 compartment exists?

3 **A** Yes, ma'am. And it's mental notes. But the
4 way that I've taught the guys that work with me now,
5 any of the classes that I've taught over the years as
6 an instructor, you look for little cues that just
7 aren't normal.

8 Now, I'm a huge car person. I don't have any
9 formal training; however, I know what should be normal
10 and what should not be normal on a car. The easiest
11 thing that I can explain to people who are trying to
12 locate compartments is think about your car that you
13 drive every day. You drive in the rain. You drive
14 through dirt. The undercarriage of your vehicle is
15 going to have a film of dirt that I refer to as road
16 wash. And that's normal, unless you have your
17 undercarriage steam cleaned, which I don't think many
18 people do that.

19 So when I'm searching vehicles, I always
20 check the undercarriage. Most people -- most police
21 officers, in my opinion, probably would not check
22 there. But most police officers don't have the amount
23 of interdiction training that some of us go through.
24 But when you look at the undercarriage of the vehicle,
25 it's very easy, in my opinion, to spot an aftermarket

1 compartment. If your vehicle has road wash on it and
2 you get up under a vehicle and you shine your
3 flashlight and do a rapid assessment of the
4 undercarriage and you see shiny black paint in an area
5 that probably shouldn't have shiny black paint or
6 fresh undercoating, that is when I start slowing down.
7 As a police officer, I'm curious by nature, so I want
8 to find out why there is fresh black undercoating or
9 fresh black spray paint above the gas tank of a
10 vehicle. And I'm sorry if I'm rambling. I'm kind of
11 getting off topic here, but --

12 Q Well, we can -- let's refocus then.
13 Basically, every time you approach a car, is there
14 sort of a precursory regular list of things that you
15 look for?

16 A Yes, ma'am.

17 Q Okay. So focusing now on June 28, 2017, were
18 you working that day?

19 A Yes, ma'am.

20 Q And you described that you are part of a
21 team of a handful of deputies who work together?

22 A Yes, ma'am.

23 Q Did you speak with agents from HSI that day?

24 A I did.

25 Q Did they share with you some information

1 about a particular car?

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

3 **MR. SARRATT:** Objection, Your Honor.
4 Speculation; hearsay.

5 **THE COURT:** I understand. We've already had
6 some testimony about it, and I allow it just to
7 set the scene. All right.

8 **MS. OWENS:** Thank you, Your Honor.

9 **THE COURT:** As long as we're not going too
10 far into it.

11 **MS. OWENS:** Certainly, Your Honor.

12 **THE COURT:** Thank you.

13 **BY MS. OWENS:**

14 **Q** Based on your conversation with the agents
15 at Homeland Security, what did you do?

16 **A** So basically, when I spoke with the agent,
17 we were actually about to head in and end of our
18 shift. I called my supervisor, immediate supervisor,
19 to let him know what I'd been told. We decided to hold
20 the guys out, stay back, and see if we could make a
21 stop on this vehicle.

22 **Q** Where did you set up?

23 **A** We were 85 northbound, Interstate 85
24 northbound, at the county line -- at the
25 Anderson/Greenville county line on the Greenville

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1 side.

2 Q Which other deputies were with you in that
3 particular location?

4 A So it would have been Deputy Reese and
5 Deputy Wasserman.

6 Q At some point, do you remember whether this
7 car passed through?

8 A I do.

9 Q What happened?

10 A So once the car came through, Deputy Reese
11 -- I'm not sure when he observed the violation, but he
12 took off from where we were sitting stationary.

13 Q And while all of this is happening, are you
14 in radio contact with Deputy Reese and the other
15 deputies in the area?

16 A Yes.

17 Q So are you hearing what's happening?

18 A Yes.

19 Q At some point, did you go to their location?

20 A I did.

21 Q What was going on when you got there?

22 A So when I arrived, Deputy Reese was at the
23 rear of the vehicle that he had stopped and had the
24 rear hatch opened up. It looked like he was searching
25 the car, to me.

1 Q Did he give you some basic information about
2 what was going on?

3 A He did.

4 Q Did you tell --

5 A So it's --

6 Q Can you tell -- I'm sorry. Go ahead.

7 A So it's common practice with us to kind of
8 share the cliff notes version or the details of the
9 stop, things that, you know, he thought were weird.
10 And so he let me know the things that he had seen,
11 smelled, or heard. The biggest thing that stuck out to
12 me was how the car was obtained, how the vehicle was
13 registered and how the insurance was -- was listed. So
14 again, doing this for as long as I have, I told him
15 it's most likely a compartment, which is not
16 information that was given to me by the agents that
17 made the phone call.

18 Q Did he tell you that the defendant had given
19 consent to search the car?

20 A I don't recall.

21 Q Would it surprise you if she had consented
22 to allow you to search the car?

23 A No, ma'am.

24 Q Why not?

25 A In my experience --

1 **MR. SARRATT:** Objection, Your Honor;
2 speculation.

3 **THE COURT:** Overruled.

4 **MS. OWENS:** Thank you, Your Honor.

5 **THE COURT:** Okay.

6 **THE WITNESS:** So in my experience with
7 multiple narcotic seizures, money seizures,
8 things like that, it is not uncommon for someone
9 to give consent to search the vehicle, especially
10 when there is a hidden compartment. That is
11 definitely not out of the norm.

12 **BY MS. OWENS:**

13 **Q** Now, after you spoke briefly with Deputy
14 Reese about the circumstances of what he learned, what
15 did you do to begin the process of your search and
16 then going through your checklist?

17 **A** I, typically, still look inside the vehicle.
18 Just do a rapid-- my own rapid assessment to see, you
19 know, what he's seeing. And then, I normally, either
20 pull my flashlight out of my pocket or I have to go
21 back to my patrol car and get it, but I always use a
22 flashlight, even in the daytime, so we can see the --
23 the -- you know, behind the dashboard, underneath the
24 car, under the engine compartment. And I think that's
25 what I did that day, was I had to go back and retrieve

1 the flashlight.

2 Q Did you notice anything in the front of the
3 car? You said you started by looking inside. Did you
4 notice anything that made you suspicious or caught
5 your attention?

6 A I don't recall on this particular traffic
7 stop.

8 Q Did you move to look at the outside of the
9 vehicle?

10 A I did.

11 Q Did you notice anything about the outside of
12 the vehicle that made you suspicious or caught your
13 attention?

14 A So I do recall that on the outside of the
15 vehicle or the vehicle that we're discussing, it was
16 silver in color, it was a small or midsize SUV. It was
17 clean in appearance. Nothing flashy. No fancy rims, no
18 bright chrome work, nothing like that. It's a vehicle
19 that I would consider -- a vehicle that could easily
20 blend in with other traffic, which, again, in my
21 experience over the years, that's typically what I
22 have seen. I have never made any significant seizures
23 out of, you know, high-end luxury cars or sports cars
24 or nothing -- you know, nothing like that. So that
25 kind of stood out to me. Again, I felt that with

1 everything that Deputy Reese had told me and the type
2 vehicle and the way it looked that day, I was still
3 tracking towards this is possibly a compartment
4 vehicle.

5 Q Did you, at some point, look under the car?

6 A I did.

7 Q What are you looking for?

8 A So again, I'm looking for anything other
9 than what should be normal, like the road wash, the
10 dirt, grime, grease, that should be under a car. And
11 that day, as I'm using my flashlight, I could see
12 where the fact -- where the gas -- the fuel tank for
13 the vehicle was at, it was lowered. The bolts that
14 held onto the scraps to secure the fuel tank had been
15 lengthened and that area had been spray-painted black,
16 which is not factory.

17 Q So based on what you saw there under the
18 car, when did you decide to do? How did you approach
19 locating whether there is actually a compartment in
20 this car?

21 A I let Deputy Reese know, "Hey, we definitely
22 have a compartment. The next step was to find the
23 access door, the way into it, to see if it was loaded
24 with contraband or what have you. Based on where the
25 gas tank in that vehicle was, it should have been

1 under the middle row of seats for the passengers. So
2 we simply lifted up the rear seat cushion and removed
3 it from the truck, or the SUV.

4 Q Did you find that seat to be attached in any
5 meaningfully strong way?

6 A No, ma'am. No, ma'am.

7 Q Once you lifted up that seat, what did you
8 do?

9 A So on the driver's side, once you lift up
10 the passenger seat cushion, there is a factory cover
11 for -- it's basically an access cover that goes into
12 the fuel tank. Most cars have a fuel pump. That's
13 where you would change out the fuel pump for the
14 vehicle. I kind of figured, again, based of where the
15 compartment was, that that was probably going to be
16 your access door for the compartment.

17 I tried to -- I want to say there were four
18 Phillips-head screws that held that door in or that
19 cover on. I tried to take the first screw off. The
20 screw basically just fell off. I examined the screw.
21 It had actually been cut and then siliconed onto the
22 door to make it look factory.

23 I then went to my patrol car and I retrieved
24 the -- I have a crowbar in my trunk. I've had it for
25 years. I refer to it as my master key. That's

1 typically what we get into these aftermarket
2 compartments with. I went to pry on the lid. When I
3 did, the lid was actually not secured. So it just came
4 right up.

5 I did some studying and -- because I'm
6 always curious about how these compartments are built.
7 I can tell that whoever made the compartment used an
8 actual trunk latch from another vehicle and welded
9 that trunk latch on the inside of the compartment and
10 then welded a hook to the factory fuel pump cover
11 plate. That's what would've held the door in. Again,
12 that day, it was not secured. I don't know why.
13 Removed the door. Packages were visible immediately.

14 Q What did you see when you opened that access
15 panel?

16 A It was -- the compartment was probably four
17 to five inches deep. And with the entire width of the
18 vehicle, it was probably about 18 inches wide towards
19 the back of the vehicle.

20 But the packages that I observed and
21 actually removed were Ziploc bags with something
22 square inside of it. The first one I pulled out, the
23 way it felt to me in my hands -- and, of course, we
24 wear gloves and, obviously, our adrenaline was up, but
25 it felt to me like it could be US currency. I didn't

1 know what it was at the time. But with my training and
2 experience, I felt like, that whatever this was,
3 somebody really wanted to hide that.

4 Q Now, we've watched the video from the
5 traffic stop and we know that all of these bags were
6 removed. Once they were piled up on the car, what
7 happened next? What did you do as it relates to the
8 investigation of this case?

9 A I called someone. I don't remember exactly
10 who I called, probably my supervisor or one of the
11 agents with Homeland Security. I know that there was a
12 child, that we had to call someone to transport the
13 child from the scene.

14 Q And did somehow, somebody, move this car to
15 a separate location?

16 A Yes. So I know the car went to our
17 maintenance shop, which is more secure for us. It gets
18 us off the interstate. I want to say that that's where
19 agents met us from that point on.

20 Q Okay. Did you have any contact with these
21 packages once they left the side of the road?

22 A Not that I recall.

23 Q I don't think I have any additional
24 questions. If you would answer any questions
25 Mr. Martinez has -- I'm sorry, Mr. Sarratt.

1 **THE COURT:** Mr. Sarratt.

2 **CROSS-EXAMINATION**

3 **BY MR. SARRATT:**

4 **Q** How are you?

5 **A** I'm good.

6 **Q** So you know a lot about cars?

7 **A** Yes, sir.

8 **Q** Okay. Well, I don't, so I'm going to ask you
9 a couple questions.

10 **A** Okay.

11 **Q** This compartment, you talk about it's
12 located, like, above the fuel tank; is that right?

13 **A** Yes.

14 **Q** Under the undercarriage?

15 **A** Yes.

16 **Q** Would you have had to drop the fuel tank out
17 to put this thing in?

18 **A** Yes.

19 **Q** In fact, did you notice that the scraps had
20 been removed recently to drop the fuel tank?

21 **A** The -- I don't recall if the straps -- if
22 you can tell the scraps had been removed. I just
23 remember the bolts being too long ---

24 **Q** Okay.

25 **A** --- for it.

1 Q Okay. And you also found that the
2 compartment had been welded in; is that right?

3 A Yes.

4 Q Okay. And that welding was not factory
5 welding; it was aftermarket; somebody else welded it?

6 A Correct.

7 Q Okay. And you also talked about how the
8 cover plate underneath the back seat that led to the
9 compartment. Now, that was factory, correct, the plate
10 itself?

11 A Yes.

12 Q Okay. And you said it had some screws that
13 would've been factory-sealed; is that right?
14 Initially, like when the cover plate was put on by the
15 factory?

16 A Yes.

17 Q Okay. But when you found it, those screws
18 had been cut and glued back into place?

19 A They had been altered, yes.

20 Q Okay. So whoever put this compartment in
21 would need equipment to drop a fuel tank; is that
22 right?

23 A Yes.

24 Q Would need a welding torch to weld the
25 compartment in?

1 **A** They would need a welder, yes.

2 **Q** Okay. And, you know, the ability to cut
3 screws and glue them back into place and that kind of
4 thing, and the knowledge to do this?

5 **A** Yes.

6 **Q** All right. No further questions.

7 **THE COURT:** Any other questions for this
8 witness?

9 **MS. OWENS:** Nothing on redirect,
10 Your Honor.

11 **THE COURT:** Sir, you can step down.

12 **THE WITNESS:** Thank you.

13 **THE COURT:** Thank you.

14 **MS. OWENS:** I have some very brief
15 witnesses, but it may be -- depending on the
16 Court's schedule, it may be an opportunity to
17 break now. I'll defer to the Court.

18 **THE COURT:** All right. Ladies and
19 gentlemen, is everyone all right to keep going
20 for about, maybe 30 minutes? If you would like to
21 break now, we'll break now.

22 Mr. Foreperson, if you want to kind of check
23 with your jurors and see what they think.

24 (Pause.)

25 **THE JUROR:** All good.

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1 **THE COURT:** All good?

2 **THE JUROR:** All good.

3 **THE COURT:** All good. All right.

4 **MS. OWENS:** May we approach very briefly?

5 **THE COURT:** Certainly. Uh-oh. I might have
6 asked too early.

7 (Bench conference is held off the record.)

8 **THE COURT:** Well, ladies and gentlemen, the
9 best laid plans, as they say. I'll tell you what,
10 we are probably at a good point to break for
11 lunch. We could -- we could wait a minute more
12 and see where we are, but I think it would be
13 wise to go ahead and break.

14 I'm going to ask you to be back in your jury
15 room deliberation room at 1:30. So if you will be
16 back at 1:30, we will begin promptly thereafter.
17 I think it is still the expectation that this
18 case will be in your hands this afternoon. I
19 think that's still the expectation. So I hope you
20 have a good lunch and look forward to seeing you
21 back after lunch. I'll sound like a broken
22 record, but please don't discuss the case with
23 anyone. Thank you.

24 (Jury exits at approximately 11:57 a.m.)

25 **THE COURT:** All right. Y'all want to talk

1 about some jury charges?

2 **MR. MARTINEZ:** Sure.

3 **THE COURT:** All right. Is that okay to talk
4 about your charges while she runs to the
5 restroom?

6 **MR. SARRATT:** I'm sure that's fine.

7 **THE COURT:** Absolutely.

8 **MR. MARTINEZ:** Obviously, Your Honor is
9 going to charge the language of the statutes.

10 **THE COURT:** Sure.

11 **MR. MARTINEZ:** We would ask for charges on
12 knowingly, constructive possession, mere
13 presence. We would respectfully request the Court
14 charge the old Edwards charge on circumstantial
15 evidence. I could read that to you if you would
16 like. "The jury may not convict unless every
17 circumstance relied upon by the state is proven
18 beyond a reasonable doubt and all the
19 circumstances so proven are consistent with each
20 other and, when taken together, point
21 conclusively to the guilt of the accused to the
22 exclusion of every other reasonable hypothesis.
23 It is not sufficient that they create a
24 probability, though a strong one and if, assuming
25 then to be true, they may be accounted for upon

1 any reasonable hypothesis which does not include
2 the guilt of the accused, the proof has failed."

3 **THE COURT:** Okay. Well, and I'm happy for
4 you to mark that. I actually have a
5 circumstantial charge that I think encapsulates
6 the spirit of that, but I think is a little
7 clearer. And I will tell you: I kind of crafted
8 that one a little bit over time myself. But
9 certainly, please mark that.

10 **MR. MARTINEZ:** And then, one -- we would
11 request -- we would object to a jury instruction
12 that knowledge and possession may be inferred
13 when a substance is found on property under the
14 defendant's control. The charge is attributed to
15 a case, *State v. Adams*, 291 S.C. 132. In that
16 case, the Supreme Court cited *State v. Hudson*,
17 which is 277 S.C. 200, for the premise that a
18 court should instruct a jury to this effect. But
19 what *Hudson* really holds is that, where there is
20 evidence that the defendant is exercising
21 dominion and control over a premise or piece of
22 property, it gives rise to an inference of
23 knowledge, which may be sufficient to carry the
24 case to the jury and not that the Court should
25 instruct the jury to that effect.

1 I think that language even suggest that, in
2 some cases, the exercise of dominion and control
3 over premises may not even be sufficient to
4 sending the case to the jury. I think in this
5 case, in particular, this instruction would
6 lessen the state's burden of proof, allowing it
7 to show guilt solely based on her control of this
8 vehicle where the drugs were found. It's
9 primarily useful in close cases, not in one where
10 possession is clear. So for that reason, we would
11 ask that that instruction not be given. I would
12 also note for the record that we believe it's a
13 charge on the facts in violation of Article 5,
14 Section 21 of the South Carolina Constitution,
15 it's an impermissible comment by the Court on the
16 facts.

17 And for the record, there's -- that
18 provision has been interpreted in two cases from
19 1997 that deal with railroads that I think are
20 actually instructive. *Yarborough v. Southern*
21 *Railway*, 78 S.C. 103 and *Finch v. Atlanta & C Air*
22 *Line Railway*, 87 S.C. 190. In *Yarborough*, the
23 Court said, "A trial court may not charge a jury
24 that they may infer acceptance by the railroad of
25 a package left on their loading dock for a

1 certain period of time." In *Finch*, an instruction
2 that the jury may infer negligence from
3 particular facts was improper because it's a
4 comment on the facts.

5 This case is the same situation. The
6 instruction tells the jury that they infer
7 possession of the drugs and, therefore, guilt,
8 based solely on the defendant's control of the
9 car.

10 **THE COURT:** I'll tell you my portion of my
11 charge that -- and your motion, while I have to
12 say I'm impressed with the level of research that
13 you've done on this -- defendant's knowledge and
14 possession may be inferred when a substance is
15 found on the property under the defendant's
16 control. However, this inference is simply an
17 evidentiary fact to be taken into consideration
18 by you, along with other evidence in the case,
19 and to be given the weight you decide it should
20 have. So I think that covers any comment on the
21 facts or that it -- or saying that it could be
22 based solely -- a conviction could be based
23 solely on that inference. I instruct the jury
24 explicitly to take all that facts into
25 consideration and that's just one thing that they

1 can consider.

2 **MR. MARTINEZ:** Yes, Your Honor. And I
3 understand the ruling. Just for the record, we,
4 of course, object to --

5 **THE COURT:** Certainly. I understand. I
6 understand. Anything else?

7 **MR. MARTINEZ:** That's it, Your Honor.

8 **THE COURT:** All right. Anything from the
9 state, so far as instruction?

10 **MS. OWENS:** No. I think Mr. Martinez has
11 covered everything. Obviously, constructive
12 possession and circumstantial evidence are two
13 that I think are highlights. Otherwise, again, I
14 defer to the Court's charge on all of the issues.

15 **THE COURT:** Let me read this to you all:
16 Constructive possession means that the defendant
17 had dominion and control or the right to exercise
18 dominion and control over either the heroin
19 itself or the property on which the heroin was
20 found. Mere presence at the scene where the drugs
21 were found is not enough to prove possession.
22 Actual knowledge of the presence of the heroin is
23 strong evidence of the defendant's intent to
24 control its disposition or use. The defendant's
25 knowledge and possession may be inferred when a

1 substance is found on the property under the
2 defendant's control. However, this inference is
3 simply an evidentiary fact to be taken into
4 consideration by you, along with other evidence
5 of the case, and to be given the weight you
6 decide it should have.

7 MS. OWENS: That certainly suits me,
8 Your Honor.

9 THE COURT: All right, then. And I know you
10 object to that, and your objection is noted for
11 the record.

12 MR. MARTINEZ: Thank you, Your Honor.

13 THE COURT: All right. Thank y'all. We'll
14 be in recess then until 1:30.

15 (The Court goes off the record at approximately
16 12:04 p.m.)

17 (The Court goes on the record at approximately
18 1:38 p.m.)

19 THE COURT: Okay. All right. Anything we
20 need to take up before we bring the jury back in?

21 MS. OWENS: To everyone's relief, we are
22 finally ready to proceed.

23 THE COURT: Fantastic. Okay. Well, we're
24 good.

25 MR. MARTINEZ: Just one matter, Your Honor

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THE COURT: Yes, sir.

MR. MARTINEZ: --- regarding the jury instructions. We received them.

THE COURT: Oh, yeah. Okay.

MR. MARTINEZ: Just a couple of things that I wanted to add. Just knowingly -- following the trafficking statute, just defining what "knowingly" is. And then, I know we hadn't talked about this. I don't believe Ms. Sanchez intends to testify, so just an instruction about her silence.

THE COURT: Yeah. Sure. Yeah.

MR. MARTINEZ: And then, finally, we understand your ruling regarding the circumstantial evidence charge. If I can hand up a proposed instruction. The language is directly from *State v. Logan*. *State v. Logan* 405 S.C. 83. If I may approach to hand the Court up. The jury instruction is on top.

THE COURT: Thank you.

MR. MARTINEZ: And then, the case is underneath. And I believe it's Page 11 and 12 that the instruction is on.

THE COURT: All right.

1 **MR. MARTINEZ:** And if I can make a copy a
2 Court's exhibit.

3 **THE COURT:** That's what I was going to say,
4 was I was going to make it a Court's exhibit.
5 (Court's Exhibit 1 is marked for identification.)

6 **MR. MARTINEZ:** Just to briefly quote. The
7 case involved whether the circumstantial
8 evidence charge given in this case was proper.
9 The Court said, "Pertinent inquiry is the proper
10 means for evaluating circumstantial evidence and
11 how the trial court may best instruct a jury as
12 to its analytical responsibility."

13 **THE COURT:** Uh-huh.

14 **MR. MARTINEZ:** On Page 11, top right
15 corner, it says, "We hold the trial court should
16 provide the following language as a
17 circumstantial evidence charge in addition to a
18 proper reasonable doubt instruction when so
19 requested by the defendant." And the language
20 there is the same language that I placed in the
21 proposed instruction.

22 **THE COURT:** I appreciate it.

23 **MR. MARTINEZ:** So we would request that
24 that language be included in the circumstantial
25 evidence.

1 **THE COURT:** All right. All right. Ad
2 certainly, your motion is preserved for the
3 record. Thank you.

4 **MR. MARTINEZ:** Thank you, Your Honor.

5 **THE COURT:** All right. Anything else we
6 need to take up before we bring the jury back
7 in? All right. We will add a definition of
8 "knowingly" in there and let you both know about
9 it before I charge. All right.

10 And Ms. Sanchez, I just wanted to say this
11 to you: We're not at this point yet, but your
12 attorney's made a good point. I don't know if
13 you plan to testify in the trial of this case,
14 but as we take breaks this afternoon, I want you
15 to continue to be talking to your lawyers about
16 this. You've got outstanding lawyers. I know
17 they talked to you about it, but I want you to
18 continue to talk to them about it because I'm
19 going to have some questions for you probably in
20 about an hour.

21 **MS. SANCHEZ:** Okay.

22 **THE COURT:** Okay.

23 Will the attorneys approach for just a
24 minute?

25 Will you hold the jury for just one second?

1 I'm sorry.

2 (Bench conference is held off the record.)

3 **THE COURT:** All right. You can bring the
4 jury back in.

5 (Jury enters at approximately 1:46 p.m.)

6 **THE COURT:** Thank you for being patient
7 with us. We were trying to work on a few things
8 that would just make the afternoon go even
9 smoother and more quickly. I hope you all had a
10 good lunch. I know at least one of you was
11 downtown. I ran into you on the street. So that
12 was -- that was nice. But we're ready to begin
13 with this afternoon's testimony.

14 Yes, ma'am.

15 **MS. OWENS:** Thank you, Your Honor, may it
16 please the Court. The state calls Ms. Kara
17 Bennick.

18 Ms. Bennick, if you would please come up and
19 be sworn.

20 **KARA BENNICK**

21 having first been duly sworn, testifies as follows:

22 **THE CLERK:** Thank you. You may be seated,
23 and please state your full name for the record.

24 **THE WITNESS:** Kara Bennick.

25 **DIRECT EXAMINATION**

1 BY MS. OWENS:

2 Q Ms. Bennick, where do you work?

3 A The property and evidence room, the
4 Department of Public Safety.

5 Q How long have you worked in that particular
6 division at the Department of Public Safety?

7 A 15 years.

8 Q What's your particular assignment?

9 A I'm the supervisor of the unit.

10 Q Generally speaking, as a supervisor, what
11 are your responsibilities day to day?

12 A I do take in evidence, just like the other
13 property and evidence techs do. But as well, I have
14 administrative duties.

15 Q Now, for the jury's education, what is
16 Property and Evidence?

17 A Property and Evidence is the secured holding
18 of all evidence or property coming in from the
19 Greenville City or Greenville County Sheriff's Office.

20 Q Is it a large facility?

21 A It is a very large facility.

22 Q Now, who has access to this particular
23 secured location?

24 A Only the five evidence techs.

25 Q Are those all employees of the Property and

1 Evidence division?

2 A Yes, ma'am.

3 Q Okay. Is it possible for anyone else to
4 enter the area without being escorted by a technician?

5 A Not without being escorted, no.

6 Q Okay. How is it that, in any particular
7 case, evidence comes into the possession of the
8 Property and Evidence?

9 A There's actually two different ways: It can
10 come in after-hours through secured holding, which
11 would be a locker or drop box system; or it could come
12 in over the counter during business hours and one of
13 the girls would receive it.

14 Q Now, once you would get an item of evidence,
15 whether it's at the counter or from this drop box when
16 you come back in the next day, what do you do with it?

17 A We will inventory it by matching it up with
18 the Property and Evidence report that is being
19 received with it. We will decide if it's going to be
20 tested or whatever's coming in with it with the off --
21 from the officer. Then we will put it in its staging
22 areas or permanent holding.

23 Q So does every item of evidence that comes
24 into your facility get assigned an identity?

25 A Yes.

1 Q How is that process work?

2 A We enter it into a bar code system. That's
3 part of the inventory process. It is transferred into
4 an digital bar code system, the item off the
5 inventory. It is, then, picked up the chain of custody
6 from that point forward.

7 Q Now, are all of the moves that a particular
8 item of evidence makes inside the facility recorded?

9 A Minus if it is in the property room itself
10 and we are moving it, that is not recorded. But
11 anything that goes from out of our hands to somewhere
12 else is recorded.

13 Q For example, if an item of evidence was
14 removed for purposes of chemical analysis, would that
15 move be recorded?

16 A Yes.

17 Q After an item is removed for chemical
18 analysis, is it returned to Property and Evidence?

19 A It is.

20 Q And is it stored there until the case is
21 summoned for trial?

22 A Yes. It then goes to permanent storage.

23 Q Now when you receive an item of evidence, do
24 you have any particular requirements about how it's
25 recorded or sealed or packaged before you will accept

1 it?

2 **A** We do, based on the type of item it is,
3 we'll require seals; we'll require initials; dates. It
4 just depends on what the item is and how it is
5 classified.

6 **Q** If you receive a particular item that isn't
7 correctly labeled or sealed, what do you do?

8 **A** It is moved to a staging area and the
9 officer is contacted in writing to come back to the
10 facility and re-inventory it and restart the
11 paperwork.

12 **Q** So will you accept an item of evidence
13 that's not sealed?

14 **A** No. We would not officially take it. It will
15 be in our custody, but it will be in a staging area
16 pending the officer's return.

17 **Q** Okay. And so if -- as you mentioned, there's
18 a recording of all this activity. If there's something
19 is wrong with this particular item would that be
20 recorded?

21 **A** Yes, there is a location on -- there is
22 actually an assigned location for those items to
23 stage.

24 **Q** Now, I want to talk specifically about the
25 two items of evidence in this particular case. You

1 testified just a moment ago that there's a particular
2 document that accompanies each item of evidence to
3 record its movements?

4 A Yes, ma'am.

5 Q Okay. So I going to show you State's
6 Exhibit 7 and the accompanying documentation. Are you
7 able to determine from examining State's Exhibit 7
8 whether the item is the item that was received by the
9 property and evidence division?

10 A I am.

11 Q How?

12 A Because all of our packaging is labeled with
13 a case number and item number and a location, and all
14 of that matches up to what we do in evidence.

15 Q And is -- does the item, State's Exhibit 7,
16 bear a bar code, as you described as the recording
17 system for keeping track of this particular item?

18 A I believe. Yes, right there.

19 Q Okay. Does it become necessary, in certain
20 circumstances, to repackage items of evidence that you
21 have received from time to time?

22 A It does.

23 Q Why?

24 A There could be any multitude of reasons. We
25 could've opened it so many times that there's no

1 longer access that we can record our signatures on. It
2 could be that it's broken through the packaging for
3 some reason, any number of reasons. But we'll always
4 keep the prior packaging and include it in the new
5 packaging and put a note in there.

6 Q Okay. With respect to State's Exhibit 8, I'm
7 going to show you that item, as well as the
8 accompanying documentation. Are you able to determine
9 from examining State's Exhibit 8 that it is an item
10 that was recorded for the property and evidence
11 division?

12 A I am.

13 Q How are you able to determine that?

14 A Again, it's marked with a case number; the
15 location; it's marked with a description; and it's
16 marked with an number.

17 Q Now, with respect to each of these items,
18 did either or both of these items leave your custody
19 for the purpose of chemical analysis at some point?

20 A Yes, ma'am.

21 Q Are you able to determine whether those
22 items were received after they were tested?

23 A I am.

24 Q And based on that documentation, are you
25 able to determine that those items remained in the

1 custody of the Property and Evidence facility until
2 they come for trial today?

3 A Yes.

4 Q Okay. I don't believe I have any additional
5 questions. If you would answer any questions
6 Mr. Martinez has for you.

7 THE COURT: Yes, sir.

8 MR. MARTINEZ: May it please the Court?

9 THE COURT: Yes.

10 CROSS-EXAMINATION

11 BY MR. MARTINEZ:

12 Q Ms. Bennett, I just have a couple of
13 questions. When it says "staging lab" on the
14 documentation ---

15 A Uh-huh.

16 Q --- does that mean it wasn't sealed and you
17 placed it in a staging area? Is that what you are
18 referring --

19 A No, staging for the lab means it has gone to
20 a secured area that is awaiting signature of the lab
21 to sign it out and take it for testing.

22 Q Okay. And then, when you received this --
23 these substances, was there any request for it to be
24 sent off for DNA for fingerprint testing, that you are
25 aware of?

1 **A** No.

2 **Q** Nothing further.

3 **THE COURT:** All right. Anything else?

4 **MS. OWENS:** No additional questions,
5 Your Honor.

6 **THE COURT:** Thank you so much.

7 **MS. OWENS:** May it please the Court,
8 Your Honor. The state calls Mr. James Armstrong.

9 **THE COURT:** Okay.

10 **MS. OWENS:** Mr. Armstrong, if you would
11 please come up and be sworn.

12 **THE CLERK:** Mr. Armstrong, please place
13 your left hand on the Bible and raise your right
14 hand.

15 **JAMES ARMSTRONG**

16 having first been duly sworn, testifies as follows:

17 **THE CLERK:** Thank you. You may be seated,
18 and please state your full name for the record.

19 **THE WITNESS:** James William Armstrong.

20 **DIRECT EXAMINATION**

21 **BY MS. OWENS:**

22 **Q** Mr. Armstrong, where do you work?

23 **A** For the Greenville County Department of
24 Public Safety Forensic Division, Crime Laboratory.

25 **Q** What's your specific assignment at the crime

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1 lab?

2 **A** I have a dual responsibility as a firearm
3 examiner and a forensic drug chemist.

4 **Q** How long have you been employed in that
5 capacity?

6 **A** Almost 23 years.

7 **Q** What particular training do you have to be
8 able to perform that particular task?

9 **A** I have a bachelor of science in chemistry
10 from Erskine College. I've trained in the area of drug
11 identification approximately one year under the
12 direction of the lab supervisor. I attended numerous
13 instrumental analysis schools concerning instruments I
14 used in my analyst. I've attended a forensic chemist
15 seminar sponsored by the Drug Enforcement
16 Administration in Washington, DC. I've testified at
17 least 174 times in federal, state, and local courts,
18 as an expert in the area of drug identification.

19 **Q** In addition to that historical training, do
20 you continue to receive regular and ongoing training
21 in order to perform your --

22 **A** Yes, ma'am. I do.

23 **Q** Focusing specifically on your role as a
24 crime lab chemist rather than a firearms examiner, how
25 do you conduct that job?

1 **A** We work cases that are submitted to us by
2 request forms from multiple agencies. An officer fills
3 out a request form and we go down to our property and
4 evidence room to receive evidence. Then we'll go back
5 to our office and inventory what is there and perform
6 examinations to try to determine what the substance
7 may or may not be.

8 **Q** Over the years that you've worked in this
9 capacity as a chemist, in approximately how many cases
10 do you think you've analyze chemical substances?

11 **A** Oh, thousands.

12 **Q** And have you been qualified previously? You
13 mentioned you've testified, but have you been
14 qualified by a court, prior to date, as an expert in
15 chemical analysis?

16 **A** Yes, ma'am. 174 times.

17 **Q** Have you ever been not qualified?

18 **A** No, ma'am.

19 **MS. OWENS:** Your Honor, at this point, the
20 state offers Mr. Armstrong as an expert in the
21 field of chemical analysis.

22 **THE COURT:** Any objection or further voir
23 dire?

24 **MR. MARTINEZ:** No, Your Honor.

25 **THE COURT:** Ladies and gentlemen, the rules

1 of evidence ordinarily do not permit a witness to
2 testify as to opinions. A witness who is
3 qualified in some area, due to education or
4 experience, may become qualified as an expert
5 witness and may give his opinion in the area in
6 which he is qualified and also give the reason
7 for that opinion. This witness has been qualified
8 by the Court to give his opinion in the area of
9 chemical analysis. You may give that opinion the
10 weight you deserve -- you decide it deserves and
11 you may use that opinion in any way you see fit.
12 Thank you.

13 MS. OWENS: Thank you, Your Honor.

14 BY MS. OWENS:

15 Q Were you asked to analyze some chemical
16 substances in this case?

17 A Yes, ma'am. I was.

18 Q How do you obtain the substance from its
19 secure holding facility at Property and Evidence?

20 A I go down to Property and Evidence and ask
21 them to bring me cases that they are waiting for us to
22 work.

23 Q Let's start with the substantially easier
24 one to carry, State's Exhibit 8, which I believe is
25 reported as item AR1. Do you know whether you analyzed

1 this substance or this item, to determine whether a
2 chemical substance was detected?

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

4 **Q** How do you know?

5 **A** The outside bag has my initials and date
6 where I sealed it when I was finished in my analysis.
7 The inside bag has my initials and item number where I
8 actually cut the open -- the sealed bag open to do my
9 analysis.

10 **Q** So when you received that item, you
11 physically cut open the seal ---

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

13 **Q** --- and then reseal it after you've tested
14 it?

15 **A** That's correct.

16 **Q** What specific analysis did you conduct on
17 this particular item?

18 **A** I did a chemical spot test and an infrared
19 spectroscopy test.

20 **Q** And what did you determine?

21 **A** I determined that it was a 20-dollar bill
22 with residue, that the residue does contain cocaine.

23 **Q** Of any particular weight?

24 **A** No. No weight.

25 **Q** Okay. Let's revisit State's Exhibit 7. Do

1 you know whether you conducted a chemical analysis of
2 that item?

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

4 **Q** How do you know?

5 **A** The outside of the box has my item number
6 and my initials where I had sealed it. I also have my
7 initials and the date where I cut open this paper bag,
8 as well.

9 **Q** How did you undertake analyzing such a large
10 quantity of suspected narcotics?

11 **A** Just work it as a case. Just open up the
12 items and take a weight and then do a chemical spot
13 test and instrumental analysis to confirm the presence
14 of a controlled substance.

15 **Q** Do you have to physically cut open and
16 remove the packaging?

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

18 **Q** All right. Did you return all of that to
19 that box?

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

21 **Q** After conducting a chemical analysis on the
22 suspected narcotics in State's Exhibit 7, what was
23 your result?

24 **A** I found the box contained heroin with a
25 weight of 6.94 kilograms.

1 **Q** After you conducted your analysis and
2 completed your report regarding what you found with
3 respect to State's Exhibit 7 and State's Exhibit 10,
4 what did you do with those items?

5 **A** Once I completed my analysis, the items were
6 sealed and taken back to Property and Evidence for
7 storage.

8 **Q** I apologize. That's State's Exhibit 7 and 8.
9 Have you had any contact with them since you deposited
10 them back in Property and Evidence?

11 **A** No, ma'am. I have not.

12 **MS. OWENS:** Your Honor, the state offers
13 exhibits 7 and 8 into evidence.

14 **THE COURT:** Any objection?

15 **MR. MARTINEZ:** Subject to my prior
16 objections.

17 **THE COURT:** Subject to your prior
18 objections, I certainly -- they will be admitted.

19 **MS. OWENS:** I don't have any additional
20 questions, Mr. Armstrong. If you would answer any
21 questions that Mr. Martinez has.

22 (State's Exhibits 7 and 8 are admitted into the
23 record.)

24 **THE COURT:** Mr. Martinez?

25 **CROSS-EXAMINATION**

1 BY MR. MARTINEZ:

2 Q Mr. Armstrong, you were not on the scene;
3 right?

4 A No, sir.

5 Q So you weren't asked to collect fingerprints
6 from the scene? That's not what your --

7 A No, sir. That's not my area.

8 Q Or from anything, from the packages
9 themselves?

10 A No, sir.

11 Q Have you had cases where packages are sent
12 to you to be tested that have first been in -- tested
13 for DNA or fingerprints?

14 A I believe some of them have. I've also had
15 cases where I would separate the package or the
16 packaging had been separated by someone else for other
17 testing. Yes, sir.

18 Q But no request for testing like that was
19 done?

20 A Not that I know of. No, sir.

21 Q You were sent how many blocks of the heroin?

22 A Well, it was this box, which contains 70
23 blocks of powder substance wrapped in plastic and
24 paper.

25 Q 70 blocks wrapped in plastic and paper.

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1 Okay. And -- that's all I have.

2 **THE COURT:** All right. Any other questions
3 for this witness?

4 **MS. OWENS:** No additional questions,
5 Your Honor.

6 **THE COURT:** All right. Thank you so much
7 for being here.

8 **THE WITNESS:** All right. Thank you.

9 **MS. OWENS:** Your Honor, the state calls
10 Investigator John Garrett.

11 **THE COURT:** All right.

12 **MS. OWENS:** Investigator, if you would
13 please come up and be sworn.

14 **JONATHAN GARRETT**

15 having first been duly sworn, testifies as follows:

16 **THE CLERK:** Thank you. You may be seated,
17 and please state your full name for the record.

18 **THE WITNESS:** My name is Jonathan Garrett.

19 **DIRECT EXAMINATION**

20 **BY MS. OWENS:**

21 **Q** Investigator, where do you work?

22 **A** The Greenville County Sheriff's Office.

23 **Q** And what is your current capacity at the
24 sheriff's office?

25 **A** Currently, I'm an investigator in gang

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1 intelligence, and I'm a bomb technician.

2 Q How long have you served in that particular
3 capacity?

4 A Six months. Well, I've been a bomb tech
5 since 2013.

6 Q What assignment did you have before moving
7 to this particular role?

8 A Arson/bomb squad. And I was there for two
9 years. Before that, I worked narcotics for 14 years.

10 Q Before joining the sheriff's office, did you
11 have any other law enforcement experience?

12 A I do. I started my law enforcement career
13 with the Greenville City Police Department in 1992. I
14 worked there until 1996. I left there and went to the
15 Greenville County Forensic Division as a crime scene
16 technician, processing crime scenes, from 1996 to
17 1998. From 1998 to 2001, I worked for the United
18 States Border Patrol, assigned to the southwest border
19 in Del Rio, Texas.

20 Q During your tenure as a narcotics
21 investigator with the sheriff's office, have you ever
22 been employed by the department -- I'm sorry, the drug
23 enforcement agency?

24 A I was assigned to the United States DEA Task
25 Force, Drug Enforcement Administration Task Force,

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1 which covers Upstate South Carolina and Western North
2 Carolina, at the time. And I was there for eight
3 years.

4 Q Now, over your course of service as a law
5 enforcement officer, have you received any special
6 training in the field of narcotics?

7 A I have.

8 Q What kind of training?

9 A Well, the basic training I got was when I
10 went to narcotics in Greenville County. You're
11 assigned to a field training officer, which is three
12 to six months according to often and how many times
13 you can accomplish the task you are required to do in
14 the field training program, which is: identify drugs,
15 work cases with confidential informant, prices,
16 surveillance, testify in court, manage my money, money
17 we used to make undercover buys for drugs, advanced
18 surveillance techniques through SLED.

19 I've attended the basic task force officer
20 for Drug Enforcement Administration. I've attended
21 clandestine labs and drug manufacturing in Quantico,
22 Virginia. I've also attended money laundering,
23 international money laundering investigations, DEA
24 task force at the academy in Quantico, Virginia; and
25 other drug manufacturing case, Meridian, Mississippi;

1 and the Regional Counter Drug Academy, are some of the
2 ones that I've attended.

3 Q During the time that you were assigned to
4 work with the DEA, did you participate in any training
5 specifically with respect to heroin?

6 A I have. And it was identification and a
7 program the DEA started in 1977. It's called the
8 Heroin Signature Program. And it's where, throughout
9 the United States and world, they'll go to certain
10 offices, which the Greenville office is the one I was
11 assigned to. We'd go out and purchase heroin in your
12 community or your area of operation, which was
13 Greenville. And it would be sent back to the lab,
14 either in Miami or the one in DC. And they would do
15 quantitative analysis -- or they would study the
16 heroin and see what heroin is showing up in what parts
17 of the country. And I had training on that, where we
18 actually went out to make purchases. They were looking
19 to see what parts of the world it was indigenous to,
20 where it came from, what purity it was, just studies
21 on the level of heroin throughout the United States.

22 Q Now, in addition to these training courses
23 and general classes that prepare you to do these jobs,
24 have you ever participated yourself in the
25 investigation of narcotics activities?

1 **A** I have.

2 **Q** How often?

3 **A** Hundreds. My last search warrant, Friday a
4 week ago, was my 270th search warrant.

5 **Q** How many of those drug investigations
6 involve heroin?

7 **A** I want to say between at least 100.

8 **Q** Have you yourself participated in the
9 orchestration of any controlled purchases of
10 narcotics?

11 **A** I have.

12 **Q** What is a controlled purchase?

13 **A** That's where either an agent undercover or a
14 confidential informant working under control of law
15 enforcement makes a purchase of narcotics from a
16 target of the investigation, where we control it.
17 They're doing it under our direction. They're wearing
18 surveillance equipment. We're conducting surveillance.
19 They're using our government money. It is documented,
20 to make a case.

21 **Q** As a result of those purchases or
22 investigations or search warrants, have you had an
23 opportunity to interview individuals engaged in the
24 sale of narcotics?

25 **A** I have.

1 **Q** How long ago?

2 **A** My estimate -- and I looked on my figures
3 earlier -- just on the DEA task force during my years
4 there -- there are larger, more complex cases -- I
5 made 57 indictments. It is very rare for somebody in a
6 federal system, that's under investigation or
7 indicted, not to cooperate. I can probably can count
8 on one hand people that don't cooperate. During a
9 federal investigation, we have agreements with their
10 attorneys and they cooperate. And they give
11 information and they tell us how organizations work,
12 how the businesses run, what we did right, what we
13 missed, stuff like that. That's the things that we
14 look for, probably in -- not just in my cases in eight
15 years, at least 100, drug traffickers.

16 **Q** As a result of those interviews, those
17 transactions in which you've participated, are you
18 familiar with the sale of heroin?

19 **A** I am.

20 **Q** How is heroin transacted?

21 **Q** In Greenville, when we make street-level
22 buys, which I've worked in undercover capacity 48
23 times, I think six of those were the purchase of
24 heroin. It usually comes in a bindle, a capsule. I
25 have even bought before where it was wrapped up in

1 tin foil. Most of them are approximately .1 gram
2 dosage.

3 **MR. MARTINEZ:** Your Honor, may we approach?

4 **THE COURT:** Certainly.

5 (Bench conference is held off the record.)

6 **THE COURT:** I should've told y'all: If
7 anybody needs any water or anything like that,
8 please let us know.

9 **BY MS. OWENS:**

10 **Q** Over the course of your involvement in the
11 investigation, the interview, the transaction or the
12 sale, the purchase of heroin, are you familiar with
13 the dollar value of heroin?

14 **A** I am.

15 **MS. OWENS:** At this point, Your Honor, I'd
16 offer Investigator Garrett as an expert in the
17 field of the identification and sale of heroin.
18 I'd ask the Court to make a finding that the
19 subject matter is outside of the ordinary scope
20 of knowledge of the jury and would assist the
21 jury in determining the factual issues and
22 evaluate the evidence in this case.

23 **THE COURT:** Any objection of that or any
24 further this witness?

25 **MR. MARTINEZ:** Just to the extent that he

1 intends to give an opinion regarding the value
2 involved here, no objection.

3 **THE COURT:** All right, then. I do find that
4 this is out -- that I would certainly believe it
5 is outside the common knowledge of the jury and
6 would assist the trier of fact in making
7 determination of the facts in this case. And I do
8 find that he is qualified in -- and tell me again
9 exactly the area that you would like him
10 qualified in.

11 **MS. OWENS:** I believe the appropriate
12 category is just the identification and sale of
13 heroin, specifically.

14 **THE COURT:** Identification and sale of
15 heroin. Ladies and gentlemen, I explained an
16 expert witness to you. This gentleman will be
17 qualified to give his opinion in the area of
18 identification and sale of heroin. Once again,
19 you give it the weight you believe it deserves
20 and you use that opinion any way you see fit.

21 **MS. OWENS:** Thank you, Your Honor.

22 **BY MS. OWENS:**

23 **Q** Investigator, you testified a few moments
24 ago about a capsule or a wrapped piece of paper. What
25 is a typical amount that a heroin user would purchase

1 at any particular time? A dosage unit, for lack of a
2 better word.

3 A Dosage unit, in my trained experience, in
4 drug laboratories that's returned back on cases I've
5 worked, is .1 gram.

6 Q Now, does -- is there, in your experience, a
7 particular dollar value associated with that quantity
8 of heroin?

9 A Yes. In the southeast, based on the
10 information I got from the Heroin Signature Program
11 and my personal experience, most dosage, which is
12 called a hit, a point, or a dose -- when I work
13 undercover, I'll usually ask for a cap or bindle -- is
14 \$20 to \$25. Consistently, in Greenville, South
15 Carolina -- is what I can testify to the most -- it's
16 been \$25 for the last 15 years.

17 Q In your experience, do sellers of heroin
18 sell pure heroin?

19 A No.

20 Q Why not?

21 A It will kill you.

22 Q So how is it that heroin in its most pure
23 form ultimately get distributed and sold to users in a
24 manageable format?

25 A It's cut down with -- cut, which is

1 laxatives -- baby laxative is common -- of
2 supplements. It's all about money. Kilos are bulk.
3 It's cut down to make more money out of it to make
4 more product. It's usually transported in the uncut
5 form because it just takes up space to cut all that
6 heroin and move it somewhere, from, like, Point A, the
7 border, to Point B, wherever. It goes uncut. Once it's
8 cut, it can be doubled, tripled, quadrupled, just to
9 make money, plus it's for transportation purposes. And
10 it's just lethal, uncut. We're seeing that here in
11 Greenville now.

12 Q I want you to take a look at State's
13 Exhibit 7.

14 A (Reviewing.)

15 Q Based on your experience, is the current
16 form of that heroin ready for distribution?

17 A Is it what?

18 Q Is the format of that heroin in that box in
19 State's Exhibit 7 ready to be sold and distributed to
20 users?

21 A No, ma'am.

22 Q Why not?

23 A From my training and experience as a border
24 patrol agent, it's packaged as if it had just came
25 from its first destination to get to its final

1 destination. It's not ready to be sold as a
2 street-level dosage yet.

3 Q What has to happen to transform what's in
4 State's Exhibit 7 to a sellable point or hit or cap?

5 A It will go to what we call in Greenville --
6 we found a few -- is a heroin dealer. It's cut down.
7 Usually, they go up north to bigger source cities.
8 Greenville is becoming somewhat of a source city. It's
9 cut down. It's diluted a cut and packaged into
10 bindles, which 25 bindles or 25 dosages would be a
11 set, what we mentioned earlier what we bought
12 throughout the United States when we're buying samples
13 for the DNA headquarters. It would be packaged up to
14 be shot, snorted, or digested in .1, being generous.
15 Probably even .2, but .1 gram dose.

16 Q So is it your testimony that .1 grams of
17 average use is purchased by a heroin user for \$25?

18 A That's correct.

19 Q What, then, is the value of 6940 grams to be
20 sold to prospective heroin users?

21 A When I calculated earlier when I looked at
22 the weights of this, in .1 dosages, would be an
23 estimated street-level value of \$1.73 million.

24 Q Now assuming that this substance is not yet
25 ready for distribution and will be cut or diluted

1 before it is ultimately sold, would the value of this
2 quantity of heroin change?

3 **A** The quantity, will it change? Yes. It will
4 be -- it will go to some destination to be cut, put in
5 a mill, and prepared for street use. It's rare to see
6 this much heroin bulk, unless it's transported. Well,
7 on the border, I saw it there. I've only seen this
8 much heroin in Greenville, probably three other times.

9 **Q** Once it's diluted, what effect would that
10 have on the value of that quantity of heroin?

11 **A** It would -- according to how much you dilute
12 it, you could cut it three, four, five six times. I
13 mean, the more you cut it, the more doses you're going
14 to get out of it. It's more money. It's all about
15 money. They don't do it for good customer service.
16 It's just about money.

17 **Q** So if this quantity of nearly 7 kilograms of
18 heroin is at its current stage worth \$1.7 million in
19 street value, what could we expect it to be worth if
20 it is diluted?

21 **A** Five million or more; maybe, six, seven.
22 It's according to how you cut it, according to what
23 purity is it is. Pure heroin, the quantity -- the
24 Heroin Signature Program in the Southeast per DEA, I
25 think currently in the Atlanta regional area, which

1 would cover us, between here and Charlotte, is 39
2 percent. It's never 100 percent of heroin. It's always
3 come across as that. Normal heroin that's being shot
4 and used in Greenville right now is between three and
5 five percent. And it's diluted; that's pure. If I
6 bought a block heroin, it would probably be three to
7 five percent in Greenville, and that would be cut down
8 three, four, five, six percent. So 6 to \$7 million.

9 Q So without knowing the purity of this
10 heroin, it's impossible to say how diluted it would
11 become. But at best, it's worth nearly \$2 million in
12 its current form?

13 A Easily that way.

14 Q Okay. I don't have any additional questions
15 for you.

16 MR. MARTINEZ: No questions, Your Honor.

17 THE COURT: All right, sir. You can step
18 down.

19 THE WITNESS: Thank you.

20 THE COURT: Thank you.

21 MS. OWENS: Your Honor, the state rests.

22 THE COURT: All right, ladies and
23 gentlemen, we've come to a point for a break this
24 afternoon. If you would step to your jury
25 deliberation room, the state has completed their

1 case. We're not finished yet, though. So if you
2 would, just hang tight with us for a moment while
3 we take up a couple of legal matters. Thank you.
4 (Jury exits at approximately 2:18 p.m.)

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

6 **MR. MARTINEZ:** Your Honor, we would move
7 for directed verdict at this time. First, there's
8 been insufficient direct and circumstantial
9 evidence that Victoria knew the car contained
10 heroin. The statute, specifically, requires that
11 she do any of the conduct in the statute
12 knowingly.

13 The case, *State v. Miles*, Court of Appeals
14 from 2017, 421 S.C. 154, the Court there made
15 clear that the state is required to prove that
16 the defendant knew whatever was contained drugs;
17 it was a controlled substance. In the case there,
18 the Court found denial of directed verdict
19 appropriate based on certain things that are not
20 present here.

21 Specifically, in that case, the evidence
22 was, quote, literally lying at the defendant's
23 feet. He attempted to flee and ditch the box
24 containing the controlled substance when agents
25 started to approach him, giving inference of his

1 knowledge of what was in the box. Finally, he
2 admitted knowing the box contained drugs.

3 Here, the circumstances only amount to a
4 mere suspicion that she knew the drugs were
5 there. Here, the drugs were stored in a
6 compartment hidden beneath the car in a
7 specially-welded container. There's been no
8 evidence establishing that my client handled the
9 compartment or the packages in that compartment
10 in any way. There's no fingerprints. There's no
11 DNA. There's no witness who testified that he
12 observed her doing that or was in any way present
13 when this compartment was filled. There's been no
14 statements from her regarding her knowledge.

15 While the state does not to prove that she
16 knew what weight the drugs were or what, even,
17 the specific drug it was, they have to prove that
18 she knew the drugs were there period and has
19 failed to present sufficient evidence to do so.
20 We move for a directed verdict on both charges,
21 as a knowing possession of the drugs is the sole
22 basis of the child neglect charge, as well.

23 One last ground. I know I mentioned *State v.*
24 *Hudson* earlier. In that case, as I described, the
25 Court held that where an individual has control

1 -- has dominion and control over the premises it
2 may be sufficient to send it to a jury. We
3 believe that that language of "may be" means that
4 there are cases where that is not sufficient to
5 send it to a jury. This is one of those cases,
6 Your Honor.

7 Unlike in *Hudson*, that was a shared
8 residence where they specifically observed the
9 defendant's wife to be disposing of the drugs by
10 flushing them down the toilet. The Court held
11 there that the jury could infer, based on their
12 sharing the premises with this individual who was
13 seen flushing down the toilet, that a jury could
14 find that there was knowledge of possession of
15 the drugs. Here we don't have that. It's simply
16 very well hidden in the car and she just happens
17 to be in the car. There's no evidence other than
18 that. Those would be our grounds for directed
19 verdict.

20 **THE COURT:** I know you are just making an
21 argument on behalf of your client. But she didn't
22 happen to be in the car; she claimed she owned
23 the car. I think there is sufficient evidence
24 upon which a jury could find that she -- base a
25 verdict and find that she knowingly was in

1 possession of these drugs. Certainly, you've
2 raised some good point that I know you will argue
3 in closing arguments, but your motion is
4 respectfully denied.

5 **MR. MARTINEZ:** Thank you, Your Honor.

6 **THE COURT:** Thank you. And I know you are
7 renewing all of your other motions, as well.

8 **MR. MARTINEZ:** Yes, Your Honor.

9 **THE COURT:** Yes.

10 **MR. MARTINEZ:** Of course.

11 **THE COURT:** Okay.

12 **MR. MARTINEZ:** I renew those for the
13 record.

14 **THE COURT:** Very well. And -- all right.

15 Now, I know, ma'am, I told you that we were
16 going to get to a point in the trial where I was
17 going to need to talk to you about whether or not
18 you intended to testify in trial of this case. So
19 we're just about there. Here's what I'm going to
20 do: I'm going take a break. I'm going to let you
21 talk to your lawyers about that one last time.

22 There are no other convictions that you are
23 planing to use against Ms. Sanchez; is that
24 right?

25 **MS. OWENS:** That's correct, Your Honor.

1 And I think that's one of the -- we're off the
2 record.

3 (The Court goes off the record at approximately
4 2:44 p.m.)

5 (The Court goes on the record at approximately
6 2:44 p.m.)

7 **THE COURT:** We're back on the record. I
8 think in this case, if memory serves me, you
9 were careful not to introduce anything into the
10 trial of the case.

11 **MR. MARTINEZ:** That's correct, Your Honor.

12 **THE COURT:** All right, then. Very well.
13 Then we're in good shape. Okay. All right.
14 (Jury enters at approximately 2:45 p.m.)

15 **THE COURT:** All right.

16 **MR. MARTINEZ:** The defense rests,
17 Your Honor.

18 **THE COURT:** All right. Ladies and
19 gentlemen, we are now ready to move to closing
20 arguments in this case.

21 Ms. Owens, you're ready to proceed?

22 **MS. OWENS:** Yes, Your Honor.

23 **THE COURT:** Okay.

24 **MS. OWENS:** May it please the Court?

25 **THE COURT:** Yes.

1 **MS. OWENS:** Ladies and gentlemen, certain
2 words come to mind in the context of cases like
3 this: mule, smuggler, drug trafficker. At the
4 end of the day, this case is not about kingpins
5 and cartels. This is not a case about the lavish
6 luxury that drug dealers, at the top of their
7 empire, lived. It is, instead, about the people
8 that those distributors enlist to do the heavy
9 lifting, literally.

10 I told you at the beginning of this trial,
11 that to prove that the defendant is guilty of
12 crime of trafficking in heroin, the state has to
13 prove that the defendant sold, purchased,
14 delivered, or brought into this state a quantity
15 of drugs; or that the defendant attempted,
16 conspired, assisted, aided and abetted someone
17 to sell, deliver, bring into this state, or
18 purchase a quantity of drugs; or that the
19 defendant possessed a quantity of illegal drugs,
20 actual or otherwise.

21 The Judge is going to explain to you, in
22 just a few minutes, what the law is and what
23 some of those words mean. But generally
24 speaking, in this case, the most clear and
25 direct evidence is that this defendant drove a

1 car that she purportedly owned, that she had
2 told the police that she had just purchased and
3 owned; and inside, she possessed more than 28
4 grams of heroin, a great deal more than 28 grams
5 of heroin.

6 The Judge will explain to you that you can
7 determine that she was in actual possession or
8 that you can find she is guilty of possessing
9 these drugs if you feel she was in constructive
10 possession. Basically, what that means, what
11 constructive possession means, is that she had
12 the ability to exercise what the law calls
13 dominion and control over the substance. As the
14 owner of the car, as the operator of that car,
15 as the sole occupant adult of that car, the
16 evidence is, at its core, that this defendant
17 possessed this quantity of drugs. And your
18 verdict could be based on that simple connection
19 in itself, but it doesn't have to. There's a lot
20 of other evidence for you to consider and a lot
21 of other ways that you can find that this
22 defendant is guilty of this crime.

23 Now, before I -- before we get into the
24 evidence, I want to talk a little bit, too,
25 about this unlawful conduct. There has not been

1 a lot of talk about it because the great weight
2 of the testimony has been about this quantity of
3 drugs. Remember, and the judge will instruct you
4 in just a few moments, that to prove the
5 defendant is guilty of that crime, the state has
6 to prove the defendant acted as a caretaker,
7 custodian, or parent of a child under 18. You
8 heard some testimony that the child in this case
9 was three -- you saw her on the video -- and the
10 defendant represented herself as the mother of
11 that child; and that the defendant did something
12 to place the child at an unreasonable risk of
13 harm.

14 The risk of harm that this child faces is
15 being exposed to the drug trade at such
16 extraordinary levels. The defendant placed her
17 child in a car seat directly above this quantity
18 of drugs. The child was necessarily there for
19 the receipt of this car; is going to be there
20 for the delivery of these drugs. That's what
21 poses such a danger, such an unreasonable risk
22 of harm, to this otherwise helpless child.

23 Now, the ultimate question that you will
24 discuss in deciding whether you believe that
25 this defendant is guilty is whether the

1 defendant knew these drugs were in the car.
2 There's a lot of evidence that you've heard over
3 the course of the day that suggests
4 overwhelmingly that this defendant knew exactly
5 what was inside that car. I want to go over some
6 of the things that you've heard as it has been a
7 long day of testimony.

8 One of the things that the Judge is going to
9 explain to you in her instruction is the
10 difference between direct and substantial
11 evidence. Direct evidence is exactly what it
12 sounds like: someone, themselves, saw something
13 or heard something or smelled something. That's
14 direct testimony. That's direct evidence that
15 something happened.

16 Circumstantial evidence is a little bit
17 different. Circumstantial evidence is an
18 inference that you make by seeing evidence that
19 leads you to the conclusion that something else
20 happened. For example, if you go to bed tonight
21 and you get up tomorrow morning and it has
22 snowed overnight, the ground is covered in snow
23 and you see footprints in the snow -- you were
24 asleep. You never saw somebody walking by your
25 house. You never heard, yourself, anyone walking

1 by the house as you were asleep, but you know
2 someone walked in that snow and walked by your
3 house by way of circumstantial evidence, that
4 those footprints wouldn't be there until --
5 unless someone had walked through. That's what
6 circumstantial evidence is about. It's about
7 connecting logical pieces of evidence to arrive
8 at a conclusion that makes sense.

9 So one of the things that you heard about,
10 not only on the video, but from the deputies
11 that participated in this traffic stop, is how
12 they found this defendant's ownership of the car
13 to be suspicious. They talked about the fact
14 that they were first stricken by the fact that
15 she agreed to purchase a car from a perfect
16 stranger for \$10,000; told the police that she
17 had paid that person, the perfect stranger,
18 \$4000; and had driven away with the car. Is that
19 reasonable? Is that -- does that ring true in
20 your common sense that a transaction like that
21 would take place? If you or yourself were
22 selling a car for \$10,000, would you let the
23 purchaser drive away with the car after only
24 then having paid you \$4000 of the purchase
25 price? Does that make sense?

1 The circumstances of how the defendant came
2 to be in possession of this car and where she
3 was going was also suspicious, according to
4 these deputies. She mentioned that she had flown
5 from Laredo, Texas, to Atlanta; had been there
6 for a short period of time; while she was there,
7 learned that this car was for sale; decided to
8 purchase that car; and then drive to visit
9 family in Georgia. That was the story -- I mean,
10 in Jersey. That was the story that was presented
11 there on the roadside on video that that was her
12 plan.

13 You heard testimony from the deputies that
14 they found that to be bizarre because there was
15 no meaningful itinerary. Is it reasonable that
16 the defendant who indicated that she worked at
17 Applebee's as a cook simply would not go in to
18 her job, visit family or friends in Georgia,
19 discover that a car was for sale, have \$4000 in
20 cash to purchase that car, and then continue to
21 develop additional plans to now travel to New
22 Jersey? Is that reasonable? Does that make
23 sense?

24 One of the things that I want you to
25 consider when you are deliberating is another

1 component of suspicious evidence, and it's
2 State's Exhibit 6. This is something we didn't
3 talk about a lot during the trial but I think
4 has some very powerful impact on your evaluation
5 of whether this defendant had knowledge about
6 what was happening, what criminal conduct was
7 happening, and what she was participating in.

8 State's Exhibit 6 is a document about a
9 completely different car. It is noted on this
10 form that this car was for -- was a Chrysler
11 200. And the purchase price, cash delivered,
12 \$4900 cash. So I know that Ms. Sanchez's
13 attorneys made great efforts to characterize
14 this as an offer to purchase and not proof of
15 purchase, but the evidence suggests that there
16 was a purchase, that cash was delivered, nearly
17 \$5000, on this date, and that this defendant is
18 the purchaser.

19 Why is that strange? Why is that suspicious?
20 Why is that weird? If that document is accurate,
21 there are a few things that necessarily follow:
22 One, that the defendant purchased a Chrysler 200
23 in Laredo, Texas, on June 21, 2017 and paid
24 \$5000 cash for it, or nearly \$5000.

25 Six days later, in Atlanta, Georgia, or

1 thereabouts, she purchased a completely separate
2 car. This time, a 2011 Kia Sportage for \$4000
3 cash and drove it and was going to drive it to
4 possibly New Jersey or possibly some other
5 destination. Does that make sense? Is it
6 reasonable to believe that that's how this
7 defendant was conducting personal business? Had
8 cash to conduct it? If it was an innocent
9 transaction, does that ring true? Or is there
10 something else going on here? Is there something
11 else happening with these cars? Is there some
12 other reason that she's purchasing in cash, car
13 after car after car in order to outfit them with
14 hidden compartments to ultimately transport
15 illegal drugs to wherever she is told to take
16 them? Isn't that far more likely?

17 Now, the other thing that's bizarre about
18 this transaction is that, according to the
19 document itself, it's labeled Laredo, Texas.
20 This transaction happened in Laredo. How did
21 they end up in the 2011 Kia in Greenville? It
22 necessarily means that the defendant made the
23 purchase in Laredo, packed the document, flew
24 with it to Atlanta, purchased the Kia, took the
25 document and placed it in the Kia. Why?

1 Again, what's really going on here? Why is
2 it important that she have proof of purchase of
3 this car in Laredo, if all we're doing is to go
4 visit family? All of that's relevant as you
5 decided whether you can believe that she had no
6 idea these drugs were in the car or whether the
7 evidence, instead, suggests that she knew
8 exactly what was happening and was part of the
9 conspiracy to move drugs from one location to
10 the next.

11 I think it's important, too, to talk about
12 the defendant's behavior. You heard testimony
13 repeatedly that the defendant was stoic
14 throughout this entire exchange; uncomfortably
15 comfortable was the expression used; showing no
16 emotion. You have got, in evidence, State's
17 Exhibit 10, which you heard former Deputy Reese
18 testify was the rear-facing camera. You have an
19 opportunity to watch exactly what happened in
20 the back seat during this entire exchange. You
21 can see how the defendant behaved herself.

22 The last witness that you heard from, just a
23 few moments ago, shared some information about
24 what makes the defendant's theory about not
25 knowing what was in the car completely

1 implausible, incredible, and unreasonable. At
2 best, at best, in its current form today, right
3 now without any further repackaging, monkeying,
4 or modification, right now, that quantity of
5 heroin would be sold cap by cap, point by point
6 to users to net \$1.7 million. That's at best.

7 If instead, it is to be diluted, as
8 Investigator Garrett described, if instead it is
9 to be cut and stepped on and added to with other
10 substances to stretch it out, its quantity
11 doubles, triples, quadruples. Now, we're talking
12 a potential \$7 million worth of heroin. Is it
13 reasonable to believe that the distributors of
14 this heroin would let it drive away? Is it
15 reasonable to believe that they would forget
16 it's in the car and sell the car? Is it
17 reasonable to believe that they would not send
18 it in a car with someone they didn't know? Is it
19 reasonable that they would allow someone to
20 transport the drugs that they didn't trust?
21 Millions of dollars of profit on the line. Is it
22 reasonable? That's the ultimate question.

23 The way that you will evaluate the evidence
24 in this case and the credibility of these
25 theories and the stories is whether you can

1 assign a credible, logical, rational reason to
2 it. Simply because the defendant can come up
3 with a fabricated explanation, some other
4 scenario that could exist, is it enough? It is
5 enough to create reasonable doubt only if you
6 are convinced that it is reasonable and that it
7 makes sense.

8 All of the circumstances of this case are
9 engineered to give the defendant some plausible
10 deniability. This was part of the program. This
11 was part of the system. She was likely told how
12 to answer questions by the police, how to deal
13 with the police if there was a traffic stop.
14 There was likely a specific reason to place a
15 small child in that car, to put a car seat in
16 the back seat to cover the bench. There was
17 probably a very specific reason to have any
18 plain car, a very clean car, that wouldn't
19 attract the attention of police. There was also
20 very good reason to have fabricated a bill of
21 sale, to make it look like a transaction, to
22 give the defendant a basis to say, "I don't
23 really know those people. I don't know anything
24 about that car." All of it is engineered to give
25 her an opportunity to say now in court, "I

1 didn't know." But it's just not reasonable for
2 you to believe based on all of the other
3 evidence that you have heard, all the other
4 things that point to just how much she had to
5 have been a direct, compensated drug trafficker.

6 The judge is going to explain to you that
7 because your verdict must be unanimous and that
8 you must be convinced of the defendant's guilt
9 beyond a reasonable doubt. Sometimes, judges
10 will explain that as being firmly convinced. It
11 is not the state's burden to prove the
12 defendant's guilt beyond on -- beyond all
13 possible scenarios. Instead, the state is
14 required to convince you of her guilt beyond a
15 reasonable doubt.

16 So please use your common sense, consider
17 all the things that you have heard today and ask
18 yourself during deliberations: Does this make
19 sense? Does this ring true in light of
20 everything you've seen? I'm going to ask you to
21 consider all the evidence that you have heard
22 and, in light of all of the testimony that you
23 have seen, find the defendant guilty of both of
24 these crimes. Thank you.

25 **THE COURT:** Thank you.

1 Mr. Martinez.

2 **MR. MARTINEZ:** May it please the Court.

3 **THE COURT:** Yes.

4 **MR. MARTINEZ:** Ladies and gentlemen of the
5 jury, this case is about knowledge and what a
6 person is expected to know when they buy a piece
7 of property. The state has to prove Victoria
8 guilty beyond a reasonable doubt and they have to
9 specifically prove that she knew the drugs were
10 in that vehicle. The state wants you to find her
11 guilty, though, based solely on the fact that she
12 was in that car and the drugs were found there.
13 But that's simply not enough.

14 Let's talk about where those drugs were
15 found. They were found in a secret compartment,
16 specially welded into this car. There was no
17 testimony today that anybody said that she welded
18 it or saw her place the drugs in there or she
19 said there were drugs in there, anything to that
20 nature. It took two well-trained, experienced law
21 enforcement officers about 15 minutes to even
22 access that compartment.

23 You heard from Master Deputy Harrison. He
24 knows more about any cars than anyone that I
25 probably ever seen. He even said most police

1 officers wouldn't even under the car to look.
2 Master Deputy Harrison has a years and years of
3 experience with aftermarket compartments. That's
4 why he gets under there and that's why he's able
5 to identify parts that shouldn't be there, parts
6 that have been lowered, factory weld versus
7 non-factory welds, bolts that are not -- not
8 straight from the factory.

9 That is Master Deputy Harrison; it's not
10 Victoria. She doesn't buy this car and get
11 underneath the car to look at whether there was
12 wash in certain places. She doesn't remove the
13 back seat as the officers did and mess around
14 with a fuel pump cover. I've never even seen the
15 fuel pump cover in my car.

16 This search required removal of that back
17 seat, removal of the cover plate. You watch how
18 thorough and how long it took these officers to
19 access that compartment. This is not case where
20 the drugs were found in the glove compartment, in
21 the center console, in the trunk, or in a duffel
22 bag in the back seat. This is an extremely
23 well-hidden compartment that they could not
24 establish her knowledge of.

25 You heard how she purchased the car the day

1 before. You've seen this bill of sale. You've
2 heard discussion of this bill of sale, the one
3 that is notarized, the one that is sworn before a
4 notary. And you heard from the officers. No
5 investigation that this bill of sale is anything
6 other than legitimate.

7 They want you to rely on this -- this offer
8 to purchase. They might say price of unit, but
9 that's exactly what it is. I realize it says cash
10 delivered price of the unit, but it doesn't say
11 anything else about amount paid. This is an offer
12 to purchase.

13 They want you to think that she just happens
14 to hear about this car in Atlanta and decided to
15 buy it. She was looking for a car. She didn't buy
16 this Chrysler. For whatever reason, she decided
17 she didn't want to. So when she gets to Atlanta,
18 she was visiting her cousin. Her cousin was like,
19 "I know a guy. He's got this Kia. Why don't you
20 buy that?"

21 The state wants you to think she paid cash
22 for that. There's been no evidence of that. All
23 we know is she purchased this car -- she told the
24 deputies that she purchased it for \$4000 and the
25 purchase price was 10,000. But she did not have

1 title. What can you infer from that? That upon
2 complete payment of the purchase price of the
3 10,000, she would get title and fully own this
4 car.

5 They want you to think -- they want you to
6 look at these red herrings about whether the car
7 was insured or registered to other parties. It's
8 not illegal to drive a car that's insured by a
9 third party or registered to a third party.

10 Just use your common sense. Why would anyone
11 who knows there is nearly \$8 million worth of
12 heroin in their car consent for the police to
13 search for it? The police want you to think -- or
14 the state wants you to think that, "Well, she
15 consented because she never thought we would find
16 it." She was free to go. Deputy Reese had handed
17 her the warnings. All she had to do was say, "No.
18 I'm good," and leave. But no, she said, "Sure,"
19 because she had no idea what was in that car. She
20 has no idea that there's over \$5 million worth of
21 heroin in that car. That's why she puts her child
22 in the back seat of that car.

23 She traveled to Atlanta to see family. She
24 had learned of a car there and then she was
25 planning to go to New Jersey. There does not need

1 to be an established itinerary. Not everyone in
2 this country travels like that. You don't need to
3 have this laid out itinerary to hand to law
4 enforcement every time you're stopped. That's not
5 how this works.

6 So the only thing that you have here is: her
7 in the car that is newly purchased and heroin
8 that is very, very well hidden. That's all you've
9 heard today. What you need to hear, what you
10 needed to hear, and what you didn't, was that
11 there was some evidence connecting her to the
12 heroin that was inside of that compartment? Where
13 are the fingerprints? Where's the DNA? Where's
14 the statement that says that she knew the drugs
15 were in that compartment?

16 You heard from Deputy Reese. You heard from
17 James Armstrong. You heard from Kara Bennick. All
18 they have to do is request the lab tests the
19 packaging for DNA or fingerprints. There were 70
20 blocks recovered from that car. They had 70
21 opportunities to try and find evidence, to bring
22 you evidence that demonstrated that she knew the
23 drugs were in that car, 70 opportunities to try.
24 They didn't do a single one. They did not even
25 try. And it was the state's decision to not try.

1 So all you have is a newly purchased vehicle and
2 a lot of drugs inside of it.

3 I've got a 12-year-old truck that works
4 pretty well right now. Sooner or later, I'm going
5 to need to look for a new car when it starts to
6 break down and things of that nature. The state's
7 theory is that I'm going to have to tear that car
8 down to its chastity to make sure there's nothing
9 illegal in it. I've got to remove the rims, the
10 wheels from the rims, I've got remove the doors
11 from the frame to make sure there's nothing in
12 there. There's not the standard.

13 I'm asking you to tell the state today that
14 is not the standard in this county. They need to
15 bring you more evidence to prove that Victoria
16 knew the drugs were there. Being in the car
17 simply is not enough.

18 It is not enough, if you go back in your
19 jury room to deliberate and you think, "Well,
20 she's probably guilty" or "She probably knew it,"
21 "She probably knew the drugs were there." There
22 is simply not enough. Your burden is to find her
23 guilty beyond a reasonable doubt. It is the
24 highest standard of proof in the legal system
25 short of absolute certainty.

1 All of the circumstances that you've heard
2 today -- this is a circumstantial evidence case.
3 There's been no direct evidence. All that lead
4 you to believe -- they need to be consistent and
5 lead you to believe that she knew the drugs were
6 there beyond a reasonable doubt.

7 Where's the evidence the state has presented
8 to you that does that? Her being in the car and
9 the drugs being in there are simply not enough.
10 Because they have not presented you more, I'm
11 going to ask you to go back in that jury room and
12 return a verdict of not guilty. Thank you.

13 **THE COURT:** Mr. Foreperson, ladies and
14 gentlemen of the jury, you have seen and heard
15 the evidence presented, as well as the arguments
16 of counsel. It now becomes my duty and obligation
17 to instruct you on the law applicable in this
18 case. It would then be your duty and obligation
19 to begin your deliberations, through which
20 process you will decide the facts, apply the law
21 as instructed by the Court, and determine whether
22 the state has met its burden of proof.

23 It is your exclusive duty to determine the
24 facts in this case. You do that based upon your
25 own common sense examination and evaluation of

1 the testimony and other evidence received in the
2 trial of this case.

3 You 12 jurors alone will decide what weight,
4 value and effect that is to be given to any
5 particular testimony or other evidence received.
6 Your ultimate goal is to determine whether the
7 state has met its burden of proof in this case
8 and, in doing so, you will have fulfilled your
9 obligation as jurors, and that is to give both
10 the state and the defendant a fair and impartial
11 trial based upon the evidence presented and the
12 law applicable to this case.
13 It is your duty to determine whether or not the
14 state has met its burden of proof.

15 In this case, the State of South Carolina
16 through the circuit solicitor -- through the
17 circuit solicitor, has charged the defendant with
18 the following criminal offenses: trafficking in
19 illegal drugs, more than 28 grams, and unlawful
20 neglect of a child. The allegations charging the
21 defendant with these crimes are set forth in the
22 indictments that have been previously explained
23 to you. The indictments are not evidence in this
24 case and may not be considered by you as evidence
25 against the defendant. The indictments will be in

1 the jury room with you, but only serve one
2 purpose, and that is: To serve as the verdict
3 forms on which your unanimous decisions will be
4 written.

5 Each indictment charges a separate and
6 distinct offense. You must decide each indictment
7 separately on the evidence and the law applicable
8 to it, uninfluenced by your decision as to any
9 other indictment. The defendant may be convicted
10 or acquitted on any or both of the offenses
11 charged. You will be asked to write a separate
12 verdict of guilty or not guilty for each
13 indictment.

14 As to the charges set forth in the
15 indictments, the defendant has entered a plea of
16 not guilty. That plea of not guilty has,
17 therefore, placed upon the state the burden of
18 proving the allegations that are set forth in
19 each of the indictments; the burden of proving
20 each of the essential elements of the crimes
21 charged; and, therefore, the burden of proving
22 the guilt of the defendant to the satisfaction of
23 you 12 jurors beyond a reasonable doubt before a
24 verdict of guilty can be returned as to any
25 indictment.

1 The burden is never upon a defendant to
2 prove that she is not guilty or to prove that she
3 is innocent because, in some cases, that might
4 not be possible. The burden is always upon the
5 state, because they have made the allegations, to
6 prove the defendant guilty beyond a reasonable
7 doubt.

8 You are further instructed that it is a
9 vital, important, and cardinal rule of law that
10 every defendant in a criminal trial, no matter
11 how serious the offense might be for which she
12 stands charged, shall always be presumed innocent
13 of that charge and that presumption of innocence
14 shall be with the defendant from the moment of
15 her arrest, and throughout the course of the
16 criminal process, and even throughout the course
17 of the actual trial.

18 The presumption of innocence shall be with
19 the defendant, even as you go into the jury room
20 to begin your deliberations and that presumption
21 of innocence shall be with her there and be with
22 her forever unless you 12 jurors determine that
23 she is no longer entitled to that presumption of
24 innocence. It is only if, unless, and until
25 you're satisfied of the defendant's guilt beyond

1 a reasonable doubt, that she would no longer be
2 entitled to the presumption of innocence.

3 I remind you that, during this trial, you
4 and I have certain duties to perform. As the
5 trial judge, it is my responsibility to preside
6 over the trial of this case, and I also have the
7 duty to rule on the admissibility of the evidence
8 offered during this trial. You are to consider
9 only the competent evidence before you. If there
10 was any testimony ordered stricken from the
11 record in this case, you must disregard that
12 testimony. You are to consider only the testimony
13 which has been presented from this witness stand,
14 any exhibits which have been made a part of the
15 record in this case, and any stipulations of
16 counsel.

17 I have the additional duty to charge you the
18 law applicable to this case. As the presiding
19 judge, I am the sole judge of the facts of this
20 case, and it is your duty as jurors to accept the
21 apply the law as I now state it to you. If you
22 already have any idea as to what the law is or
23 what the law ought to be and it does not agree
24 with what I now tell you the law is, you must
25 abandon this idea because you are sworn to accept

1 the law and apply the law exactly as I state it
2 to you.

3 In every case tried in this court before a
4 jury, the jury becomes the sole and exclusive
5 judge of the facts in a case. A trial judge
6 cannot intimate, state, comment on, or make any
7 statement to a trial jury about the facts in a
8 case. Since you, the jury, are the sole judges of
9 the facts in this case, you are not to infer from
10 what I have said during the process of this trial
11 in ruling upon the admissibility of evidence, or
12 otherwise, or anything that I now say during the
13 course of this instruction to you that I have an
14 opinion about the facts in this case. I do not.
15 The law does not allow me to have an opinion
16 about the facts in this case. This is a matter
17 solely for you, the jury, to determine. As
18 jurors, it is your duty to determine the effect,
19 value, weight and truth of the evidence presented
20 during this trial.

21 The state has the burden of proving the
22 defendant guilty beyond a reasonable doubt. Some
23 of you may have served as jurors in civil cases,
24 where you were told that it is only necessary to
25 prove that a fact is more likely true than not

1 true, such as by the greater weight or
2 preponderance of the evidence. In criminal cases,
3 the state's proof must be more powerful than
4 that. It must be beyond a reasonable doubt.
5 Reasonable doubt is the kind of doubt that would
6 make a reasonable person hesitate to act.

7 Proof beyond a reasonable doubt is proof
8 that leaves you firmly convinced of the
9 defendant's guilt. There are very few things in
10 this world that we know with absolute certainty.
11 And in criminal cases, the law does not require
12 proof that overcomes every possible doubt. If,
13 based on your consideration of the evidence, you
14 are firmly convinced that the defendant is guilty
15 of the crimes charged, you must find the
16 defendant guilty. If, on the other hand, you
17 think there is a real possibility that the
18 defendant is not guilty, you must give the
19 defendant the benefit of the doubt and find her
20 not guilty. Facts and circumstances that merely
21 place upon the defendant a grave suspicion of the
22 crime charged or that merely raise a speculation
23 or conjecture of the defendant's guilt are not
24 sufficient to authorize a conviction of the
25 accused.

1 There are two types of evidence which are
2 generally presented during a trial: direct
3 evidence and circumstantial evidence. Direct
4 evidence is the testimony of a person who claims
5 to have actual knowledge of a fact, such as an
6 eyewitness. It is evidence which immediately
7 establishes the main fact to be proved.

8 Circumstantial evidence is proof of the
9 chain of facts and circumstances indicating the
10 existence of a fact. It is evidence which
11 immediately establishes collateral facts from
12 which the main fact may be inferred.

13 Circumstantial evidence is based on inference and
14 not on personal knowledge or observation.

15 The law makes absolutely no distinction
16 between the weight or value to be given to either
17 direct or circumstantial evidence. Nor is a
18 greater degree of certainty required of
19 circumstantial evidence than of direct evidence.
20 You should weigh all of the evidence in the case.
21 After weighing all the evidence, if you are not
22 convinced of the guilt of the defendant beyond a
23 reasonable doubt, you must find the defendant not
24 guilty.

25 Necessarily, you must determine the

1 credibility of witnesses who have testified in
2 this case. Credibility simply means
3 believability. It becomes your duty as jurors to
4 analyze and to evaluate the evidence and
5 determine if the state has met its burden of
6 proof in this case.

7 In determining the believability of
8 witnesses who have testified in this case, you
9 may believe one witness over several witnesses or
10 several witnesses over one witness. You may
11 believe a part of the testimony of a witness and
12 reject the remaining part of the testimony of
13 that same witness. You may believe the testimony
14 of a witness in its entirety or reject the
15 testimony of a witness in its entirety. You may
16 consider whether the witness has exhibited to you
17 any interest, bias, prejudice or other motive in
18 this case. You may also consider the appearance
19 and manner of a witness while the witness stand.

20 The rules of evidence ordinarily do not
21 permit witnesses to testify to opinions or
22 conclusions. An exception to that rule exists for
23 witnesses we call "expert witnesses." A witness
24 who, by education and experience, has become an
25 expert in some art, science, profession or

1 calling, may state an opinion as to the relevant
2 and material matter in which the witness claims
3 to be an expert and may also state the reasons
4 for the opinion.

5 You should consider any expert opinion
6 received in evidence in this case and, like any
7 other evidence, give it the weight you think it
8 deserves. If you decide that the opinion of an
9 expert witness is not based on sufficient
10 education and experience or if you conclude that
11 the reasons given in support of the opinion are
12 not sound or that the opinion is outweighed by
13 other evidence, you -- excuse me, you may
14 disregard the opinion entirely.

15 An expert witness's testimony is to be given
16 no greater weight than that of other witnesses
17 simply because the witness is an expert. Further,
18 you're not required to accept an expert opinion,
19 even though it is not contradicted.

20 I instruct you and emphasize that the fact
21 that the defendant did not testify is not a
22 factor to be considered by you in any way in your
23 deliberation and in your consideration of the
24 question of whether the state has met its burden
25 of proof in this case. It must not be considered

1 by you in any manner whatsoever.

2 A defendant has the constitutional right to
3 remain silent. The assertion of this right must
4 not be considered by you in your deliberations. I
5 repeat: Under your oath, you are to draw no
6 conclusion whatsoever from the fact that the
7 defendant in this case did not testify. The fact
8 that this defendant did not testify should not
9 even be discussed in the jury room. The burden of
10 proof, as I have stated to you, is on the state.
11 The defendant is not required to prove her
12 innocence. The burden of proof remains on the
13 state to prove guilt beyond a reasonable doubt.

14 In order to establish criminal liability,
15 the state must also prove criminal intent. For a
16 particular crime, the mental state required might
17 be purpose, intent, knowledge, recklessness, or
18 criminal negligence. The state must prove
19 criminal intent beyond a reasonable doubt.
20 Criminal intent is a matter that must be
21 determined by the jury from the facts of the
22 case. There is no way to prove criminal intent to
23 a mathematical certainty, so the law says that
24 criminal intent may be inferred from the
25 circumstances shown to have existed. This is how

1 you determine whether the element requiring
2 intent was present. It is not necessary to
3 establish intent by direct evidence. Intent may
4 be established by circumstantial evidence or by
5 taking into consideration the acts of the parties
6 and all the facts and circumstances of the case.

7 Criminal intent is a mental state of
8 conscious wrongdoing. It is up to you to
9 determine what the defendant intended to do based
10 on the circumstances shown to have existed in
11 this case.

12 The state must prove beyond a reasonable
13 doubt that the defendant trafficked heroin 28
14 grams or more. The state need not prove that the
15 defendant trafficked heroin for less than 28
16 grams, only that she trafficked heroin for more
17 than 28 grams.

18 Trafficking means to knowingly sell,
19 manufacture, cultivate, deliver, purchase, bring
20 into this state, provide financial assistance, or
21 otherwise aid, abet, attempt, or conspire to
22 sell, manufacture, cultivate, deliver, purchase,
23 or bring into this state, or knowingly be in
24 actual or constructive possession, or knowingly
25 attempt to become in actual or constructive

1 possession of more than 28 grams of heroin.

2 To commit an act knowingly is to do so with
3 knowledge and awareness of the facts or situation
4 and not because of mistake, accident or some
5 other innocent reason.

6 Constructive possession means that the
7 defendant had dominion and control or the right
8 to exercise dominion and control over either the
9 heroin itself or the property on which the heroin
10 was found. Mere presence at the scene where the
11 drugs were found is not enough to prove
12 possession. Actual knowledge of the presence of
13 heroin is strong evidence of the defendant's
14 intent to control its disposition or use. The
15 defendant's knowledge and possession may be
16 inferred when a substance is found on the
17 property under the defendant's control. However,
18 this inference is simply an evidentiary fact to
19 be taken into consideration by you, along with
20 the other evidence in the case, and to be given
21 the weight you decide it should have.

22 The defendant is also charged with unlawful
23 neglect of the child. The state must first prove
24 beyond a reasonable doubt that the defendant had
25 charge or custody of the child, was the parent or

1 guardian of the child, or was responsible for the
2 care and support of the child.

3 A person responsible for a child's welfare
4 includes the child's parent, guardian, or an
5 adult who has assumed the role or responsibility
6 of a parent or guardian for the child. This does
7 not necessarily have legal custody of the child.
8 This does not include a person whose only role is
9 as a caregiver and whose contact is only
10 incidental with the child, such as a babysitter.

11 The state must also prove beyond a
12 reasonable doubt the defendant placed the child
13 at unreasonable risk, either affecting the
14 child's life, physical or mental health, or
15 safety; or two, unlawfully or maliciously did, or
16 caused to be done, bodily harm to the child so
17 that the life or health of the child is
18 endangered or likely to be endangered.

19 The term "child" means a person under the
20 age of 18.

21 The attorneys in this case have graciously
22 agreed to allow you to have my charge in written
23 form. You probably noticed I was reading to you,
24 and the reason is because I want to make sure
25 what I say to you, what I'm required to say to

1 you by law is exactly what I send you in the jury
2 deliberation room. I'll give you a copy of these
3 instructions in written form your deliberations.
4 You may refer to my instructions to guide your
5 decision-making.

6 You must consider the instructions as a
7 whole and not -- may not follow some and ignore
8 others. Please return the copy of the
9 instructions to the Court at the time your
10 verdict is rendered. If you need additional
11 copies of my written charge, I'm happy to provide
12 that to you.

13 Also, I know some took notes. I just want
14 you to remember that people hear and absorb
15 information in different ways. Some people are
16 notetakers. I am. Other people listen and don't
17 take notes. I just want you to understand that
18 someone's recollection might not be absolutely
19 correct just because they took notes or didn't
20 take notes. And I want you to take that into
21 consideration.

22 Ladies and gentlemen, please remember that
23 each indictment charges separate and distinct
24 offenses. You must decide each indictment
25 separately on the evidence and the law applicable

1 to it, uninfluenced by your decision as to any
2 other indictment. Your verdict as to each
3 indictment must be a unanimous one.

4 Mr. Foreperson, when the jury agrees on the
5 verdict, if you will, mark the verdict on the
6 indictments and sign your name as foreperson on
7 each. And you will see that there is a block in
8 the lower corner of each indictment for verdict.
9 Then, if you will turn on the light that
10 indicates that you've reached a verdict and
11 inform the bailiff you have a verdict, we will
12 receive you back in the courtroom at that time.

13 I ask that you now return to your jury
14 deliberation room for just one moment. I need to
15 take up some quick legal matters with the
16 attorneys. It will be your signal to begin your
17 deliberations when you get my charge in written
18 form, the indictments, and the evidence in this
19 case.

20 For obvious reasons, the drugs that had been
21 introduced into evidence are not provided to you
22 in the jury deliberation room. However, I will
23 say to you that if anyone wants to view those
24 drugs here, please let us know and we will
25 receive you back into the courtroom to do it in

1 here.

2 All right. Thank you so much for your
3 service in this case. And we'll be sending all
4 those documents back to you in a moment.

5 (Jury exits at approximately 3:28 p.m.)

6 **THE COURT:** All right. Any objection to my
7 charge on the law from the state?

8 **MS. OWENS:** No objection.

9 **THE COURT:** Any from the defense?

10 **MR. MARTINEZ:** Just my prior objection,
11 Your Honor.

12 **THE COURT:** All right.

13 **MR. MARTINEZ:** And I just, for the record,
14 renew directed verdict and all prior motions. And
15 I do want to put just one thing, for purpose of
16 the record. The video was redacted 4 minutes 52
17 seconds to 4 minutes 55 seconds and then 30
18 minutes to 30 minutes and 7 seconds.

19 And then, finally, the comment regarding the
20 child's father being in prison, I don't believe
21 that we -- that that is relevant, nor did we open
22 the door to that reference being considered by
23 the jury at all. I'm not sure how Your Honor
24 wants to handle them watching that video in the
25 back. I realize it is 15 minutes into the video,

1 so it may not be an issue, but to be cautious, I
2 wanted to address that with the Court.

3 **THE COURT:** All right.

4 **MS. OWENS:** The last thing I want to
5 undertake is attempting to create another disk.

6 **THE COURT:** Sure.

7 **MS. OWENS:** I propose, and how I've handled
8 this issue in the past is: If the jury would like
9 to view that particular exhibit, they can do it
10 in the courtroom under Your Honor's supervision
11 to be sure that no inappropriate or otherwise
12 inadmissible materials is made public.

13 **THE COURT:** And that's what we'll do. We
14 won't provide them with a DVD -- with a computer,
15 the clean computer from the clerk's office so
16 they won't have any means to do that.

17 If you would just instruct them, please,
18 that if they wanted to watch the videos, to let
19 us know and we'll bring them back into the
20 courtroom.

21 All right. If there's nothing else, I'd ask
22 y'all to agree on all the exhibits and then we'll
23 send them back.

24 (The Court goes off the record at approximately
25 3:31 p.m.)

1 (Deliberation of the jury begins at approximately
2 3:35 p.m.)

3 (The Court goes on the record at approximately
4 4:41 p.m.)

5 **THE COURT:** We have a note from the jury.
6 It says, "To exercise dominion or control over
7 the heroin itself or the property on which the
8 heroin was found, does the bill of sale give her
9 dominion and control of the vehicle?"

10 And I'm just going to have to write, "That's
11 question for you to determine."

12 **MS. OWENS:** That suits me, Your Honor.

13 **THE COURT:** All right.

14 **MR. MARTINEZ:** Yes, Your Honor.

15 (The Court goes off the record at approximately
16 4:42 p.m.)

17 (The Court goes on the record at approximately
18 4:49 p.m.)

19 (Jury enters at approximately 4:49 p.m.)

20 **THE COURT:** All right. Ladies and
21 gentlemen, we have got the back seat video cued
22 up for you. I want to advise you that it -- the
23 video itself is probably something like an hour
24 or something. But that being said, the video
25 begins immediately when the defendant gets in

1 the back of the car, so we do start there. I
2 will tell you this: That if you all want to let
3 Mr. Foreperson here know when you've seen enough
4 -- you can see the whole thing, if you want to.
5 That makes no difference with us. But when you
6 feel like you've seen enough, please do signal
7 to us and we're happy to turn it off at that
8 point. All right.

9 (State's Exhibit 9 is played.)

10 **THE COURT:** Mr. Foreperson, the jury's seen
11 what they wanted to see?

12 **THE JUROR:** Yes.

13 **THE COURT:** All right. Thank you. All
14 right. Then I'll just ask you to step back to
15 your jury deliberation room to continue your
16 deliberations. Thank you.

17 (Jury exits at approximately 4:58 p.m.)

18 **THE COURT:** All right. We're in recess
19 pending a verdict.

20 (The Court goes off the record at approximately
21 4:58 p.m.)

22 (The Court goes on the record at approximately
23 5:08 p.m.)

24 (Jury enters at approximately 5:08 p.m.)

25 **THE COURT:** Mr. Foreperson, it's my

1 understanding the jury has reached a verdict. Is
2 that correct?

3 **THE JUROR:** That's correct.

4 **THE COURT:** All right. If you would hand
5 the verdict forms to the bailiff please.

6 (The verdict forms are handed to the Court.)

7 **THE COURT:** The verdict forms appear to be
8 in order.

9 Madam clerk, I'm going to ask you to publish
10 them please.

11 **THE CLERK:** Your Honor, this is docket
12 number 2017-GS-23-010232, the State versus
13 Victoria Sanchez, indictment for unlawful
14 conduct towards a child, the verdict is guilty.
15 Signed, foreperson, Russell Mayes, December 3,
16 2018.

17 Your Honor, this is docket
18 number 2017-GS-23-010233, the State versus
19 Victoria Lorraine Sanchez, indictment for
20 trafficking heroin. The verdict is guilty.
21 Signed, foreperson, Russell Mayes, December 5,
22 2018.

23 If this is your verdict so say you all,
24 please signify by raising your right hand.

25 (Each juror responds.)

1 **THE CLERK:** Thank you.

2 **THE COURT:** All right. Thank you. Any
3 matters we need to take before I release the
4 jury, from the state?

5 **MR. SARRATT:** None from the State.

6 **THE COURT:** Any from the defense?

7 **MR. MARTINEZ:** No, Your Honor.

8 **THE COURT:** All right. Ladies and
9 gentlemen, I want to come back here and speak
10 with you. But before I do, thank you so much for
11 your service in this case. I'm going to step
12 back and say goodbye to you. The good news is
13 that the -- you -- this is going to conclude
14 your jury service for this week, so good. Very
15 good. I'll meet you in the back, but I won't
16 hold you up. I promise. Okay. Thank you.

17 (Jury exits at approximately 5:10 p.m.)

18 **THE COURT:** I'm going to step out and speak
19 to them for a moment, and I'll be back shortly.

20 (The Court goes off the record at approximately
21 5:10 p.m.)

22 (The Court goes on the record at approximately
23 5:20 p.m.)

24 **THE COURT:** Well, I will tell you that they
25 felt like everybody did a good job. They did --

1 they hated the fact that they know and knew that
2 these were not, you know, Ms. Sanchez's drugs;
3 that she was carry -- they felt like she was
4 carrying them for somebody else. I said, of
5 course, we don't have any information on that.

6 And they were concerned about your child.
7 They were very concerned about your child. I
8 will tell you that the jury was -- had a lot of
9 questions about that, but your attorney had told
10 me beforehand that the child is safe and with
11 family.

12 All right. I guess we need to move to the
13 part that I've been dreading, and I know
14 everyone has. How long has she been in jail?

15 **MR. MARTINEZ:** I've got it here somewhere.

16 **MS. OWENS:** Since arrest. I have -- I
17 didn't calculate for today's.

18 **MR. MARTINEZ:** I believe it's 524 days.

19 **THE COURT:** All right.

20 **MR. MARTINEZ:** 524.

21 **THE COURT:** And no prior record?

22 **MS. OWENS:** Correct, Your Honor.

23 **MR. MARTINEZ:** No prior record.

24 **THE COURT:** Certainly, we heard the facts.
25 All right. Yes, sir.

1 **MR. MARTINEZ:** May it please the Court?

2 **THE COURT:** Yes.

3 **MR. MARTINEZ:** We certainly respect the
4 jury's verdict. Victoria, from the beginning,
5 has maintained that she had no knowledge of
6 those drugs. You know, I think it's apparent
7 that given the weight and the value of those
8 drugs that she's certainly not a kingpin and is
9 not moving 7 -- nearly 7 kilos of heroin on her
10 own.

11 We understand that the sentencing range here
12 is 25 to 40. We're certainly asking for the
13 minimum here. She is -- she was arrested when
14 she was 23 years old; she's now 25. We believe
15 that a 25-year sentence is more than sufficient
16 for her conduct here. We believe that that would
17 be the same range that the kingpin who moved the
18 -- orchestrated the transportation and the
19 delivery and distribution of these -- this
20 heroin would be subject to that same sentence.
21 We believe that the 25-year sentence would be
22 appropriate in this case.

23 **THE COURT:** All right. Thank you.

24 Anything else from the state?

25 **MS. OWENS:** Your Honor, I just add what

1 we've already expressed to this point, that this
2 is a historically significant seizure in
3 Greenville County history. It's my understanding
4 from the deputies that they personally never
5 seized a quantity this large.

6 I think that speaks to a level of
7 involvement, a level of trust within the
8 organization. That reflects a great deal more
9 involvement than we may have been able to prove
10 with the evidence just in this case. The state
11 has some extraordinary concerns about this
12 defendant's connection to that criminal
13 enterprise and would ask this Court to consider
14 a sentence that is in keeping with the gravity
15 of her conduct.

16 **THE COURT:** Well, I certainly --
17 Ms. Sanchez, I take into consideration that you
18 don't have any criminal record. I do take that
19 into consideration, but I can't ignore the fact
20 that, you know, that -- I mean, certainly, and I
21 told you this in all candor earlier -- more
22 drugs than any case I've ever seen in the time
23 that I've been doing this. I'm -- the sentence
24 of the Court is 32 years, credit for 524 days
25 and 10 years concurrent, 524. Good luck to you.

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MS. OWENS: Thank you, Your Honor.

THE COURT: Thank you.

(The Court goes off the record at approximately
5:25 p.m.)

THE STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

THE STATE)

v.)

VICTORIA LORRAINE SANCHEZ,)

DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
 THIRTEENTH JUDICIAL CIRCUIT
 Warrant/Indictment Nos.: 2017GS23010232-233

**DEFENDANT'S PROPOSED
 JURY INSTRUCTION**

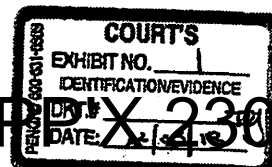
The defendant submits following proposed jury instructions:

1. There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.
2. Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.
3. The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

State v. Logan, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013).

Respectfully submitted,

GREENVILLE COUNTY PUBLIC DEFENDER



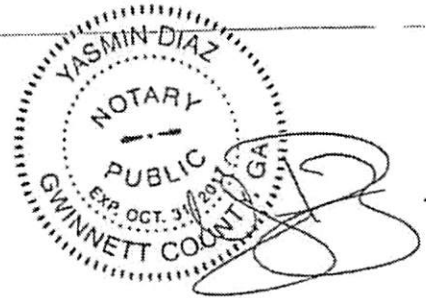
By: Michael Martinez
Michael Martinez, Esq
Attorney for Defendant
305 E. North Street, Suite 123
Greenville, SC 29601
(864) 467-8522

Date: December 5, 2018

Form T-7 (Rev. 09/2008)



BILL OF SALE



This bill of sale provides evidence that a transaction between the buyer and seller has taken place and that the odometer reading has been declared by the vehicle's seller and acknowledged by the vehicle's purchaser. NOTE: If a COURT-ORDERED SALE, attach the court order and provide the case number under the Seller/Transferor Name Below.

On 06/27/2017, I/we, EDWIN CAMPOS
Month, Day & Year of Sale/Transfer Seller(s)/Transferor(s) Full Legal Name(s)

ROSWELL RD APT ATLANTA GA 30342
Seller(s)/Transferor(s) Street Address, City, State & Zip

Court Order Case Number _____ Georgia Tax ID Number _____

Sold/transferred the following vehicle 2011 KIA SPORTAGE SX
Vehicle Year /Make/Identification Number

To VICTORIA LORRAINE SANCHEZ
Purchaser(s)/Transferee(s) Full Legal Name(s)

4302 SALINAS LAREDO TX 78041
Purchaser(s)/Transferee(s) Street Address, City, State & Zip

Seller(s)/Transferor(s) further states that there are no liens, security interests, or encumbrances on this vehicle except as listed below:

Lien, Security Interest or Encumbrance Holder(s) Name(s)

Lien, Security Interest or Encumbrance Holder(s) Street Address, City, State & Zip

Federal regulations require the seller(s)/transferor(s) to disclose the odometer reading and the purchaser(s)/transferee(s) to acknowledge the odometer reading upon the transfer of ownership of a vehicle that is not exempt from odometer disclosure requirements. Ten-model (10) years old and older vehicles are exempt from odometer disclosure requirements. If a vehicle is ten-model (10) years old or older, the seller/transferor may enter the word "exempt" in the space provided below for the odometer reading.

I/we hereby certify that to the best of my/our knowledge the odometer reading is 114,000 (no tenths) and reflects the total actual mileage of the vehicle unless one of the following statements is checked:

- ☐ The mileage on the vehicle is in excess of the mechanical limits of the odometer.
☐ The odometer reading is not the actual mileage - Warning Odometer Discrepancy

The Information in this Section is Required for Vehicles Purchased Outside Georgia or Pursuant to a Court Order*		
1. Purchase Price (Cash price plus taxable fees & charges)		\$ 10,000.00
2. Trade-in Allowance (Do not include down payment or any rebates.)		\$
3. Taxable Amount (Subtract line 2 from line 1 and record total.)		\$
4. Purchaser(s) Georgia County of Residence:		
5. Georgia Sales Tax Rate in Purchaser's County	%	
6. Tax Due Amount (Amount on line 3 multiplied by sales tax rate on line 5):	\$	
7. Credit (From sales tax paid to other state if applicable):	\$	
8. Georgia Sales Tax Due (Amount shown on line 6 minus amount shown on line 7):	\$	

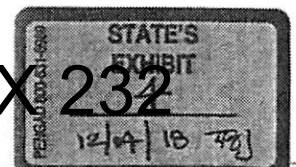
Victoria Sanchez
Purchaser(s)/Transferee(s) Signature(s)
Victoria Sanchez
Purchaser(s)/Transferee(s) Printed Name(s)

Edwin Campos
Seller(s)/Transferor(s) Signature(s)
Edwin Campos
Seller(s)/Transferor(s) Printed Name(s)

Seller's GEORGIA Sales Tax Number (if applicable)

*Effective January 1, 2006, a Georgia title will not be issued (if title required) for a vehicle purchased out-of-state or purchased pursuant to a court order unless sales tax is not due, paid with the application for title, or proof of payment of Georgia sales tax is submitted, e.g. contract, dealer's invoice, bill of sale showing the amount of Georgia sales tax paid or the seller's valid Georgia sales tax number is recorded on the bill of sale.

APP'X 232



ID Card

CLEAR BLUE INSURANCE COMPANY

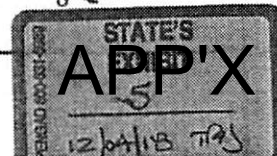
B-7 Tabernacle Street Suite 912 Guaynabo, PR 00958 (Hercin Company)
P.O. Box 5081, San Ramon, CA 94583 | 1-800-210-6584

State
GAPolicy Number
AG01-1372895.002

GEORGIA AUTOMOBILE INSURANCE CARD

CLEAR BLUE INSURANCE AGENCY Georgia - Liability Insurance Card		
Policy Number:	Effective Date:	Expiration Date:
	06/05/2017	12/05/2017
Year:	Make:	Model:
2011	KIA	SPORTAGE SX
NAIC #:	Body:	VIN:
28860	UTILITY 4X2 4DR	
Insured Name & Address:		
RIGOBERTO GUZMAN JR NORTHWOOD DR ATLANTA, GA 30342		
Agency Name:		Agency Phone:
FUERZA LATINA INSURANCE		404/252-6766
Drivers Listed on Policy:		
GUZMAN JR, RIGOBERTO		
Excluded Drivers and Their DOBs		
ESLY GUZMAN		
GEORGIA LIABILITY INSURANCE CARD Keep this card. IMPORTANT: This card or a copy of your insurance policy must be shown when you apply for or renew your: * motor vehicle registration * driver's license * motor vehicle safety inspection sticker You also may be asked to show this card or your policy if you have an accident or if a police officer asks to see it. All drivers in Georgia must carry liability insurance on their vehicles or otherwise meet legal requirements for financial responsibility. Failure to do so could result in fines up to \$1,000, suspension of your driver's license and motor vehicle registration, and impoundment of your vehicle for up to 180 days (at a cost of \$15 per day). For Amigo MGA customer service, call 1-800-210-6584.		
In Case of an Accident 1. Do not leave the scene of the accident. 2. Get the names and addresses of the drivers and owners of all vehicles involved. 3. Get the names and addresses of all occupants of the vehicles including your own. 4. Do not admit you were at fault or discuss the accident with anyone other than your company representative or investigating police authorities. 5. Get the names and addresses of all witnesses. To report an accident call Blackhawk Claims immediately at 1 800-999-0107. Keep this card in your motor vehicle while in operation, as evidence of insurance.		
IMPORTANT NOTICE This policy provides at least the minimum amounts of liability insurance required by the Georgia Motor Vehicle Safety Responsibility Act for the specified vehicle and named insured and may provide coverage for other persons and other vehicles as provided by the insurance policy. To report an accident call 1 800-999-0107. If the driver(s) or vehicle(s) listed above have changed, please contact your Agent, immediately.		

CLEAR BLUE INSURANCE AGENCY Georgia - Liability Insurance Card		
Número de Póliza:	Fecha de Vigencia:	Fecha de Vencimiento:
	06/05/2017	12/05/2017
Año:	Marca:	Modelo:
2011	KIA	SPORTAGE SX
NAIC #:	Estilo:	VIN:
28860	UTILITY 4X2 4DR	
Nombre del Asegurado y Dirección:		
RIGOBERTO GUZMAN JR NORTHWOOD DR ATLANTA, GA 30342		
Nombre de la Agencia:		Teléfono de la Agencia:
FUERZA LATINA INSURANCE		404/252-6766
Conductores Nombrados en la Póliza:		
GUZMAN JR, RIGOBERTO		
Conductores Excluidos y sus Fechas de Nacimiento		
ESLY GUZMAN		
TARJETA DE SEGURO DE RESPONSABILIDAD DE GEORGIA Guarda esta tarjeta. IMPORTANTE: Esta tarjeta o una copia de su póliza de seguro debe ser mostrada cuando usted solicite o renueve su: * registro de vehículo de motor * licencia para conducir * etiqueta de inspección de seguridad para su vehículo Puede que usted tenga también que mostrar esta tarjeta o su póliza de seguro si tiene un accidente o si un oficial de la paz se lo pide. Todos los conductores en Georgia deben de tener seguro de responsabilidad para sus vehículos o de otra manera cumplir los requisitos legales de responsabilidad civil. Fallar en cumplir este requisito pudiera resultar en multas de hasta \$1,000, suspensión de su licencia para conducir, su registro de vehículo de motor y la retención de su vehículo por un periodo de hasta 180 días (a un costo de \$15 por día). Para contactar al servicio al cliente de Amigo MGA, llame al 1-800-210-6584.		
En Caso De Un Accidente 1. No abandone la escena del accidente. 2. Obtenga los nombres y las direcciones de los conductores y los dueños de todos los vehículos involucrados. 3. Obtenga los nombres y las direcciones de todos los ocupantes de los vehículos incluyendo el suyo. 4. No admita ser culpable o discuta sobre el accidente con ninguna persona que no sea el representante de su compañía o investigadores policiales. 5. Obtenga los nombres y las direcciones de todos los testigos. Para reportar un accidente llame a Blackhawk Claims inmediatamente al 1 800-999-0107. Mantenga esta tarjeta en su vehículo en todo momento como prueba de su seguro.		
AVISO DE IMPORTANCIA Esta póliza provee de por lo menos la cantidad mínima de seguro de responsabilidad requerida por la ley (Georgia Motor Vehicle Safety Responsibility Act) para el vehículo especificado y para los asegurados nombrados y puede proveer cobertura para otras personas y otros vehículos según provisto en la póliza. Para reportar un accidente llame a 1 800-999-0107. Si el conductor(es) o vehículo(s) mencionado anteriormente han cambiado, contacte a su Agente inmediatamente.		



PEIS AUTO SALES

2305 SAN BERNARDO AVE. * TEL. (956) 602-4904

LAREDO, TEXAS 78040

OFFER TO PURCHASE

06-21-2017

DATE

J. Hdz

SALESMAN'S NAME

Victoria Sanchez

NAME

Salinas

ADDRESS

(56) 441 63-39

HOMEPHONE

WORK PHONE



USED



CAR



TRUCK

MODEL
OR SERIES

BODY
TYPE 200

COLOR

YEAR 2014

MAKE Chrysler

MVI OR SERIAL NO.

CASH DELIVERED PRICE OF UNIT

\$4,900 cash

REMARKS

Trade In

Total

Salvage Rebuilt

Title

Doc Fee

Lic Plate

Tax

Buyertag

Vit

Inspection

Processing Fee

ESTE MUEBLE SE VENDE ASI COMO ESTA
NO TIENE GARANTIA

**SOLD AS IS
NO WARRANTY**

**NO REPAIR
REFUND**

DISCLAIMER OF WARRANTIES

ANY WARRANTIES ON THE PRODUCTSSOLD HEREBY ARE THOSE MADE BY THE MANUFACTURER THE SELLER PEIS AUTO SALES HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. END PEIS AUTO SALES NEITHER ASSUMES NOR AUTHORIZAS ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE SALE OF SAID PRODUCTS.

SUB TOTAL

BALANCE OWED ON TRADE-IN

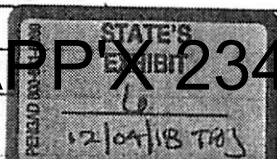
SUB TOTAL

CASH DOWN PAYMENT

UNPAID CASH BALANCE
DUE ON DELIVERY

PURCHASER'S SIGNATURE

APPX 234



010232

DOCKET NO. 2017-GS-231
KBS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2017

~~December~~

THE STATE

vs.

VICTORIA LORRAINE SANCHEZ

WITNESSES

M P Gura

Greenville County Sheriffs Office

6/30/2017

ARREST WARRANT NUMBER
2017A2330206198ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

2481

Indictment for

UNLAWFUL CONDUCT TOWARDS A CHILD

VIOLATION § 63-05-0070

Foreperson of Petit Jury

Date:

12/5/18

APX 235

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 UNLAWFUL CONDUCT TOWARDS A CHILD

At a Court of General Sessions, convened on

DEC 19 2017

the Grand Jurors of Greenville

County present upon their oath:

That VICTORIA LORRAINE SANCHEZ did in Greenville County, between the 28th day of June, 2017, while being the legal custodian, parent, or guardian, place the child, Y.M.O., (1) at unreasonable risk of harm affecting the child's life, physical or mental health, or safety; or (2) unlawfully or maliciously do or cause to be done any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered; or (3) willfully abandon the child. This is in violation of § 63-05-0070 of South Carolina Code of Laws (1976) as amended.

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


 SOLICITOR

BAR # 73989

APP'X 236

DOCKET NO. 2017-GS-23-^{KBS} 010233

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December TERM 2017

THE STATE

vs.

VICTORIA LORRAINE SANCHEZ

WITNESSES

Andrew H. Reese

Greenville County Sheriffs Office

6/29/2017

ARREST WARRANT NUMBER

2017A2330206147

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

GUILTY

0149

Indictment for

TRAFFICKING HEROIN

VIOLATION § 44-53-0370

Foreperson of Petit Jury

Date:

12/5/18

APPX 237

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING HEROIN

At a Court of General Sessions, convened on

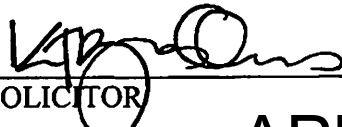
the Grand Jurors of Greenville

DEC 19 2017

County present upon their oath:

That VICTORIA LORRAINE SANCHEZ did in Greenville County, on or about the 28th day of June, 2017, knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 28 grams of Heroin. This is in violation of §44-53-0370 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 73989

APP'X 238

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Victoria Lorraine Sanchez

AKA:

Race: WHITE Sex: F Age: 25

DOB: -1993 SS#:

Address: Salinas

City, State, Zip: Laredo, TX 78041

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: UNLAWFUL CONDUCT TOWARDS CHILDUp to 10 yrs
IN THE COURT OF GENERAL SESSIONS

239

INDICTMENT/CASE#: 2017GS2310232

A/W#: 2017A2330206198

Date of Offense: 6/29/2017

S.C. Code § : 63-05-0070

CDR Code #: 2481

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lowd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Owens, Katryna Bevis

73989

SC Bar#

Defendant

MARTINEZ, MICHAEL
Attorney for Defendant

101800

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Paul B. Wickensamer

Court Reporter:

Teresa Johnson

SCCA/217 (04/2018)

Presiding Judge

Judge Code: 2162

Sentence Date: Dec 27/18

APPX 239

Fax to Jail 12-5-18 12-6-18

SCDC

240
STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Victoria Lorraine Sanchez

AKA:
Race: WHITE Sex: F Age: 25
DOB: [REDACTED]-1993 SS#: [REDACTED]
Address: [REDACTED] Salinas Ave
City, State, Zip: Laredo, TX 78041
DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: TRAFFICKING IN HEROIN, GREATER THAN 28 GRAMS

25-40 YRS AND \$200,000
IN THE COURT OF GENERAL SESSIONS
1693270

INDICTMENT/CASE#: 2017GS2310233
A/W#: 2017A2330206147
Date of Offense: 6/29/2017
S.C. Code § : 44-53-0370(E)(3)(
CDR Code #: 0149

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0370(E)(3)(of the S.C. Code of Laws, bearing CDR Code # 0149
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY: [Signature] 73989 101800
Owens, Katryna Bevis SC Bar# Defendant MARTINEZ, MICHAEL SC Bar#
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 32 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:
§14-1-206 (Assessments 107.5 %) \$
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§14-1-211(A)(2) (DUI Surcharge) \$100 \$
§56-5-2995 (DUI Assessment) \$12 \$
§56-1-286 (DUI Breath Test) \$25 \$
Proviso (Public Def/Probation) \$500 \$
§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00
§50-21-114(BUI Breath Test Fee) \$50 \$
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk Paul B. Nickerson

Court Reporter: Teresa Johnson

SCCA/217 (04/2018)

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

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge [Signature]
Judge Code: 2062
Sentence Date: 06-29-18

APP X 240
Fax to Jail 12-5-18 SCDC 12-6-18

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Adam Sinclair Ruffin
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 6th day of March, 2020.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Letitia H. Verdin, Circuit Court Judge

THE STATE

RESPONDENT,

V.

VICTORIA LORRAINE SANCHEZ

APPELLANT.

APPELLATE CASE NO. 2018-002163

FINAL BRIEF OF APPELLANT

ADAM SINCLAIR RUFFIN
Appellate Defender

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

ATTORNEY FOR APPELLANT

APP'X 242

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the Court erred in denying Appellant's motion to suppress the drugs found in her vehicle when the officer engaged in broad, off-topic questioning to unreasonably prolong the traffic stop beyond its original scope, withheld giving Appellant the warning tickets, then requested consent to search without reasonable suspicion that Appellant was engaged in criminal activity, and then exceeded the scope of consent since this constituted an illegal search and seizure under the totality of the circumstances, and violated Appellant's right to privacy under the South Carolina Constitution?

2.

Whether the Court erred in denying Appellant's motion for a directed verdict since there was no substantial circumstantial evidence presented that Appellant knew there were drugs in the vehicle?

3.

Whether the Court erred in refusing to charge the jury the State v. Logan circumstantial evidence instruction when the state relied exclusively on circumstantial evidence to attempt to prove the element of knowledge of the drugs since the Supreme Court held this instruction should be given when requested by a defendant?

STATEMENT OF THE CASE

Appellant was indicted by the Greenville County grand jury for trafficking more than 28 grams of heroin and unlawful conduct towards a child. R. 235-238. Appellant's jury trial was held before the Honorable Letitia H. Verdin from December 4, 2018 through December 5, 2018. R. 1. Appellant was represented by Michael Martinez and Stuart Sarratt and the state was represented by Katrina Owens. R. 1.

The jury found Appellant guilty of both counts and the Court sentenced her to thirty-two years imprisonment on the drug trafficking and concurrent ten years imprisonment on the unlawful conduct charge.

This appeal follows.

ARGUMENT

1.

The Court erred in denying Appellant's motion to suppress the drugs found in her vehicle because the officer engaged in broad off-topic questioning to unreasonably prolong the traffic stop beyond its original scope, withheld giving Appellant the warning tickets, then requested consent to search without reasonable suspicion that Appellant was engaged in criminal activity, and then exceeded the scope of consent since this constituted an illegal search and seizure under the totality of the circumstances and violated Appellant's right to privacy under the South Carolina Constitution.

Standard of Review

An appeal of a trial court's ruling on a motion to suppress evidence based on Fourth Amendment grounds is reviewed for clear error only. State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010). The appellate courts must affirm if there is any evidence to support the decision of the trial judge. State v. Provet, 405 S.C. 101, 107, 747 S.E.2d 453, 456 (2013). "However, this deference does not bar this Court from conducting its own review of the record to determine whether the trial judge's decision is supported by the evidence." Tindall, 388 S.C. at 521, 698 S.E.2d at 205 citing State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 459 (2002).

Relevant Facts

On June 28, 2017, Greenville County Sheriff's Office received a tip from the Department of Homeland Security that a silver Kia left a suspected drug location in Atlanta, Georgia and was driving North on I-85 towards Greenville. R. 9, l. 22 – 10, l. 7. The tip did not include any information about the identity of the driver or whether there was anything illegal in the car. R.

18, ll. 18 – 22. Homeland Security asked Greenville Sheriff's Office if they could "intercept" the car. R. 33, l. 23 – 34, l. 2. The plan of the Greenville County deputies was to keep an eye out for this car and stop the car "if [they] can find a reason." R. 18, l. 23 – 19, l. 2. Deputy David Harrison ("Harrison") with the Greenville County Sheriff's Office referred to their attempting to initiate a traffic stop as "just a poke and a hope." R. 34, ll. 4 – 5.

Deputy Andrew Reese ("Reese") with the Greenville County Sheriff's Office initiated a traffic stop on this silver Kia for allegedly crossing over the dotted line and traveling too close behind a tractor trailer. R. 9, ll. 4 – 21. Reese approached the passenger side of the vehicle to obtain basic information like license, registration and insurance. R. 10, ll. 13 – 20; State's Ex. 9 at 1:00-1:13 (Dash cam video on file with this Court). Appellant, who was the driver of the silver Kia, provided Reese with a Texas identification card, vehicle registration and proof of insurance. R. 10, ll. 21 – 25. The registration and insurance were in two different people's names. R. 10, ll. 21 – 25. Reese noticed that Appellant also had her minor child in the back seat of the vehicle. R. 13, ll. 10 – 16; State's Ex. 9 at 1:55.

Appellant informed Reese that she was heading to New Jersey. R. 13, ll. 4 – 9; State's Ex. 9 at 1:42 – 1:45. She also informed him that she recently purchased the vehicle and provided him with a bill of sale. R. 11, ll. 4 – 7. Reese claimed that he noticed some "indicators of criminal behavior" to include that Appellant was drinking Red Bull, was in possession of two cell phones¹ and that the vehicle key was the only key on her keychain. R. 11, l. 8 – 42, l. 2. Reese informed Appellant that it was "not a big deal" that she did not have a driver's license but

¹ Although Reese testified during the suppression hearing that one of the reasons he was suspicious of Appellant was the fact that she had two cell phones, it appears from the dash cam video that Reese does not actually discover this until well into the search. State's Ex. 9 at 23:00 – 24:00. The video was reviewed by the Court and on it, Reese can be heard stating "flip phone" while searching through the driver's seat area of the vehicle. State's Ex. 9 at 23:40.

still asked her to step out of the vehicle and leave her child in the car on the side of the interstate while he ran her information. State's Ex. 9 at 3:23 – 3:43.

Reese then engaged in very broad, off-topic questioning of Appellant to include her educational background, her personal background, her place of employment, her romantic life and her children. State's Ex. 9 at 3:50 – 12:00. While Appellant was standing outside the passenger side door of Reese's patrol car, he began questioning her about where she was from. State's Ex. 9 at 4:00. Appellant informed Reese that she was from Laredo, Texas and had flown to Georgia to visit her cousin. State's Ex. 9 at 4:00 – 5:05. While she was there, she purchased the vehicle that she was currently driving. State's Ex. 9 at 4:00.

Reese asked Appellant how much she paid for the car, what she was going to be doing in New Jersey and he also asked about her employment history. State's Ex. 9 at 4:00 – 5:00. When Reese asked Appellant if she had been saving money so she could take time off work she informed him that her family in New Jersey "has money." State's Ex. 9 at 5:45. Reese continued his off-topic questioning by asking Appellant where her other children were, how long she had been dating her boyfriend, why "he ain't [sic] put a ring on [her] finger yet" and if she was "not pushing him to." State's Ex. 9 at 6:25 – 6:40. Reese also asked Appellant what her boyfriend did for work. State's Ex. 9 at 6:40.

At this point, Reese asked Appellant if there were drugs in the car. State's Ex. 9 at 6:55. Reese specifically asked if there was any "marijuana, methamphetamine, crack-cocaine, ecstasy, [or] large amounts of drug tainted US currency." State's Ex. 9 at 7:00. Appellant said "no" to all of them. State's Ex. 9 at 7:00. Reese then began to question Appellant about her ethnicity and whether she ever lived in Mexico or if she had any family that lived in Mexico. State's Ex. 9 at 7:00 – 7:45. Reese asked Appellant if she went to college, how she learned to cook and what

she did with the food she cooked while she was in culinary school. State's Ex. 9 at 8:00 – 9:00. Reese went back to asking Appellant about her employment history and also asked about the size of her hometown, Laredo, Texas. State's Ex. 9 at 9:30 – 10:20.

Throughout Reese's questioning of Appellant, she remained calm, answered his questions and denied illegal activity. R. 25, ll. 2 – 19; State's Ex. 9 at 3:50 – 12:00. She did not appear to be nervous and did not exhibit nervous behaviors like sweating or shaking. R. 25, ll. 2 – 19.

After conducting his computer checks on Appellant and the vehicle, Reese made the decision to issue Appellant warning tickets. R. 13, l. 17 – 14, l. 4. He "explained the warning to her . . . to make sure . . . she understood what she did wrong." R. 13, ll. 21 – 23. Appellant indicated that she understood the warnings and did not have any questions. State's Ex. 9 at 12:00. However, before Reese handed her the warning tickets, he asked Appellant for permission to search the car. State's Ex. 9 at 12:10. Appellant responded "sure." Reese then asked Appellant to pull her three-year-old daughter out of the car while 18-wheeler trucks were driving by and stand on the side of the interstate while he began to look through their personal belongings. State's Ex. 9 at 12:10 – 12:40.

Reese told Appellant to stand with another officer, Deputy Wasserman, while he began to search the vehicle. R. 27, ll. 16 – 18; State's Ex. 9 at 12:50. Reese looked through the interior of the car including through Appellant's purse and her luggage in the trunk. R. 28, ll. 9 – 19. Appellant's purse and luggage both contained personal items. R. 28, ll. 20 – 22. When Harrison arrived, Reese was searching through the trunk of the car. R. 35, ll. 11 – 15. Harrison claimed that he believed the vehicle might contain a hidden compartment because it was a newly purchased car that had registration and insurance in two different people's names, that the vehicle was heading from Atlanta to New Jersey, both known drug source areas, and that there

was nothing fancy or flashy about the vehicle to draw attention from law enforcement. R. 36, ll. 2 – 24.

Over three minutes into the search, Reese started taking Appellant and her child's luggage out of the trunk and putting it down on the side of the interstate. State's Ex. 9 at 16:35. After five minutes of searching inside the vehicle, including rummaging through Appellant and her three-year-old daughter's luggage, Harrison began looking underneath the vehicle. State's Ex. 9 at 18:50. Harrison claimed that he could tell that the fuel tank appeared to have been lowered and the bolts holding it in were elongated and freshly painted. R. 38, l. 5 – 10. At that point Harrison pulled the three-year-old girl's car seat out of the back and put it on the ground on the side of the interstate. State's Ex. 9 at 20:25. For the next several minutes the officers tried to figure out a way to gain access to the supposed hidden compartment they believed to be under the back seat. State's Ex. 9 at 20:30 – 28:00.

In trying to gain access to what the officers believed to be a hidden compartment, Reese pulled the rear seat cushion out of the car and threw it on the ground. State's Ex. 9 at 24:45. Harrison then retrieved his crow bar which he referred to as his “‘master key’ because we do have to break into a lot of these compartments.” R. 39, ll. 16 – 21. Harrison brought the crow bar with him to the back seat of the car to try to pry open the compartment. State's Ex. 9 at 27:40. Harrison then stated:

I went to pry the lid up or see if I [could] pry it up, and one of the screws . . . had been sawed off and then glued to the lid to make it look like the screws were still being used. . . . [T]hey had taken a trunk lock, which is what would hold your trunk lid down for your car, and they had welded it inside of the compartment and then welded a small hook to the factory fuel pump cover. And that was the access door for the compartment. When I went to go pry it, it was loose. I turned it. Picked it up.

R. 40, ll. 1 – 11. Inside the compartment were several Ziploc bags that had rectangular packages inside them. R. 16, ll. 9 – 15. After opening the packages, they revealed a brown powder substance which ultimately was confirmed to be heroin. R. 16, ll. 13 – 15; R. 165, ll. 21 – 25.

Motion to Suppress

Defense counsel made a pre-trial motion to suppress the drugs found in the silver Kia. R. 5, l. 11 – 7, l. 9. During the suppression hearing the state called Andrew Reese and David Harrison. R. 7, l. 11 – 44, l. 25. Their testimony, along with the dash cam video of the traffic stop and subsequent search of the vehicle established the above referenced facts. See State's Ex. 9; R. 7, l. 11 – 44, l. 25.

At the conclusion of the testimony defense counsel moved to suppress the drugs found during the search. Counsel argued that Reese unreasonably prolonged the traffic stop in violation of Rodriguez v. United States, 135 S.Ct. 1609 (2015), by engaging in broad off-topic questioning. R. 47, l. 18 – 50, l. 6. Counsel argued that this off-topic questioning into Appellant's education, place of origin, romantic life, employment history and the whereabouts of her children all unreasonably extended the duration of the stop. R. 47, l. 18 – 50, l. 6. Counsel further argued that Reese did not have reasonable suspicion to continue detaining her. R. 49, ll. 16 – 22. Specifically, defense counsel argued that Appellant had luggage in her car with personal items for her trip, she had documentation that supported her purchase of the car from the day before and she had a clear itinerary of traveling to New Jersey to see family. R. 49, ll. 5 – 15.

The assistant solicitor responded by arguing that Reese's off-topic questioning did not extend the duration of the stop because the whole time he was questioning Appellant he was typing on his computer filling out his paperwork. R. 50, l. 9 – 51, l. 9. The solicitor argued that

as soon as Reese finished the warning tickets, he explained them to Appellant and gave them to her. R. 51, ll. 9 – 11. The solicitor further argued that Reese did have reasonable suspicion to request Appellant's consent to search because she had Red Bull cans, no driver's license and that the registration and insurance were in different people's names. R. 52, ll. 1 – 9. The solicitor also argued that reasonable suspicion was supported by the fact that the bill of sale Appellant gave to Reese indicated a purchase price of \$10,000 but Appellant said she had only paid \$4,000 so far. R. 52, ll. 10 – 20.

The Court ruled that the stop was not unreasonably prolonged by the off-topic questioning and that Reese did have reasonable suspicion based on the "Red Bull can; no driver's license is a very big one; the third-party insurance; and unclear ownership of the car." R. 53, ll. 12 – 24. Defense counsel pointed out that Appellant had not received the title to the car yet because she had only paid \$4,000 of the \$10,000 purchase price. R. 54, ll. 6 – 12.

Counsel then argued that in addition to the off-topic questioning, Reese also seized Appellant anew by withholding the warning tickets from Appellant and asking for consent to search her car without reasonable suspicion. R. 54, l. 21 – 55, l. 8. Counsel argued that a roadside consent request is different from a field interview because there has already been a seizure and therefore a reasonable person would not feel free to leave. R. 55, ll. 5 – 14. Counsel argued that Appellant had already been stopped and pulled out of her car and questioned for nearly ten minutes about unrelated topics; there were two uniformed, armed police officers present; she was not told that she was free to leave and the transition from the stop to the request for consent to search happened so quickly that she would not have realized the initial seizure had ended. R. 55, ll. 14 – 25. Counsel again argued that there was no reasonable suspicion because Appellant was not nervous or shaking and she answered Reese's questions calmly. R. 56, ll. 1 –

7. Therefore, Appellant's consent was obtained as an exploitation of the initial seizure. R. 56, ll. 11 – 12.

The Court ruled that there was enough reasonable suspicion to request consent to search and that the stop was not extended. R. 57, ll. 18 – 22. The Court also ruled that Appellant's consent was not coerced and was given voluntarily. R. 57, ll. 18 – 22.

Defense counsel also argued that the officers exceeded the scope of consent. R. 57, ll. 23 – 24. Counsel argued that the South Carolina Constitution's express right to privacy prevents officers from having carte blanche to search wherever they want even when an individual does not specifically limit the scope of consent. R. 57, l. 24 – 58, l. 5. Counsel cited to Florida v. Jimeno, 500 U.S. 248 (1991) and State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001) in support of this position. Counsel argued that the search performed by Reese and Harrison far exceeded what a reasonable person would have believed the request to search entailed because parts of the vehicle were removed. R. 58, ll. 11 – 25.

The Court ruled that consent was voluntarily given by Appellant, she was present for the search and that she never objected or attempted to limit the scope of the officers' search at any point. R. 59, ll. 1 – 8. The trial judge cited to State v. Funderburk,² stating that "that case is practically on all fours with this factual scenario" and that the scope of consent was not exceeded. R. 59, ll. 4 – 11. The trial judge then denied Appellant's motion to suppress. R. 59, ll. 15 - 17.

² 367 S.C. 236, 625 S.E.2d 248 (2006). Although the transcript reads "*State v. Funderburg*," it appears from the context of the trial judge's comments and her reference to Judge Miller that this is a scrivener's error and the actual case she was referring to was State v. Funderburk.

Jury Trial

Reese and Harrison both testified in front of the jury as to their involvement in the search of the silver Kia. R. 72, l. 17 – 99, l. 16; R. 103, l. 1 – 123, l. 22; R. 89, l. 17 – 106, l. 12. At trial, Harrison testified that in order to have installed the hidden compartment a person would have had to remove the fuel tank from underneath the car, then the person would have had to weld the compartment to the underside of the car's frame and then reinstall the fuel tank using extended screws and bolts to hold it in. R. 139, l. 11 – 141, l. 5.

The state also admitted the video of the dash cam showing the traffic stop and search of the car, State's Ex. 9. R. 110, ll. 2 – 11. The state moved to introduce the drugs found in the vehicle, State's Ex. 7 and 8 and defense counsel renewed his objection. R. 166, ll. 8 – 16. The Court admitted the evidence over counsel's objection. R. 166, ll. 17 – 18.

Discussion

"The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures." State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001). When evidence against a criminal defendant is obtained in violation of the Fourth Amendment it cannot be used against him in court. Weeks v. United States, 232 U.S. 383 (1914). The Supreme Court of the United States made this exclusionary rule applicable to the States in Mapp v. Ohio, 367 U.S. 643 (1961). "Therefore, all citizens enjoy this federal constitutional protection in every criminal proceeding." Forrester, 343 S.C. at 643, 541 S.E.2d at 840.

The South Carolina Constitution also contains a provision protecting people from unreasonable searches and seizures. S.C. Const. art. I, § 10. However, our State Constitution goes further than the U.S. Constitution by including an express right of the people against "unreasonable invasions of privacy." Id. "Thus, this Court can interpret the state protection

against unreasonable searches and seizures in such a way as to provide greater protection than the federal Constitution.” Forrester, 343 S.C. at 644, 541 S.E.2d at 840.

A. The Court erred in denying Appellant’s motion to suppress because Reese engaged in broad off-topic questioning and withheld the warning tickets which unreasonably prolonged the traffic stop beyond its scope in violation of Rodriguez v. United States.

A traffic stop is a seizure under the Fourth Amendment and must be reasonable under the circumstances. Whren v. United States, 517 U.S. 806 (1996). In general, a traffic stop is reasonable if it is supported by probable cause that a traffic violation has occurred. Id. During a traffic stop, police officers are permitted to request typical documents associated with the stop like driver’s license, vehicle registration and proof of insurance. United States v. Sullivan, 138 F.3d 126, 131 (4th Cir.1998). They also may run a computer check and issue a citation. Id. However, “when the purpose justifying the stop is exceeded, the detention becomes illegal unless a reasonable suspicion of some other crime exists.” Id.

The Supreme Court of the United States held in Rodriguez v. United States, 135 S.Ct. 1609, 1612 (2015) that “[a] seizure justified only by a police-observed traffic violation . . . ‘becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation.’” Id. quoting Illinois v. Caballes, 543 U.S. 405, 407 (2005). The Rodriguez Court noted that when the purpose of a stop is addressing a traffic violation, the stop cannot last any longer than what is necessary to address that traffic violation. Rodriguez, 135 S.Ct. at 1614. “Authority for the seizure thus ends when tasks tied to the traffic infraction are – *or reasonably should have been* – completed.” Id. (emphasis added).

In this case, Reese claimed that he initially stopped Appellant for crossing the dotted line and following too close. R. 9, ll. 4 – 21. The scope and purpose for the stop then should have been only to investigate those violations and to issue a ticket or warning. The purpose of a

traffic stop for alleged traffic infractions is not to go on a fishing expedition in search of criminal activity. However, the record in this case strongly suggests that is exactly what the purpose of this stop was. R. 9, l. 22 – 10, l. 7; R. 33, l. 18 – 34, l. 5; R. 74, l. 20 – 75, l. 1; R. 129, l. 23 – 130, l. 21.

Reese and Harrison both freely admitted during the suppression hearing that they were looking for this specific Kia only because they had a tip from the Department of Homeland Security that the vehicle left a location believed to be involved in narcotics. R. 9, l. 22 – 10, l. 7; R. 33, l. 18 – 34, l. 5. The tip did not include any information about the identity of the driver or whether there was anything illegal in the car. R. 18, ll. 18 – 22. The plan of the Greenville County deputies was to keep an eye out for this car and stop the car “if [they] can find a reason.” R. 18, l. 23 – 19, l. 2. Harrison even stated in the suppression hearing that Homeland Security “called us to see if we could possibly intercept [the silver Kia]” and that “[i]t was basically just a poke and a hope.” R. 34, ll. 1 – 5. Reese and Harrison’s testimony strongly suggested that the sole purpose for pulling over Appellant was to go on a fishing expedition for drug activity and in fact had nothing to do with legitimate enforcement of traffic laws.

After Appellant was pulled over, Reese made her get out of the vehicle, even though her three-year-old daughter was inside, while he did a computer check on the vehicle and her identity. State’s Ex. 9 at 3:30. During this time, Reese engaged Appellant in extremely broad and off-topic questioning that had nothing to do with the purpose of the stop. State’s Ex. 9 at 4:00 – 12:00. While our State Supreme Court has allowed off-topic questioning in the past, see, e.g., State v. Provet, 405 S.C. 101, 747 S.E.2d 453 (2013), Rodriguez, 135 S.Ct. 1609 makes clear that an officer cannot *unreasonably* extend a traffic stop beyond its original scope and

mission. By engaging in extremely broad and off-topic questioning of Appellant, Reese unreasonably prolonged the traffic stop resulting in an illegal seizure.

Throughout most of the questioning it appears that Reese is engaging in off-topic questioning for the sole purpose of delaying and prolonging the stop. This is supported by the fact that from the very beginning of the stop, Reese told Appellant that it was “not a big deal” that she did not have a driver’s license. State’s Ex. 9 at 3:23 – 3:43. However, despite Reese telling Appellant that it was “not a big deal” and despite Reese having no reason to believe that Appellant was a danger to herself or others, he ordered her out of the vehicle on the side of the interstate while her three-year-old child remained inside.

The dash cam video supports defense counsel’s contention to the trial judge that the off-topic questioning was used to unreasonably prolong the traffic stop beyond its initial scope. The record does not support the trial judge’s finding that the stop was not extended. Especially when after over three minutes of off-topic questioning, Reese asked Appellant directly if there were any drugs in the car. State’s Ex. 9 at 7:00. Appellant calmly and flatly denied that anything illegal was in the car. State’s Ex. 9 at 7:00. Reese then continued to engage Appellant in extremely broad and off-topic questioning for several more minutes after having specifically asked about the presence of drugs in the car. State’s Ex. 9 at 7:00 – 12:00. Reese even had the audacity to ask Appellant about her ethnicity and why her boyfriend had not proposed to her. State’s Ex. 9 at 6:25 – 6:40; State’s Ex. 9 at 7:00 – 7:45.

The Court erred in finding that Reese’s off-topic questioning of Appellant did not unreasonably prolong the traffic stop beyond its initial scope of investigating a minor traffic infraction. Therefore, the Court erred in denying Appellant’s motion to suppress and Appellant’s convictions and sentence should be reversed and this case remanded to the Greenville County

Court of General Sessions for a new trial. See Rodriguez v. United States, 135 S.Ct. 1609, 1612 (2015).

B. The Court erred in denying Appellant's motion to suppress because Reese did not have reasonable suspicion to continue detaining Appellant beyond the scope of the initial stop and therefore her consent to search was involuntary.

"[A] law enforcement officer's continued questioning of a vehicle's driver and passenger outside the scope of a valid traffic stop passes muster under the Fourth Amendment either when the officer has a reasonable articulable suspicion of other illegal activity or when the valid traffic stop has become a consensual encounter." State v. Pichardo, 367 S.C. 84, 99, 623 S.E.2d 840, 848 (Ct. App. 2005). An officer may conduct a warrantless search in compliance with the Fourth Amendment if voluntary consent is given for the search. State v. Provet, 405 S.C. 101, 113-114, 747 S.E.2d 453, 460 (2013). Whether consent was voluntarily given is to be determined under the totality of the circumstances and the burden of proving voluntariness is on the state. Id. "A consent to search procured during an unlawful stop is invalid unless such consent is both voluntary *and* not an exploitation of the unlawful stop." State v. Robinson, 306 S.C. 399, 402, 412 S.E.2d 411, 414 (1991). Whether a suspect is in custody or not is a factor to be considered in determining whether the consent given was voluntary. State v. Mattison, 352 S.C. 577, 584, 575 S.E.2d 852, 855 (Ct. App. 2003).

Further, it is important to recognize that a traffic stop is different from a field interrogation where an officer may engage a person in questions without reasonable suspicion. Pichardo, 367 S.C. at 101-102, 623 S.E.2d at 849. During a traffic stop, the individual has already been seized by law enforcement which "enhances the coercive nature of the situation." Id. Reasonable suspicion is when officers have a particularized and objective reason to suspect a

person is engaged in illegal activity. Id., at 104, 623 S.E.2d at 851. The state has the burden of proving facts to support a finding of reasonable suspicion. Id.

In this case, the state failed to prove sufficient facts justifying the Court's finding that Reese had reasonable suspicion. Reese claimed that he had reasonable suspicion for the following reasons: (1) Appellant had recently purchased the vehicle by putting \$4,000 down payment towards the \$10,000 purchase price; (2) the registration and insurance of the vehicle were in two different individuals' names; (3) Appellant was drinking Red Bull; (4) Appellant only had a single car key in the ignition; (5) Appellant was traveling from Atlanta to New Jersey; and (6) Appellant had a minor child traveling with her but had two other minor children that she left at home. R. 10, l. 21 – 13, l. 16. Each of these reasons have innocent explanations whether taken individually or as a whole.

Appellant remained calm and collected the entire time Reese questioned her during the stop. R. 25, ll. 2 – 19; State's Ex. 9 4:00 – 12:00. She never showed signs of nervousness like sweating or shaking. R. 25, ll. 2 – 19. She showed Reese her bill of sale from the day before which explained why the registration and insurance were in different names and why she only had a single key in the ignition. R. 11, ll. 4 – 7; State's Ex. 9 at 2:00.

The fact that Appellant was drinking an energy drink while driving on the interstate a long distance demonstrates nothing more than that she was drinking an energy drink. Countless people drive on our nation's interstates every day and there can be little doubt that a large number of them drink some kind of caffeinated beverage to help them focus.

The fact that Appellant only had one of her three children with her for her trip is also not suspicious of anything. She was traveling to New Jersey to see family and stated to the officer that she could only bring one of her children because bringing all three would have been too

difficult to manage. State's Ex. 9 at 6:35. She left her other children in the care of her boyfriend at home which is not indicative of criminal activity in any way.

The record does not support the Court's conclusion that Reese had a reasonable articulable suspicion to continue to detain and question Appellant beyond the scope of the traffic stop. In incorrectly finding that reasonable suspicion did exist in this case, the trial judge pointed to the Red Bull can; the fact that Appellant did not have a driver's license; the fact that the car's insurance was in a different person's name; and the "unclear ownership of the car." R. 53, ll. 12 – 24. The trial judge's reliance on Appellant's not having a driver's license is belied by Reese's own statement that her not having a driver's license was "not a big deal." State's Ex. 9 at 3:23 – 3:43. Furthermore, Appellant immediately produced a Texas Identification Card, so it is not as if she attempted to conceal her identity. The issues with the insurance and registration paperwork are indicative only of possible traffic violations and do not in any way suggest *other* criminal activity.

The trial judge also referenced State v. Culbreath, 300 S.C. 232, 387 S.E.2d 255 (1990), abrogated on other grounds by Horton v. California, 496 U.S. 128 (1990), in concluding that Reese had reasonable suspicion. R. 53, l. 12 – 54, l. 4. However, the facts of Culbreath are quite different from this case. In Culbreath, the defendant was parked in a private residence's driveway of a person whom he did not know at 1:00 a.m. with the engine running. Id. at 233-234, 387 S.E.2d at 256. When approached by law enforcement, the defendant became angry and aggressive towards the officers and also refused to produce *any* identification. The resident of the home informed law enforcement that she did not know who the defendant was, and the officer then observed a package of cocaine in the defendant's hand. Id.

The Court in Culbreath noted that the correct standard for prolonging a detention of an individual is reasonable suspicion and not probable cause. Id. at 235, 387 S.E.2d at 257. However, the Court found in Culbreath that no seizure had occurred until after the officers saw the cocaine in the defendant's hand and forced him out of the vehicle. Id. at 236, 387 S.E.2d 257.

The Culbreath case lends no support whatsoever to the Court's ruling in this case. Appellant was never angry or aggressive with Reese, she did not refuse any of his requests including showing him her I.D., and there was never any observation of anything illegal in plain view. She also was traveling down a public interstate unlike Culbreath who was parked in a stranger's private driveway.

Because there was no reasonable suspicion to continue to detain Appellant, Reese would only be justified in continuing to detain and question Appellant if she consented. Pichardo 367 S.C. at 99, 623 S.E.2d at 848. After Reese completed his computer check on Appellant, he decided to issue warning tickets for her. R. 13, l. 17 – 14, l. 4; R. 84, l. 16 – 85, l. 6. Once Reese finished writing the warning tickets and explaining them to Appellant the initial purpose of the stop was complete. Therefore, Appellant should have been free to leave. However, instead of letting Appellant go, Reese withheld the warning tickets and asked for consent to search her car. By withholding the warning tickets from Appellant and requesting her permission to search, he additionally and unreasonably prolonged the traffic stop which resulted in an illegal seizure of Appellant. Because Appellant had already been seized by Reese for the alleged traffic violations she was already in a more coercive situation and less likely to feel free to decline Reese's request for consent.

Further, the fact that Reese physically withheld the warning tickets he issued Appellant before asking for consent demonstrates that a reasonable person in Appellant's shoes would not have felt free to leave under the circumstances. By withholding the tickets and asking Appellant for consent to search, he seized Appellant anew. Appellant's "consent" to search was involuntary because she was illegally seized and a reasonable person in her circumstances would not have felt free to decline the request.

The Court erred in finding that Reese had reasonable suspicion that Appellant was engaged in illegal activity and that Appellant's consent to search was voluntary. Therefore, the Court erred in denying Appellant's motion to suppress and Appellant's convictions and sentence should be reversed and this case remanded to the Greenville County Court of General Sessions for a new trial. See State v. Pichardo, 367 S.C. 84, 99, 623 S.E.2d 840, 848 (Ct. App. 2005).

C. The Court erred in denying Appellant's motion to suppress because the officers exceeded the scope of consent when they removed the back seat from the vehicle to access a hidden compartment which went beyond what a reasonable person would have understood the search to entail.

An individual who consents to a search by law enforcement is free to limit the scope of the search in any manner he sees fit. State v. Forrester, 343 S.C. 637, 648, 541 S.E.2d 837, 843 (2001). If a police officer is relying on the individual's consent as the basis for the search the officer "must not exceed the scope of consent granted or the search becomes unreasonable." Id. Even if law enforcement obtains a general and unqualified consent from an individual, the police still do not have "carte blanche to do whatever they please." Forrester, 343 S.C. at 648-49, 541 S.E.2d at 843 citing Wayne R. LaFave, Search and Seizure: A Treatise On The Fourth Amendment § 8.1(c), at 612 (3d ed. 1996).

Courts must evaluate the scope of consent under an objective and reasonableness standard, i.e. what a reasonable person in the circumstances would have understood the scope of

consent to be. State v. Mattison, 352 S.C. 577, 585-86, 575 S.E.2d 852, 856 (Ct.App. 2003) citing Florida v. Jimeno, 500 U.S. 248, 251, (1991). Neither the individual's nor the officer's subjective belief as to the scope of consent is dispositive as to what is "objectively reasonable." Wayne R. LaFave, Search and Seizure: A Treatise On The Fourth Amendment § 8.1 (c) (5th ed. 2012).

In this case, the search performed by Reese and Harrison far exceeded what an objectively reasonable person would have believed the scope to be. After spending several minutes rummaging through Appellant's and her three-year-old daughter's belongings the officers had found nothing illegal. State's Ex. 9 at 13:00 – 19:00. Reese physically removed Appellant's and her daughter's luggage from the vehicle and put it on the ground next to the interstate. State's Ex. 9 at 16:35. After getting down on the ground and shining his flashlight underneath the car, Harrison went in to the back seat of the vehicle and removed Appellant's daughter's car seat and set it on the side of the interstate as well. State's Ex. 9 at 20:25. Reese physically removed the back seat from the car and threw it on the ground. State's Ex. 9 at 24:45. Although Harrison claimed he did not end up using it, he retrieved his crow bar which he referred to as his "master key" that he specifically keeps on hand because he "[has] to break into a lot of these containers." R. 39, ll. 16 – 21.

In Florida v. Jimeno, 500 U.S. 248, (1991), the Supreme Court only held that it was objectively reasonable that the scope of a general and unqualified consent extended to a paper bag on the floorboard of a car. The Jimeno Court also noted that "[i]t is very likely unreasonable to think that a suspect, by consenting to the search of his trunk, has agreed to the breaking open of a locked briefcase within the trunk." Id. at 251-252.

Relying on Jimeno, the Court of Appeals of New York held that an officer exceeded the scope of a general consent to search when he pulled up carpeting in the vehicle and used a crowbar to pry open a part of the gas tank. People v. Gomez, 838 N.E.2d 1271 (2005). In so holding, the Gomez Court held that “a general consent to search alone cannot justify a search that impairs the structural integrity of a vehicle or that results in the vehicle being returned in a materially different manner than it was found.” Id. 838 N.E.2d at 1273. The Court ruled: “A reasonable person would not have understood the officer’s request to search to include prying open a hole in the floorboard and gas tank with a crowbar.” Id. The Gomez Court reached this conclusion even though the defendant in that case did not place any limitations on the officers’ search, nor did the defendant object to the search while it was performed. Id.

The search performed in Jimeno is a far cry from the search performed in this case. Here, the officers went well beyond what a reasonable person would have thought the scope of the search would entail when they removed the child’s seat from the rear of the car and also removed the back seat of the car. Even after the officers did this, they still retrieved a crow bar fully planning on using it to pry open the closed container underneath the vehicle. R. 40, ll. 1 – 11.

Harrison stated that when he attempted to pry the container open, he found that he did not actually need the crowbar. R. 40, ll. 1 – 11. However, this is immaterial to the objectively reasonable standard because by the time Reese and Harrison had gotten to where the lid to the container was visible, they had already exceeded the scope of consent under an objectively reasonable standard. Further, opening the container after they found it was also beyond the objectively reasonable scope of the consent in this case. Harrison stated at the motion to suppress that there was a trunk lock with a hook welded onto the lid of the closed container. R. 40, ll. 1 – 11.

This case was not simply a paper bag on the floorboard of the front passenger seat. Rather this was, a container that had been installed by removing the fuel tank of the vehicle and welding the aftermarket compartment to the underside frame of the vehicle and then reinstalling the fuel tank below it with elongated bolts. R. 139, l. 11 – 141, l. 5. Further, there was a trunk lock welded to the lid of the container which was accessible only by removing the rear seat. R. 40, ll. 1 – 11. An objectively reasonable person would not have believed that even an unqualified consent to search a vehicle would extend this far.

The Court erred in finding that the search of the closed container welded under the rear seat of the vehicle was not beyond the scope of consent under the objectively reasonableness standard. Therefore, the Court erred in denying Appellant's motion to suppress and Appellant's convictions and sentence should be reversed and this case remanded to the Greenville County Court of General Sessions for a new trial. See Florida v. Jimeno, 500 U.S. 248, (1991); State v. Forrester, 343 S.C. 637, 648, 541 S.E.2d 837, 843 (2001).

The Court erred in denying Appellant's motion for a directed verdict since there was no substantial circumstantial evidence presented that Appellant knew there were drugs in the vehicle.

Standard of Review

In determining whether a trial judge erred in denying a defendant's motion for a directed verdict, the appellate courts must view the evidence in the light most favorable to the state. State v. Hudson, 277 S.C. 200, 201, 284 S.E.2d 773, 774 (1981). A trial judge should not be concerned with the weight of the evidence presented but only whether evidence exists. Id. "If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must reverse the lower court's denial of the directed verdict motion. State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013).

Relevant Facts

At the close of the state's case Appellant moved for a directed verdict. R. 181, ll. 6 – 12. Defense counsel argued that there was insufficient direct and circumstantial evidence that Appellant knew the car contained heroin. R. 181, ll. 6 – 12.

Defense counsel cited to State v. Miles, 421 S.C. 154, 805 S.E.2d 204 (Ct.App. 2017) which held that in a drug trafficking case the state must prove that the defendant "knew the item was a controlled substance." Id. at 165, 805 S.E.2d 211. Counsel distinguished Appellant's case from Miles, where the Court found denial of a directed verdict was proper, because in Miles the

defendant attempted to flee and throw away the box that contained the controlled substance and he also admitted to knowing the box contained drugs. R. 181, l. 13 – 182, l. 2.

Counsel argued that the evidence against Appellant only amounted to a mere suspicion because the drugs were hidden beneath the car in a specially welded container, there was no evidence that Appellant ever handled the drugs in any way, no witness testified that Appellant was present when the drugs were put into the compartment, and there were no statements made by Appellant that she knew there were drugs in the car. R. 182, ll. 3 – 22.

The trial judge denied Appellant's motion for a directed verdict ruling that "she claimed she owned the car." R. 183, l. 20 – 184, l. 4.

Discussion

South Carolina' defines trafficking heroin as:

Any person who *knowingly* sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of: . . . heroin . . . is guilty of a felony which is known as "trafficking in illegal drugs."

S.C. Code Ann. § 44-53-370(e)(3)(c) (1976) (emphasis added). Therefore, an essential element the state must prove is knowledge. "Knowledge can be proven by the evidence of acts, declarations, or conduct of the accused from which the inference may be drawn that the accused knew of the existence of the prohibited substances." Hernandez, 382 S.C. at 624, 677 S.E.2d at 605.

In this case there was no direct evidence whatsoever that Appellant had knowledge of the drugs in the car. There were no witnesses who testified to seeing Appellant putting the drugs in

the car and she flatly denied there were any drugs in the car when asked by Reese. State's Ex. 9 at 7:00.

There also was not "substantial circumstantial evidence" of knowledge in this case. The Court relied on the fact that Appellant claimed ownership of the car, having purchased it the day before. R. 183, ll. 21 – 23. This may be circumstantial evidence that rises to a mere suspicion that Appellant knew of the drugs, but it certainly does not meet the "substantial circumstantial evidence" standard demanded of our courts. In fact, Harrison testified that in order to have installed the hidden compartment a person would have had to remove the fuel tank from underneath the car, presumably requiring the car to be lifted off the ground, and then the person would have had to weld the compartment to the underside of the car's frame and then reinstall the fuel tank using extended screws and bolts to hold it in. R. 139, l. 11 – 141, l. 5. There was no evidence in the record that Appellant possessed the specialized skills required to perform such a task. In fact, Appellant told Reese that she was a cook at Applebee's. State's Ex. 9 at 4:00 – 5:00. There was no evidence presented that Appellant had any knowledge there was even a hidden compartment added to the vehicle that she purchased and there was certainly not sufficient evidence that she knew the hidden compartment contained contraband.

The Court erred in denying Appellant's motion for a directed verdict because there was no direct evidence that Appellant had knowledge of the drugs in the car and there was not substantial circumstantial evidence of knowledge either. Therefore, this Court should direct a verdict of acquittal in favor of Appellant. See State v. Miles, 421 S.C. 154, 805 S.E.2d 204 (Ct.App. 2017); S.C. Code Ann. § 44-53-370(e)(3)(c) (1976).

The Court erred in refusing to charge the jury the *State v. Logan* circumstantial evidence instruction when the state relied exclusively on circumstantial evidence to attempt to prove the element of knowledge of the drugs since the Supreme Court held this instruction should be given when requested by a defendant.

Standard of Review

When determining whether a trial court erred in its jury instruction, appellate courts should consider the charge given “as a whole and in light of the evidence and issues presented at trial.” State v. Logan, 405 S.C. 83, 90–91, 747 S.E.2d 444, 448 (2013) citing State v. Brandt, 393 S.C. 526, 713 S.E.2d 591 (2011). If the jury charge adequately covers the law and is substantially correct, then it does not require reversal. Logan 405 S.C. at 90-91, 747 SE.2d at 448.

Relevant Facts

At Appellant’s jury trial, the state did not present any direct evidence to prove the element of knowledge. The state relied solely on circumstantial evidence as to this particular element of the charged offense.

Defense counsel requested the specific circumstantial evidence charge derived from State v. Logan. R. 143, l. 11 – 144, l. 2; R. 230. The judge refused to charge the requested instruction but marked Appellant’s proposed charge as Court’s Exhibit 1. R. 144, ll. 3 – 9; R. 230.

Discussion

In State v. Logan, our Supreme Court clarified the rule regarding jury instructions on circumstantial evidence. The circumstantial evidence jury instruction had been the subject of some modifications and the Logan Court sought to clarify the proper instruction to be given. See

State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2005); State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997); State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955).

The Supreme Court of South Carolina held in Logan that a trial judge should give the following jury charge on circumstantial evidence, in addition to a proper reasonable doubt instruction, when the defendant requests it:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence; *however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt.* If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

State v. Logan, 405 S.C. at 99, 747 S.E.2d at 452 (emphasis added).

The Logan Court further clarified that a trial judge may still issue the circumstantial evidence charge approved of in Grippon and Cherry but that the trial judge cannot rely exclusively on that charge when a defendant objects to it. Logan at 100, 747 S.E.2d at 453. The Logan Court went on to state “[t]hus, we modify Grippon and Cherry to allow the additional language provided above if requested by a defendant.” Id.

Defense counsel requested the exact jury instruction that was laid out in Logan. R. 143, l. 11 – 144, l. 2; R. 230. The Court refused to charge the requested instruction. Instead, the Court gave the following instruction to the jury on circumstantial evidence:

There are two types of evidence which are generally presented during a trial: direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of the chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

R. 211, ll. 1 – 24.

Pursuant to State v. Logan, refusal to grant Appellant's request for the approved circumstantial evidence charge was error. State v. Logan, 405 S.C. at 99, 747 S.E.2d at 452. The Supreme Court plainly held in Logan that this instruction should be given when requested by a defendant and the Court's failure to do so was improper. Id. Furthermore, the error was not harmless beyond a reasonable doubt because the state relied exclusively on circumstantial evidence to prove the element of knowledge. Without *any* direct evidence to prove the element of knowledge, the Court's error in its failure to charge the Logan instruction on circumstantial evidence was not harmless. Therefore, Appellant's conviction should be reversed and this case remanded for a new trial. See State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013).

CONCLUSION

By reason of the foregoing argument, this Court should issue an order of acquittal on both charges pursuant to argument 2. In the alternative Appellant's convictions should be reversed, and this case be remanded to the Greenville County Court of General Sessions for a new trial pursuant to arguments 1 and 3.

s/Adam Ruffin

Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of March, 2020.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 26, 2020

s/Adam Ruffin

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2018-002163

THE STATE,

Respondent,

vs.

VICTORIA LORRAINE SANCHEZ,

Appellant.

FINAL BRIEF OF RESPONDENT

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II. The trial judge properly denied Appellant’s directed verdict motion because the evidence and testimony presented during trial, including the evidence and testimony establishing more than a million dollars’ worth of heroin was found hidden inside Appellant’s vehicle, supported a rational and logical conclusion Appellant was in knowing possession of the vast quantity of valuable contraband contained within her own vehicle and, thus, was guilty as charged, which required the trial judge to submit her case to the jury.	30
III. Even assuming the trial judge erred by declining to instruct the jury on circumstantial evidence in one of the manners proposed by defense counsel, any conceivable error was harmless beyond a reasonable doubt because the trial judge’s jury instructions as presented were sufficient to adequately and properly convey the applicable law to the jury, including the law regarding the fact Appellant could not be convicted unless the evidence—regardless of whether it was direct or circumstantial—proved her guilt beyond a reasonable doubt.	39
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STATEMENT OF ISSUES ON APPEAL

I.

The trial judge properly declined to suppress the vast quantity of heroin found hidden inside a secret compartment installed above Appellant's vehicle's fuel tank because the deputy who stopped Appellant's vehicle did not unreasonably prolong the stop beyond the time necessary to complete its mission prior to obtaining Appellant's voluntary consent for a search, the deputies who proceeded to search Appellant's vehicle properly began to do so only after valid consent had been obtained, and one of the deputies spotted the vehicle's secret compartment during the course of the search, which established a probable cause basis for a search of that compartment even without Appellant's consent.

II.

The trial judge properly denied Appellant's directed verdict motion because the evidence and testimony presented during trial, including the evidence and testimony establishing more than a million dollars' worth of heroin was found hidden inside Appellant's vehicle, supported a rational and logical conclusion Appellant was in knowing possession of the vast quantity of valuable contraband contained within her own vehicle and, thus, was guilty as charged, which required the trial judge to submit her case to the jury.

III.

Even assuming the trial judge erred by declining to instruct the jury on circumstantial evidence in one of the manners proposed by defense counsel, any conceivable error was harmless beyond a reasonable doubt because the trial judge's jury instructions as presented were sufficient to adequately and properly convey the applicable law to the jury, including the law regarding the fact Appellant could not be convicted unless the evidence—regardless of whether it was direct or circumstantial—proved her guilt beyond a reasonable doubt.

STATEMENT OF THE CASE

In June of 2017, Appellant Victoria Lorraine Sanchez was arrested after roughly fifteen pounds of heroin were found during the course of a traffic stop hidden inside a secret compartment installed underneath her vehicle's rear seat. In December of 2017, the Greenville County Grand Jury indicted Appellant for one count of trafficking in heroin and one count of unlawful conduct towards a child. On December 4, 2018, a jury trial was commenced in the Greenville County Court of General Sessions with the Honorable Letitia H. Verdin, circuit court judge, presiding. At the conclusion of the two-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of thirty-two years for trafficking in heroin and ten years for unlawful conduct towards a minor. Appellant then filed a timely notice of appeal.

STATEMENT OF FACTS

On June 28, 2017, Master Deputy David Harrison, a highly-experienced member of the Greenville County Sheriff's Office's interdiction unit, was alerted by an agent from the United States Department of Homeland Security about a particular silver Kia that was actively travelling—and being followed—along Interstate 85 while headed in the direction of Greenville County.¹ (R. pp. 9-10; pp. 31-34; pp. 74-75; p. 111; pp. 124-127; pp. 129-130). The agent further indicated the identified vehicle had been seen at a suspected stash house in Atlanta, Georgia, just before it began travelling along the highway, and he asked Master Deputy Harrison if his unit could stop the vehicle when they encountered it in the event they could find a legitimate reason for doing so. (R. p. 10; pp. 18-19; pp. 33-34; pp. 74-75). The deputy then relayed the information provided by the agent to the other members of the interdiction unit, and they all waited for the vehicle to arrive in their jurisdiction. (R. p. 10; pp. 18-19; pp. 33-34).

Around 8:00 p.m. to 8:15 p.m. later that evening, Deputy Andrew Reese, another member of the Greenville County Sheriff's Office's interdiction unit, spotted the identified vehicle, which had a Georgia license tag, just as it entered Greenville County and subsequently observed its driver commit several illegal traffic infractions, including by following another vehicle too closely in a manner that made the deputy believe the driver was suspiciously attempting to “blend in” with the other traffic on the highway.² (R. pp. 8-9; p. 26; p. 34; pp. 73-76; Defense

¹ Regarding his background, Master Deputy Harrison had worked in law enforcement for over seventeen years, had received “hundreds” of hours of specialized training on interdiction, had been specifically trained on recognizing and identifying secret compartments, and had personally conducted numerous searches of vehicles. (R. pp. 31-33; p. 41; pp. 124-129). Based on his extensive knowledge and experience, Master Deputy Harrison further served as an instructor for other law enforcement officers on the topic of interdiction. (R. pp. 32-33).

² By that time, Deputy Reese had worked in law enforcement for approximately three to four years, had received both in-state and out-of-state specialized training on interdiction, and had

Ex. # 1 (Recording of Stop)). Based on the observed traffic infractions, Deputy Reese activated his patrol car's blue lights to initiate a stop, and the vehicle's driver responded by stopping the vehicle along the side of the highway. (R. p. 10; pp. 76-77; Defense Ex. # 1).

Once the vehicle had stopped, Deputy Reese approached it and immediately noticed the "overwhelming" scent of air fresheners emanating from its interior. (R. p. 10; p. 81; Defense Ex. # 1). Beyond that, he further noticed there were two cell phones inside the vehicle despite the fact the only occupants were the driver and a small child, there were multiple cans of energy drink present, and the vehicle's key ring had no personal keys on it, which were all factors that raised the deputy's suspicions. (R. pp. 11-12; p. 17; p. 79; p. 81). Deputy Reese then explained to the vehicle's driver, Appellant Victoria Lorraine Sanchez, why he initiated the stop, asked where she was going, and requested her driver's license, registration information, and insurance information. (R. pp. 10-11; p. 23; p. 77; p. 81; Defense Ex. # 1). In response to the deputy's queries, Appellant stated she was headed to New Jersey, admitted she did not have a driver's license, and indicated the vehicle, which she claimed to have purchased just a day earlier, was not registered in her name. (R. p. 10; pp. 77-78; Defense Ex. # 1). Appellant also provided the deputy with a Texas identification card, a registration card indicating the vehicle was suspiciously registered in a third-party's name, insurance information indicating the vehicle was suspiciously insured by an entirely different third-party, and a bill of sale indicating Appellant bought the vehicle on the preceding day. (R. pp. 77-78; p. 96; pp. 114-115). Deputy Reese then asked Appellant to step out of the vehicle, and she accompanied him to his patrol car while he completed the necessary checks. (R. p. 12; p. 82; Defense Ex. # 1).

been specifically trained in regard to the recognition of indicators of criminal behavior. (R. p. 8; pp. 72-73).

For roughly the next seven minutes, Deputy Reese questioned Appellant while simultaneously attempting to verify the information she had supplied.³ (R. p. 78; pp. 82-83; Defense Ex. # 1). During their conversation, Appellant, who again candidly acknowledged she did not have—and had never had—a driver’s license, indicated she was from Texas, had taken a flight to Georgia a week earlier to visit with family, and had been staying with a cousin. (R. pp. 12-13; pp. 77-78; Defense Ex. # 1). While in Georgia, Appellant claimed she bought a vehicle from an individual her cousin knew, and she alleged she paid just \$4,000 towards its purchase price of \$10,000 before driving off with it, which seemed highly unusual and suspicious to the deputy.⁴ (R. p. 11; pp. 78-79; p. 84; Defense Ex. # 1). She further asserted she was heading to New Jersey for “probably like” two weeks with her three-year-old daughter to “have fun,” stated she had family living there, and also indicated she had some unspecified tickets to care of in that state. (R. p. 13; pp. 78-79; p. 116; Defense Ex. # 1). Additionally, Appellant claimed she had been working on and off as a cook at Applebee’s for a short period of time, had simply not gone into work, and was unsure if she would be allowed to return to her job. (R. p. 17; pp. 83-84; Defense Ex. # 1). Furthermore, Appellant stated she had two other children who were back in Texas with her boyfriend of roughly one year, and she asserted she did not bring them along on her trip because they were “too much of a hassle.” (R. p. 13; pp. 79-80; Defense Ex. # 1). Beyond that, Appellant expressly confirmed she was responsible for everything in the vehicle. (Defense Ex. # 1).

³ Throughout the deputy’s conversation with Appellant, the recording of the stop depicts what appears to be the sounds of the deputy typing on his patrol car’s computer, which was “not super fast,” and shuffling through paperwork. (R. p. 83; Defense Ex. # 1).

⁴ Supporting the deputy’s suspicions, the bill of sale Appellant provided to Deputy Reese did not contain any information indicating Appellant only paid a portion of the \$10,000 purchase price at the time she bought the vehicle. (R. p. 232).

Thereafter, just over ten minutes into the stop, Deputy Reese informed Appellant he was going to step out of his patrol car and explain the warning citation to her. (R. pp. 84-85; Defense Ex. # 1). The deputy then talked with Appellant for slightly less than a minute about the warning citation and the need for her to properly insure her vehicle in her own name. (R. pp. 13-14; p. 23; pp. 84-85; Defense Ex. # 1). Immediately after that, Deputy Reese asked Appellant for permission to conduct a search of her vehicle. (R. pp. 11-14; pp. 16-17; p. 24; p. 27; p. 79; pp. 81-83; p. 85; Defense Ex. # 1). Almost instantaneously in response, Appellant unequivocally and unconditionally granted the requested consent without any hesitation. (R. p. 14; p. 24; p. 27; p. 85; Defense Ex. # 1).

At that point, Deputy Reese asked Appellant to remove her child from the vehicle, and Appellant complied with that request. (R. p. 13; p. 86; Defense Ex. # 1). Deputy Reese then indicated he was going to get some assistance from other members of his team to speed up the search process, and, upon doing so, he began a search of the vehicle's trunk, which contained only a small amount of luggage for Appellant and her daughter, a little less than thirteen minutes after the stop had first begun. (R. pp. 15-16; p. 35; p. 86; Defense Ex. # 1). Just seconds after that, Master Deputy Harrison arrived on the scene, and Deputy Reese alerted him of the information he had uncovered up to that point, which led Master Deputy Harrison to suspect drugs might be hidden inside Appellant's vehicle. (R. p. 16; pp. 35-36; p. 86; pp. 131-132; Defense Ex. # 1). The two deputies then resumed the search, and, roughly five to six minutes into it, Master Deputy Harrison looked underneath the vehicle and saw a secret compartment that appeared to have been recently installed above the vehicle's fuel tank. (R. p. 35; pp. 37-39; pp. 41-42; p. 87; p. 121; p. 135; pp. 139-140; Defense Ex. # 1).

Once the secret compartment had been spotted, Deputy Reese continued looking inside the passenger compartment of the vehicle for a few minutes while Master Deputy Harrison retrieved some tools to aid in the removal of the vehicle's rear seat, which was positioned directly over the access cover for the secret compartment. (R. p. 15; pp. 39-40; p. 136; Defense Ex. # 1). Shortly after that, the deputies removed the rear seat, found the access cover for the compartment, and opened it. (R. p. 15; p. 29; pp. 39-40; p. 87; p. 121; pp. 135-137; Defense Ex. # 1). Upon doing so, they found numerous wrapped and vacuum-sealed packages of a brown powdery substance that was ultimately determined to constitute just under seven kilograms—or roughly fifteen pounds—of heroin hidden inside the compartment.⁵ (R. p. 16; p. 44 p. 87; p. 90; p. 92; pp. 106-107; p. 137; p. 165; Defense Ex. # 1). At that point, Appellant was swiftly placed under arrest.⁶ (R. p. 88; pp. 93-94; Defense Ex. # 1).

Subsequently, Appellant was indicted for trafficking in heroin and unlawful conduct towards a child, and she elected to proceed forward to trial. (R. p. 2; pp. 235-238). During the course of trial, Master Deputy Harrison and Deputy Reese recounted the circumstances of the stop that led to the discovery of Appellant's enormous hidden stash of heroin, a recording of the stop was admitted into evidence and played for the jury, and the drugs were admitted into evidence over defense counsel's objection. (R. pp. 72-121; pp. 124-141; p. 166). Ultimately, at the conclusion of trial, the jury convicted Appellant as indicted, and the trial judge sentenced her to an aggregate sentence of thirty-two years. (R. p. 224; p. 228).

⁵ During trial, expert testimony was presented establishing Appellant's heroin, which had been concealed in seventy separate blocks, had an "uncut" value of roughly \$1,730,000 and a "cut" value of between \$5,000,000 and \$7,000,000. (R. p. 167; pp. 174-175; pp. 178-179; State's Ex. # 1 (Photograph); State's Ex. # 2 (Photograph)).

⁶ Following her arrest, Appellant was transported to a detention center, and a \$20 bill with cocaine residue on it was found underneath Appellant's bra. (R. p. 94; p. 164).

ARGUMENT

I.

The trial judge properly declined to suppress the vast quantity of heroin found hidden inside a secret compartment installed above Appellant's vehicle's fuel tank because the deputy who stopped Appellant's vehicle did not unreasonably prolong the stop beyond the time necessary to complete its mission prior to obtaining Appellant's voluntary consent for a search, the deputies who proceeded to search Appellant's vehicle properly began to do so only after valid consent had been obtained, and one of the deputies spotted the vehicle's secret compartment during the course of the search, which established a probable cause basis for a search of that compartment even without Appellant's consent.

Appellant contends the trial judge committed reversible error by denying her motion to suppress the evidence discovered during the course of the stop of her vehicle. In support of that contention, Appellant maintains the deputy who conducted the stop allegedly unreasonably prolonged the stop beyond the time reasonably required to complete its mission by asking off-topic questions, the deputy purportedly did not possess the reasonable suspicion necessary to justify an extension of the stop, the consent provided was the involuntary product of an unreasonably-prolonged stop, and the deputies' search of the vehicle exceeded the scope of any consent granted. To the contrary, the deputy who lawfully stopped Appellant's vehicle did not prolong the time period required to complete the stop's mission through his questioning of Appellant because it was conducted at the same time he was checking the information she provided and preparing a warning citation, which meant the contemporaneous questioning did not add any time to the stop. Likewise, at the time the deputy requested Appellant's consent for a search, the stop had not yet ended because the deputy could not permit Appellant to drive her vehicle away from the scene since neither she nor anyone in her vehicle had a driver's license. Under those circumstances, the deputy did not extend the stop—unconstitutionally or otherwise—prior to asking for and obtaining voluntary consent from Appellant. Furthermore, since Appellant did not object to the deputies' search or attempt to place any limitations on the

consent she provided, the deputies did not exceed the scope of Appellant's consent by opening the secret compartment installed below her vehicle's rear seat, and, even if Appellant somehow had not consented to a search of that compartment, the deputies nonetheless had a probable cause basis to search it as soon as one of them saw it from outside the vehicle. Accordingly, because the stop of Appellant's vehicle was not unreasonably prolonged beyond its mission before Appellant voluntarily provided consent for a search and because the consent-based search that led to the discovery of her hidden stash of heroin was properly and reasonably conducted, the trial judge did not abuse her broad discretion or commit any other error of law by denying Appellant's suppression motion. Appellant's convictions should be affirmed.

Relevant Facts

Towards the outset of Appellant's trial, defense counsel moved to suppress all the evidence discovered during the course of the stop due to an alleged violation of Appellant's constitutional rights. (R. pp. 5-6). In response to that motion, the trial judge conducted an in limine hearing on the matter. (R. pp. 6-7).

During the course of the hearing, Deputy Reese testified about the stop of Appellant's vehicle, which he had been advised had left a "known area" for drug activity in Atlanta before heading in his direction, and indicated he initiated the stop after observing Appellant commit several traffic infractions. (R. pp. 8-10; pp. 18-19). Once the vehicle was stopped, Deputy Reese stated he approached it and made contact with Appellant, who did not have a driver's license but did provide an identification card from Texas along with vehicle registration information in one man's name and insurance information in another man's name. (R. pp. 9-10; p. 23). Based on that, Deputy Reese stated he proceeded to question Appellant to find out if she actually had authorization to drive the vehicle, and, during the course of their interactions, he

observed a number of indicators of criminal activity. (R. pp. 11-17). Specifically, Deputy Reese indicated his suspicions were raised by the following factors: (1) several cans of energy drink were present; (2) Appellant, who was the only person present in the vehicle other than a young child, was in possession of two cell phones; (3) no personal keys were present on the vehicle's key ring; (4) Appellant was travelling from a known drug hub; (5) the itinerary provided by Appellant seemed inconsistent with her claimed employment; (6) Appellant was travelling with one child while leaving two others with her boyfriend; and (7) the vehicle was not full of luggage as would be expected based on the weeks-long travel plans provided. (R. pp. 11-17). Based on the factors he detected, the officer stated he requested—and obtained—consent from Appellant, who remained “stoic” throughout the stop, after he explained—but did not hand—the warning citation to her roughly twelve minutes after initiating contact with her, which ultimately led to the discovery of the hidden stash of heroin.⁷ (R. pp. 13-16; pp. 24-25; p. 27).

In addition to that testimony, Master Deputy Harrison, who was a highly-experienced officer by that point, recounted he was initially alerted about Appellant's vehicle by an agent from the Department of Homeland Security and was informed the vehicle had been observed leaving a suspected stash house in Atlanta before heading in the direction of Greenville County on Interstate 85. (R. pp. 31-34). Master Deputy Harrison indicated he then relayed the information provided by the agent to the members of his interdiction team and asked Deputy Reese to initiate a stop of Appellant's vehicle once it reached their jurisdiction. (R. p. 34). After that, Master Deputy Harrison stated he responded to the scene of the stop when requested by Deputy Reese, spoke with the deputy, and received information that made him suspect drugs were hidden in a secret compartment inside Appellant's vehicle. (R. pp. 35-36). Specifically,

⁷ Later on during his trial testimony, Deputy Reese described Appellant's demeanor throughout the stop as “uncomfortably uncomfortable.” (R. p. 116).

Master Deputy Harrison affirmed he suspected drugs were present because: (1) the vehicle was newly-purchased and travelling a long distance between two “source” locations for drugs; (2) the vehicle was registered to one man and insured by another while neither of those men were present; and (3) the non-flashy nature of the vehicle suggested it had been chosen to “blend in” with the other vehicles on the roadway. (R. p. 36). Master Deputy Harrison indicated he then joined in the search of the vehicle, looked underneath it, and quickly noticed signs indicating a secret compartment, which he noted was only used for the purpose of hiding or smuggling contraband, had recently been installed. (R. pp. 35-39; pp. 41-42). In light of that discovery, Master Deputy Harrison stated he proceeded to open the secret compartment’s cover and found Appellant’s stash of contraband inside. (R. pp. 39-40; p. 44).

After that testimony was presented and a recording of the stop was played for the trial judge, defense counsel argued for suppression by first contending there was no probable cause for the initiation of the stop in light of the fact Appellant’s traffic infractions were not recorded, and he further contended the trial judge should announce a per se rule holding there must be recorded evidence of a traffic violation before a pretextual traffic stop could be found to be valid. (R. pp. 5-6; p. 22; pp. 45-46; p. 61). However, the trial judge rejected defense counsel’s contentions and determined the stop was supported by probable cause in light of Deputy Reese’s testimony about the traffic infractions he personally observed. (R. pp. 46-47).

Next, defense counsel contended the evidence found during the course of the stop should be suppressed because the deputy allegedly did not possess reasonable suspicion of criminal activity and purportedly extended the stop beyond the time reasonably required to complete its mission through his off-topic questioning of Appellant. (R. pp. 5-6; pp. 47-50). Furthermore, defense counsel contended Appellant’s consent was the product of an unlawful extension of the

stop in light of the fact the deputy did not fully present Appellant with the warning citation until after asking for consent to search. (R. pp. 5-6; pp. 54-56). In rebuttal, the solicitor contended the stop, which only lasted approximately eleven minutes before consent for a search was obtained, was not extended beyond the time required to complete its mission because the deputy's questioning of Appellant took place entirely while the deputy was audibly completing the necessary checks on his patrol car's computer and preparing a warning citation for Appellant, which meant it occurred wholly contemporaneously with the deputy's completion of the stop's mission. (R. pp. 50-51). Beyond that, the solicitor contended the deputy nonetheless possessed reasonable articulable suspicion of criminal activity sufficient to justify an extension of the stop under the totality of the circumstances, which included the information establishing the vehicle was observed leaving a stash house, the fact Appellant did not have a driver's license, the presence of multiple energy drink cans in the vehicle, the fact the vehicle was insured by an unknown third-party, and the bizarre information Appellant provided as to how she came to be in possession of the vehicle. (R. pp. 51-53). After considering the matter, the trial judge found the stop was not unreasonably prolonged and further determined the deputy's acts of both conducting off-topic questioning and requesting consent were warranted because the circumstances involved, including the "very concerning" fact Appellant had no driver's license, reasonably aroused the deputy's suspicions. (R. pp. 53-54; p. 57). Likewise, the trial judge concluded the "immediate" and "unequivocal" consent Appellant provided during the course of the stop was voluntarily given. (R. pp. 56-57).

Finally, defense counsel argued the suppression motion should be granted because the deputies purportedly exceeded the scope of Appellant's consent by removing the vehicle's back seat and opening the secret compartment's cover. (R. pp. 5-6; pp. 57-58). However, once again,

the trial judge rejected defense counsel's argument and found the deputies did not exceed the scope of Appellant's consent in light of the fact Appellant, who was present throughout the search, did not object to or seek to limit the search at any point. (R. p. 59). Moreover, the trial judge noted an independent need for a more extensive search arose as soon as one of the officers looked underneath the vehicle and observed the secret compartment. (R. p. 59).

Following the denial of the suppression motion, the trial proceeded forward, and Deputy Reese again testified about the circumstances of his stop of Appellant's vehicle, which culminated in the discovery of Appellant's hidden stash of pounds upon pounds of heroin. (R. pp. 72-121). During that testimony, Deputy Reese confirmed his questioning of Appellant occurred entirely during the period in which he was attempting to check the information she provided to him, and he further discussed why the things he detected during the stop—such as the “overwhelming” odor of air fresheners emanating from Appellant's vehicle—raised his suspicions. (R. pp. 76-83; p. 96). Likewise, Master Deputy Harrison recounted the circumstances of the stop, a recording of the stop was played for the jury, and Appellant's heroin was admitted into evidence over defense counsel's renewed objection. (R. pp. 109-110; pp. 124-141; pp. 165-167).

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In a search and seizure case, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) (“[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if

there is any evidence to support the ruling.”). The reviewing court may conduct its own review of the record to determine whether the trial judge’s ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence supporting the ruling. See State v. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016) (“[A]ppellate courts must affirm if there is any evidence to support the trial court’s ruling.”); State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) (“When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling.” (citation and internal quotations omitted)). Critically, the appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009); see Khingratsaiphon, 352 S.C. at 70, 572 S.E.2d at 459 (“In State v. Brockman, . . . [w]e concluded the appellate court would not review the trial judge’s ultimate determination de novo but, rather, would apply a deferential standard of review.”).

Analysis

A. Reasonableness of the Traffic Stop and Ensuing Detention

Both the Fourth Amendment of the United States Constitution and Article I, Section 10 of the South Carolina Constitution protect the right of the people “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV; see S.C. Const. art. I, § 10 (“The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated[.]”). Significantly, based on their plain wording, the touchstone of those constitutional provisions is reasonableness. See Florida v. Jimeno, 500 U.S. 248, 250 (1991) (“The touchstone of the Fourth Amendment is reasonableness.”). As a result, *only* unreasonable

searches and seizures are constitutionally prohibited. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977); see Maryland v. Buie, 494 U.S. 325, 331 (1990) (“It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]”); see also Heien v. North Carolina, 574 U.S. 54, 60 (2014) (“To be reasonable is not to be perfect[.]”).

Pursuant to both the state and federal constitutions, “[a] police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his [constitutional] rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity.” State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999); see State v. Robinson, 306 S.C. 399, 402, 412 S.E.2d 411, 413 (1991) (“To justify a brief stop and detention, the police officer must have a reasonable suspicion that the person has been involved in criminal activity.”); see also United States v. Sokolow, 490 U.S. 1, 7 (1989) (“[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot” (citation and internal quotations omitted)). The reasonableness of a stop or detention “is measured in objective terms by examining the totality of the circumstances.” Ohio v. Robinette, 519 U.S. 33, 39 (1996).

For constitutional purposes, a traffic stop of a vehicle, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). While the relevant constitutional provisions requires a stop to be reasonable under the circumstances, the initiation of an automobile stop is reasonable per se when either probable cause exists to believe a traffic violation has occurred or reasonable suspicion exists to believe the occupants of the vehicle are involved in criminal activity. See Knight v. State, 284 S.C. 138, 141, 325 S.E.2d 535, 537 (1985) (“[A] police officer may stop an

automobile and briefly detain its occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity.”); State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002) (“Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se.”); see also Whren v. United States, 517 U.S. 806, 810 (1996) (“An automobile stop is thus subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.”).

Once an investigatory traffic stop is initiated, it must be temporary and last no longer than necessary to effectuate its purpose. State v. Pichardo, 367 S.C. 84, 98, 623 S.E.2d 840, 848 (Ct. App. 2005); see Rodriguez v. United States, 575 U.S. 348, 349 (2015) (“Authority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.”); see also United States v. Branch, 537 F.3d 328, 336 (4th Cir. 2008) (“The maximum acceptable length of a routine traffic stop cannot be stated with mathematical precision. Instead, the appropriate constitutional inquiry is whether the detention lasted longer than was necessary, given its purpose.”). Typically, such a stop begins at the point an officer stops a vehicle to investigate the basis for the stop and continues for the period necessary to complete the investigation *and* conduct the ordinary inquiries incident to any stop. Arizona v. Johnson, 555 U.S. 323, 333 (2009); see Rodriguez, 575 U.S. at 355 (“Beyond determining whether to issue a traffic ticket, an officer’s mission includes ordinary inquiries incident to the traffic stop. Typically such inquiries involve checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance. These checks serve the same objective as enforcement of the traffic

code: ensuring that vehicles on the road are operated safely and responsibly.” (citations, internal quotations, and brackets omitted)). As part of the permissible inquiries, an officer may order the driver and any passengers out of the vehicle pending completion of the stop and “may request a driver’s license and vehicle registration, run a computer check, and issue a citation.” Pichardo, 367 S.C. at 98, 623 S.E.2d at 847; see Maryland v. Wilson, 519 U.S. 408, 415 (1997) (“[A]n officer making a traffic stop may order passengers to get out of the car pending completion of the stop.”). Following that, a stop normally ends “when the police have no further need to control the scene, and inform the driver and passengers they are free to leave.” Johnson, 555 U.S. at 333; see Kothe v. State, 152 S.W.3d 54, 63-64 (Tex. Crim. App. 2004) (“On a routine traffic stop, police officers may request certain information from a driver, such as a driver’s license and car registration, and may conduct a computer check on that information. It is only after this computer check is completed, and the officer knows that this driver has a currently valid license, no outstanding warrants, and the car is not stolen, that the traffic-stop investigation is fully resolved.” (footnotes omitted)).

Beyond that, an officer can also inquire into matters unrelated to the initial justification for the stop without converting the stop into something other than a lawful seizure so long as the unrelated questioning does not measurably extend the stop’s duration. Johnson, 555 U.S. at 333; see Rodriguez, 575 U.S. at 355 (“An officer . . . may conduct certain unrelated checks during an otherwise lawful traffic stop.”); see also Muehler v. Mena, 544 U.S. 93, 100-101 (2005) (instructing additional questioning during a detention unrelated to the original purpose of the detention does not constitute an additional seizure or independent constitutional violation). Importantly though, the detention “can become unlawful if it is prolonged beyond the time reasonably required to complete [its] mission.” Illinois v. Caballes, 543 U.S. 405, 407 (2005);

see Pichardo, 367 S.C. at 98, 623 S.E.2d at 848 (“Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention.”). However, a further detention extending the scope of a traffic stop beyond its original purpose is not automatically unconstitutional. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848. Instead, such a detention is lawful and permissible where: (1) the officer possesses reasonable articulable suspicion of other illegal activity based on the totality of the circumstances; or (2) the traffic stop becomes a consensual encounter. Id.; see Illinois v. Wardlow, 528 U.S. 119, 123 (2000) (explaining the reasonable suspicion standard “is a less demanding standard than probable cause” and simply requires a showing of “a minimal level of objective justification” in order to be established); United States v. Coker, 648 F. App’x 541, 544 (6th Cir. 2016) (noting the reasonable suspicion standard “is not a high bar”); see also United States v. Arvizu, 534 U.S. 266, 273 (2002) (“[W]e have said repeatedly that [reviewing courts] must look at the ‘totality of the circumstances’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing.” (citation omitted))).

In the case sub judice, Deputy Reese—almost immediately after validly stopping Appellant for committing traffic infractions he personally witnessed—discovered Appellant, who was the only adult inside her vehicle, did not have a driver’s license—valid or otherwise—and, thus, could *not* lawfully operate her vehicle on a South Carolina roadway in any manner.⁸ See

⁸ Although Appellant is not challenging the propriety of the stop on appeal, it was unquestionably proper in light of the fact it was only initiated after the deputy saw Appellant commit several traffic infractions. See State v. Nelson, 336 S.C. 186, 193, 519 S.E.2d 786, 789 (1999) (“As a general matter, the decision to stop an automobile is reasonable where police have probable cause to believe that a traffic violation has occurred.”); see also S.C. Code Ann. § 56-5-1900(a) (requiring a driver driving a vehicle on a South Carolina roadway that is divided into two or more clearly marked traffic lanes to drive the vehicle “as nearly as practicable entirely within a single lane”); S.C. Code Ann. § 56-5-1930(a) (prohibiting drivers in South Carolina from following other vehicles “more closely than is reasonable and prudent”).

S.C. Code Ann. § 56-1-20 (“No person, except those expressly exempted in this article shall drive any motor vehicle upon a highway in this State unless such person has a valid motor vehicle driver’s license issued to him under the provisions of this article.”); S.C. Code Ann. § 56-1-30(2) (permitting “[a] nonresident who is at least sixteen years of age and who has in his immediate possession a valid operator’s or chauffeur’s license issued to him in his home state or country” to operate a motor vehicle in South Carolina); see also Tex. Transp. Code Ann. § 521.021 (“A person, other than a person expressly exempted under this chapter, may not operate a motor vehicle on a highway in this state unless the person holds a driver’s license issued under this chapter.”); Tex. Transp. Code Ann. § 521.027 (exempting from Texas’s licensing requirements only drivers who are military members operating vehicles in the scope of their employment, drivers who are non-resident military members with out-of-state license, drivers who are non-resident military members’ spouses or dependent children with out-of-state licenses, and drivers who are operating various non-commercial farming or husbandry-related equipment); cf. United States v. Espinoza, 885 F.3d 516, 523 (8th Cir. 2018) (“[W]hen Espinoza revealed that he lacked a valid driver’s license, the request that he move to [the officer]’s cruiser was directly related to proper completion of the traffic stop because, without a license, Espinoza *could not be permitted to drive his vehicle after the stop.*” (emphasis added)). After that, Deputy Reese proceeded to question Appellant for the next few minutes while *simultaneously* attempting to both verify the confusing and suspicious information she provided to him and prepare a warning citation for the infractions he had observed. See Rodriguez, 575 U.S. at 355 (explaining an officer can conduct unrelated checks during a lawful traffic stop even without possessing reasonable suspicion of criminal activity so long as those checks are conducted in a way that does not prolong the stop). Then, only roughly eleven minutes after first stopping Appellant’s

vehicle, Deputy Reese explained the warning citation to Appellant and then immediately asked for—and obtained—consent for a search, which meant the deputy was able to obtain consent from Appellant during a period of time consistent with the time reasonably required to complete an ordinary and routine stop. See State v. Provet, 391 S.C. 494, 499, 706 S.E.2d 513, 516 (Ct. App. 2011) (finding a traffic stop was not unreasonably extended even if the officer’s questioning was unrelated to the purpose of the traffic stop where the entire stop lasted less than eleven minutes), aff’d, 405 S.C. 101, 747 S.E.2d 453 (2013); see also United States v. Sharpe, 470 U.S. 675, 683 (1985) (concluding a twenty-minute detention during an investigatory traffic stop was objectively reasonable); United States v. Jeffus, 22 F.3d 554, 557 (4th Cir. 1994) (finding a fifteen-minute traffic stop to be reasonable).

Critically, by the point in time he asked for consent, Deputy Reese had done nothing to unreasonably prolong the stop beyond the time necessary to complete its mission along with the ordinary inquiries that were permitted because any off-topic questioning he conducted was conducted *simultaneously with* his computer checks and preparation of the warning citation. See Rodriguez, 575 U.S. at 355 (recognizing a lawful stop does not become unlawful due to an officer asking inquiries unrelated to the stop’s purpose if those inquiries do not measurably extend the stop’s duration); cf. Caballes, 543 U.S. at 409 (finding no constitutional violation resulted from an officer using a drug-detection dog to conduct a sniff search of a vehicle stopped for a traffic violation because the sniff search occurred at the same time another officer was simultaneously completing the stop). Beyond that, Appellant supplied an out-of-state registration in one third-party’s name and insurance information in an entirely different third-party’s name to Deputy Reese during the course of the stop, which rendered the stop anything but routine and allowed for whatever additional time was needed to sort out that seemingly-

inconsistent and unusual information. See United States v. Olivera-Mendez, 484 F.3d 505, 510 (8th Cir. 2007) (“[Trooper] Kolz’s attempts to sort through Olivera-Mendez’s conflicting information involved Kolz in the legitimate and sometimes time-consuming tasks of a traffic stop. These tasks took longer than normal because Olivera-Mendez presented unusual circumstances and incomplete documentation.”); see also Sharpe, 470 U.S. at 688 (“We reject the contention that a 20-minute stop is unreasonable when the police have acted diligently and a suspect’s actions contribute to the added delay about which he complains.”). Moreover, as soon as he learned Appellant did not have a driver’s license towards the outset of the stop, Deputy Reese was aware of a crucial fact that prevented him from releasing Appellant—and, particularly, her vehicle—even *after* he had finished preparing the warning citation and done his best to verify the bizarre information that had been supplied because Appellant simply could not lawfully drive her vehicle away from the scene due to her lack of a valid license. See Kothe, 152 S.W.3d at 63-64 (recognizing the initial purpose of a traffic stop is not fully resolved *until* the officer has checked the driver’s information *and* “knows that this driver has a currently valid license, no outstanding warrants, and the car is not stolen”); see also United States v. Vargas, 848 F.3d 971, 974 (11th Cir. 2017) (“The fact that [the officer] had earlier informed [the driver] that he was issuing a warning is irrelevant. Under state law [the officer] had a duty not to allow [the driver] or Vargas, who were unlicensed, to drive the vehicle. Preventing them from driving off without is a license is lawful enforcement of the law, not unlawful detention.”); cf. State v. Hewins, 409 S.C. 93, 115, 760 S.E.2d 814, 825 (2014) (finding “the purpose of the traffic stop was fulfilled except for presenting the warning citation to Hewins” *after* the officer obtained Hewins’s driver’s license during the course of the stop, ran a check on it, confirmed the vehicle was registered to Hewins, and completed the citation).

Therefore, just as the trial judge correctly found, Deputy Reese did not unreasonably prolong the stop through his questioning of Appellant, and the stop had not yet ended at the time he requested consent from Appellant since he still had a need to control the scene in light of the fact no licensed drivers—aside from the deputies themselves—who could validly operate Appellant’s vehicle were present there at that time. See Vargas, 848 F.3d at 974 (concluding the mission of a traffic stop had not been completed by the time the officer obtained consent to search the vehicle because neither the vehicle’s driver nor passenger had licenses and, therefore, the officer was lawfully permitted to continue the detention since the officer had a duty to enforce “the law requiring that any person driving a vehicle be licensed to do so”); see also Johnson, 555 U.S. at 333 (explaining the typical ending point of a stop is “when the police have no further need to control the scene”). Accordingly, the trial judge properly declined to suppress the heroin found inside Appellant’s vehicle after correctly determining Deputy Reese did not extend the stop prior to obtaining Appellant’s consent, and her ruling was fully supported by the evidence and testimony presented during trial.⁹ See State v. Wright, 391 S.C. 436, 442, 706

⁹ Significantly, even if the initial stop had somehow been extended into a second detention under the circumstances involved, Deputy Reese—just as the trial judge correctly recognized—nonetheless possessed reasonable articulable suspicion of criminal activity that would have permitted him to do so in light of the indicators of criminal activity he detected during the course of the stop, which included: (1) Appellant’s vehicle was observed leaving a suspected stash house before heading towards Greenville County; (2) Appellant was travelling from Atlanta, a known source city for drugs; (3) Appellant was travelling on Interstate 85, which was a known drug corridor; (4) there were two cell phones present in Appellant’s vehicle but only one adult, which was consistent with drug activity; (5) multiple energy drink cans were present in the vehicle, which was a recognized indicator of drug activity; (6) an overwhelming odor of air fresheners was emanating from the vehicle, which was consistent with an effort to mask the smell of drugs; (7) there were no personal keys on the vehicle’s key ring; (8) Appellant did not possess a driver’s license; (9) Appellant’s vehicle was registered in the name of one third-party but insured by another third-party, and neither of those individuals were present at the scene; (10) Appellant provided bizarre information about the manner in which she purchased her vehicle that was not consistent with the information reflected in the bill of sale she provided; (11) Appellant’s travel plans appeared to be illogical and her claim of weeks of travel seemed

S.E.2d 324, 326 (2011) (instructing “an appellate court must affirm if there is any evidence to support the ruling” in a case involving a constitutional challenge to a search or seizure); see also Pichardo, 367 S.C. at 105, 623 S.E.2d at 851 (“Undoubtedly, a law enforcement officer may request permission to search at any time.”); cf. State v. Jones, 364 S.C. 51, 59, 610 S.E.2d 846,

inconsistent with the amount of luggage she had in her vehicle; and (12) Appellant was driving her vehicle in a manner that suggesting she was trying to “blend in” with other vehicles on the roadway to avoid detection. See United States v. Santillan, 902 F.3d 49, 57 (2nd Cir. 2018) (explaining the presentation of “a story that simply does not ring true” can contribute to a finding of reasonable suspicion); United States v. Bams, 858 F.3d 937, 944 (5th Cir. 2017) (concluding the presence of multiple energy drinks and a lone key in a vehicle’s ignition contributed to a finding of reasonable suspicion); United States v. Vaughan, 700 F.3d 705, 712 (4th Cir. 2012) (confirming the presence of multiple cell phones can contribute to a finding of reasonable suspicion to prolong a stop); United States v. Ervin, 469 F. App’x 374, 379 (5th Cir. 2012) (finding the fact a driver drove in a manner indicative of an attempt to blend in with other traffic supported a finding of reasonable suspicion sufficient to extend a traffic stop); United States v. Hearn, 476 F. App’x 512, 513 (4th Cir. 2011) (determining both the presence of multiple energy drink cans and an unusual story about how the driver came to be in possession of the vehicle contributed to a finding of reasonable suspicion to extend the stop); United States v. Figueroa-Espana, 511 F.3d 696, 703 (7th Cir. 2007) (holding the fact the driver “failed to provide a valid driver’s license or vehicle registration” during the course of a properly-initiated traffic stop to be a factor justifying an extension of the stop); United States v. Arango, 912 F.2d 441, 447 (10th Cir. 1990) (concluding the presence of an inadequate amount of luggage for the several-week-long period of travel reported by the occupants of a vehicle supported a finding of reasonable suspicion justifying further investigation); Moore, 415 S.C. at 253-254, 781 S.E.2d at 901-902 (recognizing illogical travel plans can be a relevant factor in a reasonable suspicion analysis); State v. Corley, 392 S.C. 125, 127, 708 S.E.2d 217, 218 (2011) (concluding the fact a vehicle left a residence connected to drug activity to be a pertinent factor in a reasonable suspicion analysis); State v. Wallace, 392 S.C. 47, 55, 707 S.E.2d 451, 455 (Ct. App. 2011) (finding third-party vehicle ownership, Atlanta’s status as a known drug hub, and Interstate 85’s status as a known drug corridor to be relevant factors in establishing a reasonable articulable suspicion of drug activity); see also Sokolow, 490 U.S. at 10 (“[I]nnocent behavior will frequently provide the basis for a showing of probable cause, and . . . in making a determination of probable cause the relevant inquiry is not whether particular conduct is innocent or guilty, but the degree of suspicion that attaches to particular types of noncriminal acts. That principle applies equally well to the reasonable suspicion inquiry.” (internal quotation marks and brackets from original omitted)); cf. Terry v. Ohio, 392 U.S. 1, 28 (1968) (holding an officer’s actions in effectuating a detention and frisk search were constitutionally reasonable because they were not “the product of a volatile or inventive imagination” or “undertaken simply as an act of harassment” and, instead, were reasonably tempered based on the officer observing Terry and his confederate repeatedly walk by and look in a store window in a manner that appeared suggestive of criminal activity to the officer).

850 (Ct. App. 2005) (“In the case at hand, there is evidence to support the trial judge’s findings and we cannot say his findings are clearly erroneous. We therefore find no abuse of discretion.”). Appellant’s convictions should be affirmed.

B. Propriety of the Search of Appellant’s Vehicle

Both the United States Constitution and the South Carolina Constitution prohibit unreasonable searches and seizures. U.S. Const. amend. IV; S.C. Const. art. I, § 10. Typically, any evidence seized as the result of an unreasonable search and seizure must be excluded from trial, and, absent an applicable exception to the warrant requirements, warrantless searches are generally considered to be unreasonable. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007); see State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978) (explaining it is well-settled warrantless searches are per se unreasonable “unless an exception to the warrant requirement is presented”). In South Carolina, recognized exceptions to the warrant requirement include: (1) the search incident to lawful arrest exception; (2) the hot pursuit exception; (3) the stop and frisk exception; (4) the automobile exception; (5) the plain view exception; (6) the consent exception; (7) the abandonment exception; and (8) the exigent circumstances exception. State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012); see State v. Herring, 387 S.C. 201, 209, 692 S.E.2d 490, 494 (2009) (“A fairly perceived need to act on the spot may justify entry and search under the exigent circumstances exception to the warrant requirement.”).

One of the recognized exceptions to the warrant requirement is the consent exception. See Birchfield v. North Dakota, ___ U.S. ___, 136 S. Ct. 2160, 2185 (2016) (“It is well established that a search is reasonable when the subject consents[.]”). Pursuant to the consent exception, an officer can validly conduct a warrantless search of a constitutionally-protected area when he receives free and voluntary consent. See State v. Adams, 377 S.C. 334, 339, 659 S.E.2d 272,

275 (Ct. App. 2008) (holding warrantless searches and seizures are constitutionally permissible when conducted under the authority of voluntary consent). Factors to be considered when determining whether consent was validly provided include the characteristics of the individual providing consent, which include the individual's age, maturity, education, intelligence, and experience, and the conditions under which the consent was granted, which include the conduct of the officer asking for consent, the number of officers present, and the duration of the encounter. United States v. Boone, 245 F.3d 352, 361-362 (4th Cir. 2001). Significantly, the State bears the burden of establishing the voluntariness of consent, which is a question of fact to be determined from the circumstances. Pichardo, 367 S.C. at 105, 623 S.E.2d at 851.

Likewise, another of the recognized exceptions to the warrant requirement is the automobile exception, which is based on the ready mobility of automobiles coupled with the lessened expectation of privacy in such vehicles. State v. Bailey, 276 S.C. 32, 36, 274 S.E.2d 913, 915 (1981); see State v. Cox, 290 S.C. 489, 491, 351 S.E.2d 570, 571 (1986) (“The two bases for the exception are: (1) the ready mobility of automobiles and the potential that evidence may be lost before a warrant is obtained; and (2) the lessened expectation of privacy in motor vehicles which are subject to governmental regulation.”). Pursuant to the automobile exception, law enforcement officers can conduct a warrantless search of an automobile based solely on the existence of probable cause, which simply means there is a fair probability contraband or evidence of a crime will be found. State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App. 1995); see Illinois v. Gates, 462 U.S. 213, 238 (1983) (identifying probable cause as “a fair probability that contraband or evidence of a crime will be found”); see also Kaley v. United States, 571 U.S. 320, 338 (2014) (recognizing the probable cause standard “is not a high bar”). Critically, when probable cause exists for a vehicle search, the search can be extended to every

part of the vehicle—and its contents—potentially containing the search’s object. Bultron, 318 S.C. at 332, 457 S.E.2d at 621; see also Wyoming v. Houghton, 526 U.S. 295, 307 (1999) (“We hold that police officers with probable cause to search a car may inspect passengers’ belongings found in the car that are capable of concealing the object of the search.”).

In the case at bar, Deputy Reese requested consent from Appellant at a point in time before the lawful stop of her vehicle had concluded, and, thus, the consent request was made during a period of time during which Appellant was being lawfully detained.¹⁰ See Salmeron v. State, 632 S.E.2d 645, 646 (Ga. 2006) (“If a driver is questioned and gives consent while he is being lawfully detained during a traffic stop, there is no Fourth Amendment violation.”); see also Pichardo, 367 S.C. at 105, 623 S.E.2d at 851 (“[W]hen an officer asks for consent to search *after* an unconstitutional detention, the consent procured is per se invalid unless it is both voluntary and not an exploitation of the unlawful detention.”); cf. State v. Willard, 374 S.C. 129, 136, 647 S.E.2d 252, 256 (Ct. App. 2007) (“We likewise find the search was not an exploitation of an unlawful detention. As previously discussed, we find reasonable suspicion existed to make the stop and detention. Furthermore, although Willard allegedly noticed the officers’ guns when first surrounded, there is no evidence of any threat of force against Willard once he had exited his vehicle. Nor is there evidence of coercion or promises made.”). Significantly, in response to that request, Appellant, who had only been detained for approximately eleven minutes by that point, unequivocally provided consent in a free and voluntary manner, and nothing suggested she

¹⁰ Moreover, as previously noted, Deputy Reese possessed reasonable suspicion to believe criminal activity was afoot at the time he requested consent based on the numerous suspicious factors he detected during the course of the yet-to-be-completed stop, and, therefore, he had a basis upon which he could have justifiably continued to detain Appellant even if the initial purpose of the stop had been satisfied. See Boone, 245 F.3d at 362 (“If an individual voluntarily consents to a search while justifiably detained on reasonable suspicion, the products of the search are admissible.”).

was not of a sufficient age, maturity, or intellect to be able to provide consent. See United States v. Watson, 423 U.S. 411, 424-425 (1976) (“There is no indication in this record that Watson was a newcomer to the law, mentally deficient, or unable in the face of a custodial arrest to exercise a free choice.” (footnote omitted)); see also State v. Mattison, 352 S.C. 577, 584, 575 S.E.2d 852, 855 (2003) (“Custody alone . . . is not enough in itself to demonstrate a coerced consent to search.”). Beyond that, Deputy Reese did not do anything coercive, deceptive, or threatening in order to obtain Appellant’s consent before she granted it. See Salmeron, 632 S.E.2d at 648 (rejecting the contention Salmeron’s consent was involuntary where there was “no evidence that the officer coerced or tricked him into agreeing to a search” when consent was requested during the course of a traffic stop). Furthermore, Appellant placed no express limits on the scope of her consent, and, during the course of the search, she did not expressly attempt to revoke it or engage in any actions that would have reasonably indicated to the deputies her consent had been in any way limited even when the deputies began removing the vehicle’s rear seat. See State v. Trapp, 420 S.C. 217, 242, 801 S.E.2d 742, 755 (Ct. App. 2017) (concluding a search did not exceed the consent provided where “Trapp presented no evidence that he limited the consent he gave to the police in their investigation”); State v. Funderburk, 367 S.C. 236, 240, 625 S.E.2d 248, 250 (Ct. App. 2006) (“A suspect’s failure to object (or withdraw his consent) when an officer exceeds limits allegedly set by the suspect is a strong indicator that the search was within the proper bounds of the consent search.”). Under those circumstances, the deputies were permitted to conduct a consent-based search of Appellant’s vehicle, including by removing the rear seat to access the vehicle’s secret compartment. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 66 (1999) (“The constitutional immunity from unreasonable searches and seizures may be waived by valid consent.”); see also Mattison, 352 S.C. at 587, 575 S.E.2d at 857 (“Effective

withdrawal of a consent to search requires unequivocal conduct, in the form of either an act, statement or some combination of the two, that is inconsistent with consent previously given.”); cf. Funderburk, 367 S.C. at 240-241, 625 S.E.2d at 250 (“Because Funderburk gave a general consent to a search of the vehicle and failed to object to Robinson’s search, we find the trial court’s ruling was supported by the evidence, and, therefore, we find no error.”).

However, even assuming the removal of the seat somehow could have exceeded the unrestricted consent for a search Appellant had provided, Master Deputy Harrison—before removing the vehicle’s rear seat—saw the secret compartment from outside the vehicle when he took a look underneath it, which gave him a compelling probable cause basis to believe the vehicle contained concealed contraband. See United States v. Estrada, 459 F.3d 627, 633 (5th Cir. 2006) (“[E]vidence of a hidden compartment supports ‘probable cause’ for a search/arrest.”); United States v. Ledesma, 447 F.3d 1307, 1318 (10th Cir. 2006) (“Because the evidence was highly probative of the existence of a secret compartment, and because it is difficult to imagine a licit purpose for a large hidden compartment in a vehicle the size of a Chevy van, these signs of a hidden compartment strongly suggest—and perhaps even singlehandedly establish—probable cause to search behind the side panels in the rear of the van.”); United States v. Price, 869 F.2d 801, 804 (5th Cir. 1989) (“Once the agents had discovered the secret compartment they had probable cause to search the compartment itself.”). As a result, the deputies were permitted to remove the rear seat and search the secret compartment even without Appellant’s express permission to do so based on the existence of probable cause. See United States v. Ross, 456 U.S. 798, 825 (1982) (“If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.”).

Accordingly, because the search of Appellant's vehicle that led to the discovery of her hidden stash of heroin was conducted both with her own voluntary consent and probable cause, the trial judge properly denied the suppression motion after finding the search was constitutionally proper, and her ruling was fully supported by the testimony and evidence presented during trial. See Moore, 415 S.C. at 251, 781 S.E.2d at 900 (explaining an appellate court reviewing a trial judge's ruling on a search and seizure issue must affirm "if there is any evidence to support the trial court's ruling"); see also Robinette, 519 U.S. at 39-40 (recognizing an individual does not have to be told they are free to go before that individual can voluntarily provide consent for a search); cf. United States v. Lattimore, 87 F.3d 647, 651 (4th Cir. 1996) ("[E]ven when an appellate court is convinced that it would have reached an opposite conclusion had it been charged with making the factual determination in the first instance, and although the temptation to substitute its judgment is particularly seductive when the encounter was recorded, a reviewing court may not reverse the decision of the district court that consent was given voluntarily unless it can be said that the view of the evidence taken by the district court is implausible in light of the entire record." (citing Anderson v. City of Bessemer City, 470 U.S. 564 (U.S. 1985))). Appellant's convictions should be affirmed.

II.

The trial judge properly denied Appellant's directed verdict motion because the evidence and testimony presented during trial, including the evidence and testimony establishing more than a million dollars' worth of heroin was found hidden inside Appellant's vehicle, supported a rational and logical conclusion Appellant was in knowing possession of the vast quantity of valuable contraband contained within her own vehicle and, thus, was guilty as charged, which required the trial judge to submit her case to the jury.

Appellant contends the trial judge reversibly by denying her motion for a directed verdict. In support of that contention, Appellant maintains there was no direct or substantial circumstantial evidence she had knowledge of the heroin found concealed inside her vehicle, which was required to establish her guilt for trafficking in heroin.¹¹ To the contrary, the evidence and testimony presented during trial, including the evidence establishing Appellant was caught driving a vehicle containing a vast quantity of heroin worth more than a million dollars, was sufficient for the jury to logically and rationally find Appellant was knowingly in constructive possession of the heroin found during the search and, thus, was guilty as charged.

¹¹ In challenging on appeal the trial judge's ruling on the directed verdict motion, Appellant has not raised any specific arguments in regard to her unlawful conduct towards a child conviction aside from a conclusory request for relief. (App. Br. pp. 23-25; p. 29). As a result, any issue Appellant may have had in regard to that particular conviction has been abandoned on appeal and cannot appropriately be considered or addressed. See State v. Hiott, 276 S.C. 72, 86, 276 S.E.2d 163, 170 (1981) (recognizing an issue raised on appeal but not actually argued in the brief will be "deemed abandoned on appeal"). Nonetheless though, the trial judge committed no conceivable error by declining to grant a directed verdict on the unlawful conduct towards a child charge because the evidence and testimony presented during trial established Appellant brought her young daughter along with her while she engaged in the inherently dangerous act of trafficking in heroin, which supported an obvious and rational conclusion Appellant placed her child's safety at unreasonable risk and, thus, was guilty of all the required elements of unlawful conduct towards a child. See S.C. Code Ann. § 63-5-70(A) (prohibiting a parent of a child from—amongst other things—"plac[ing] the child at unreasonable risk of harm affecting the child's life affecting the child's life, physical or mental health, or safety"); see also United States v. Sakyi, 160 F.3d 164, 169 (4th Cir. 1998) (explaining the presence of drugs creates a "readily apparent" risk of danger); State v. Banda, 371 S.C. 245, 253-254, 639 S.E.2d 36, 40-41 (2006) (recognizing an indisputable nexus exists between drugs and guns).

Accordingly, the trial judge correctly denied Appellant's directed verdict motion and submitted the case to the jury. Appellant's convictions should be affirmed.

Relevant Facts

During the course of Appellant's trial, evidence and testimony was presented establishing Appellant was stopped while driving from a known source location for drugs in a vehicle she claimed to own, provided "extremely" suspicious and inconsistent information after she was stopped, and asserted she was responsible for everything in her vehicle, which contained—amongst other things—a number of indicators of criminal activity. (R. pp. 75-81; pp. 109-110; p. 114; State's Ex. # 9 (Recording of Stop)). Additionally, evidence and testimony was presented establishing Appellant, who was the only occupant of her vehicle aside from her three-year-old daughter, was arrested after roughly fifteen pounds of heroin were found concealed inside a secret compartment that appeared to have been installed above her vehicle's fuel tank, apologized to her daughter several times after the heroin was found, and was subsequently found to be in actual possession of cocaine after being taken to a detention center. (R. pp. 79-80; pp. 87-88; p. 94; pp. 109-110; p. 121; pp. 128-129; p. 135; pp. 139-140; pp. 164-165; State's Ex. # 9; State's Ex. # 10 (In-Car Recording)). Furthermore, expert testimony was presented establishing the heroin found inside Appellant's vehicle was worth no less than \$1,730,000 and as much as \$7,000,000. (R. pp. 174-175; pp. 178-179).

After all that evidence and testimony was presented, defense counsel moved for a directed verdict on both charges. (R. pp. 181-182). In support of that motion, defense counsel argued the State's evidence was purportedly not sufficient to prove Appellant knew her vehicle contained heroin since the drugs were found in a secret compartment, no fingerprint evidence was introduced, and no eyewitnesses were presented to directly connect her to the drugs. (R. pp.

181-183). However, the trial judge rejected defense counsel's arguments and concluded sufficient evidence had been introduced from which the jury could find Appellant was knowingly in possession of the heroin found hidden inside her vehicle. (R. pp. 183-184).

Subsequent to that ruling, the trial proceeded forward, and Appellant's case was submitted to the jury. (R. p. 222). Ultimately, after deliberating on the matter, the jury convicted Appellant of trafficking in heroin and unlawful conduct towards a child. (R. p. 224).

Standard of Review

On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004). In other words, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see also Crawford v. United States, 375 F.2d 332, 334 (D.C. Cir. 1967) ("It is not the function of appellate judges to weigh the evidence and decide that if they had doubts other reasonable persons were compelled to have the same doubts. If that were the test the jury of twelve would be relegated to the very low grade function of secondary fact finders.").

Analysis

When presented with a motion for a directed verdict challenging the sufficiency of the evidence presented, the question before the trial judge is simply whether any rational juror could find the essential elements of the crime beyond a reasonable doubt from the evidence viewed in a

light most favorable to the State. State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016); see Jackson v. Virginia, 443 U.S. 307, 319 (1979) (“[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”). In resolving that question, the trial judge must be concerned solely with the existence or non-existence of evidence and is *not* permitted to personally weigh the evidence, decide credibility issues, or resolve conflicts in the testimony or evidence presented. Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002); see State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997) (“When ruling on a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not its weight.”); see also State v. Franklin, 80 S.C. 332, ___, 60 S.E. 953, 955 (1908) (“The orderly administration of justice requires that all proper evidence should be admitted, and the jury must determine the facts, and testimony should be exceedingly clear and without contradiction where a circuit judge assumes to direct a verdict.”).

Significantly, if there is *any* direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced, the trial judge should deny a directed verdict motion and submit the case to the jury. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992); see State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955) (“[O]n a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.”). By doing so under such circumstances, the trial judge correctly avoids

improperly encroaching upon the jury's exclusive role to find the facts, weigh the evidence, evaluate witness credibility, and resolve any evidentiary conflicts that may have arisen during trial. See Jackson, 443 U.S. at 319 (“[The directed verdict] standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.”); see also Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 174-175 (2010) (“[I]t is exclusively within the jury's province to decide how much weight the evidence deserves.”).

In South Carolina, it is illegal to traffic in four grams or more of heroin. See S.C. Code Ann. § 44-53-370(e) (prohibiting trafficking in heroin). In order to prove a defendant's guilt for trafficking in heroin under a theory of possession, the State must present direct *or* circumstantial evidence establishing the defendant was knowingly in actual or constructive possession of the requisite quantity of heroin. Id.; see State v. Halyard, 274 S.C. 397, 400, 264 S.E.2d 841, 842 (1980) (“[A] conviction for possession of contraband drugs requires proof of actual or constructive possession, coupled with knowledge of the presence of the drugs.”); see State v. Kimbrell, 294 S.C. 51, 54, 362 S.E.2d 630, 631 (1987) (“Possession may be inferred from circumstances.”); State v. Stanley, 365 S.C. 24, 42-43, 615 S.E.2d 455, 464 (Ct. App. 2005) (“In order to prove constructive possession, the State must show the defendant had dominion and control, or the right to exercise dominion and control, over either the drugs or the premises upon which the drugs are found.”); State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995) (explaining actual possession occurs “when the drugs are found to be in the actual physical custody of the person” while constructive possession occurs “when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs were found”). Significantly, when drugs are found on premises under the control of the

defendant, that fact “*in and of itself* gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury.” State v. Hudson, 277 S.C. 200, 203, 284 S.E.2d 773, 775 (1981) (emphasis added). Moreover, possession of a controlled substance can be inferred from the circumstances of a particular case and can be imputed to a person with both the power and intent to control the disposition and use of the drugs. State v. Brown, 319 S.C. 400, 404, 461 S.E.2d 828, 830 (Ct. App. 1995); see State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009) (“In drug cases, the element of knowledge is seldom established through direct evidence, but may be proven circumstantially. Knowledge can be proven by evidence of acts, declarations, or conduct of the accused from which the inference may be drawn that the accused knew of the existence of the prohibited substances.” (citations omitted)); see also Kimbrell, 294 S.C. at 54, 362 S.E.2d at 631 (“Because actual knowledge of the presence of the drug is strong evidence of intent to control its disposition or use, knowledge may be equated with or substituted for the intent element.”).

In Appellant’s case, the evidence and testimony presented during trial established multiple *pounds* of heroin were found concealed in a vehicle Appellant both owned and was driving, which supported a logical conclusion she knew about and was in possession of that heroin since it was concealed in her own car. See United States v. De Jesús-Viera, 655 F.3d 52, 59 (1st Cir. 2011) (“The jury could have inferred that De Jesús-Viera acted knowingly and intentionally from testimony that the drugs were found in a car that De Jesús-Viera both owned and was driving, notwithstanding the fact the drugs were concealed in a hidden compartment.”); United States v. Ascolani-Gonzalez, 449 F.2d 159, 159-160 (9th Cir. 1971) (“The act of driving a car laden with concealed contraband provides . . . a substantial basis [for inferring knowledge.]”); Townsend v. State, 558 S.E.2d 849, 850 (Ga. Ct. App. 2002) (“There is a

presumption that drugs found within a vehicle actually belong to the driver of the vehicle, particularly when the driver is also the owner of the vehicle.”); see also Hudson, 277 S.C. at 203, 284 S.E.2d at 775 (recognizing evidence establishing drugs were found on premises under the control of a particular individual can alone support an inference of knowledge and possession sufficient to warrant submission of the case to the jury). Additionally, the evidence and testimony presented during trial established the heroin concealed in Appellant’s vehicle was worth more—and perhaps much more—than a million dollars, which supported an obvious and rational conclusion such valuable contraband would not have simply been left behind or unwittingly allowed into the hands of a random stranger by its owner. See De Jesús-Viera, 655 F.3d at 60 (“The jury also could have inferred that De Jesús-Viera knew of the presence of the illegal narcotics in his car from the sheer amount of drugs the CBP officers found. . . . The jury could have drawn the inference that De Jesús-Viera knew that the over \$1.45 million worth of drugs were in his car based on its common sense.”); United States v. Cota-Meza, 367 F.3d 1218, 1224 (10th Cir. 2004) (“[T]he value of drugs can support an inference of knowledge.”); United States v. Villarreal, 324 F.3d 319, 324 (5th Cir. 2003) (“One example of circumstantial evidence which may be probative of knowledge is the value of the drug being transported.”); United States v. Hooks, 780 F.2d 1526, 1532 (10th Cir. 1986) (finding the high value of drugs found concealed in a vehicle supported a conclusion the individual in possession of the vehicle was also knowingly in possession of the drugs since the owner of the drugs would not have been likely to have simply left the valuable drugs behind). Beyond that substantial evidence, Appellant’s knowledge of the heroin was further supported by the evidence establishing various indicators of criminal activity were detected during the course of the stop coupled with the evidence establishing Appellant, who candidly apologized to her daughter after the heroin was found, was

in *actual possession* of other drugs. See Robinson, 310 S.C. at 539, 426 S.E.2d 317, 319 (“Once physical possession is shown, knowledge becomes a question for the jury.”); see also Hernandez, 382 S.C. at 624, 677 S.E.2d at 605 (recognizing knowledge of drugs can be established by the presentation of evidence regarding the acts and conduct of the accused that support an inference the accused knew of the existence of the drugs); State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) (“As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt.”).

In light of all that testimony and evidence, the jury—even without eyewitness testimony or fingerprint evidence—could have rationally and logically found Appellant had the right to exercise dominion and control over and was in knowing possession of the heroin and, thus, was guilty as charged based on her constructive possession of that contraband. See Hudson, 277 S.C. at 203, 284 S.E.2d at 775 (“When contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury.”); State v. Smith, 307 S.C. 376, 384, 415 S.E.2d 409, 414 (Ct. App. 1992) (recognizing the lack of incriminating physical evidence such as fingerprints, blood stains, and fiber samples does not preclude a finding sufficient evidence existed to support a guilty verdict); cf. United States v. Guzman, 446 F.2d 1137, 1139 (9th Cir. 1971) (“The question of the occupant’s knowledge of the concealed contraband is for the trier of fact to answer, not a court of review. Having answered this question by way of a guilty verdict, it has long been our position that evidence which is the subject of this controversy serves as a substantial basis to draw an inference of such knowledge.”). As a result, the trial judge was *required* to deny Appellant’s directed verdict motion and submit the case to the jury, and she committed no possible error by doing just that. See State v. Al-Amin, 353 S.C. 405, 411, 578

S.E.2d 32, 35 (Ct. App. 2003) (recognizing the trial judge is “required” to submit a case to the jury when substantial evidence is presented reasonably tending to prove the guilt of the accused or from which the accused’s guilt may be fairly and logically deduced), overruled on other grounds by State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015); cf. Ascolani-Gonzalez, 449 F.2d at 159-160 (finding sufficient evidence existed to support the defendant’s convictions for drug offenses based on the presentation of evidence establishing the defendant was apprehended driving a vehicle containing a large stash of marijuana that had been concealed in a hidden compartment). Appellant’s convictions should be affirmed.

III.

Even assuming the trial judge erred by declining to instruct the jury on circumstantial evidence in one of the manners proposed by defense counsel, any conceivable error was harmless beyond a reasonable doubt because the trial judge's jury instructions as presented were sufficient to adequately and properly convey the applicable law to the jury, including the law regarding the fact Appellant could not be convicted unless the evidence—regardless of whether it was direct or circumstantial—proved her guilt beyond a reasonable doubt.

Appellant contends the trial judge reversibly erred by declining to instruct the jury on one of the circumstantial evidence jury instructions requested by defense counsel. As support for that contention, Appellant maintains our Supreme Court mandated in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), the instruction requested by defense counsel be given and further maintains the trial judge's refusal to give that particular instruction was not harmless due to the fact the State relied exclusively on circumstantial evidence when proving part of its case. Significantly, even without the presentation of the jury instruction requested by defense counsel, the trial judge's jury instruction, when considered as a whole, were substantially correct and sufficient to adequately cover the applicable law to the jury and ensure the jury understood Appellant could not be convicted unless her guilt had been established by the evidence beyond a reasonable doubt. Under such circumstances, any possible error committed by the trial judge in instructing the jury on the applicable law was harmless beyond a reasonable doubt and could not have resulted in any actual prejudice to Appellant. Thus, reversal of Appellant's convictions is simply not warranted on appeal. Appellant's convictions should be affirmed.

Relevant Facts

During the course of Appellant's trial, the trial judge asked the parties if they wished to discuss potential jury instructions outside the presence of the jury. (R. pp. 142-143). In response, defense counsel proposed the trial judge present the "old" circumstantial evidence jury

instruction from State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989). (R. p. 143).

Specifically, defense counsel asked the trial judge to instruct the jury:

“The jury may not convict unless every circumstance relied upon by the state is proven beyond a reasonable doubt and all the circumstances so proven are consistent with each other and, when taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that they create a probability, though a strong one and if, assuming the[m] to be true, they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed.”

(R. pp. 143-144). However, the trial judge declined defense counsel’s request and indicated she intended to present her own circumstantial evidence charge, which she stated “encapsulate[d] the spirit” of the proposed charge. (R. p. 144).

Thereafter, following a recess, defense counsel informed the trial judge he understood her earlier ruling but proposed she present an alternative circumstantial evidence charge containing language from the decision in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). (R. pp. 149-150). Through that proposal, defense counsel requested a jury instruction stating:

1. There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.
2. Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant’s behavior as suspicious, the proof has failed.

3. The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

(R. pp. 230-231). Once again though, the trial judge denied defense counsel's request. (R. p. 151).

Subsequently, the trial judge charged the jury on the applicable law. (R. pp. 204-220). In doing so, the trial judge instructed the jurors their ultimate goal and duty was to determine whether the State met its burden of proof, explained the burden of proof was solely on the State and not on the defendant, thoroughly discussed both the reasonable doubt standard and the fact Appellant was presumed to be innocent, and advised the jurors their verdict must be a unanimous one.¹² (R. pp. 205-210; p. 219). Additionally, the trial judge instructed the jurors on the indicted offenses and specifically advised them mere presence was not sufficient to prove possession of drugs. (R. p. 215-217). Furthermore, regarding circumstantial evidence, the trial judge instructed:

There are two types of evidence which are generally presented during a trial: direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved.

¹² Specifically, in discussing reasonable doubt, the trial judge explained: "Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crimes charged, then you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find her not guilty. Facts and circumstances that merely place upon the defendant a grave suspicion of the crime charged or that merely raise a speculation or conjecture of the defendant's guilt are not sufficient to authorize a conviction of the accused." (R. p. 210).

Circumstantial evidence is proof of the chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

(R. p. 211).

Following the presentation of those instructions, defense counsel unsuccessfully renewed his “prior objection” without further comment. (R. p. 220). Thereafter, the case was submitted to the jury, and the jury ultimately convicted Appellant as indicted. (R. p. 222; p. 224).

Standard of Review

On appeal, an appellate court reviewing a trial judge’s jury charge must view the charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); see Todd v. State, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) (“[J]ury charges should be examined in their entirety and not in isolation in analyzing whether the defendant’s due process rights have been violated.”). When reviewing a jury charge, the appropriate test involves determining what a reasonable juror would have understood the charge to mean. Sheppard v. State, 357 S.C. 646, 664, 594 S.E.2d 462, 474 (2004). So long as the jury instructions presented are substantially correct and cover the applicable law, reversal is not warranted. See State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) (“A jury charge which is substantially correct and covers the law does not require reversal.”); see also State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) (“A trial court’s decision regarding

jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied.”). Moreover, an appellate court will only reverse a trial judge’s decision regarding jury instructions when that decision constitutes an abuse of discretion resulting in actual prejudice. See Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (“An appellate court will not reverse the trial court’s decision regarding jury instructions unless the trial court abused its discretion.”); Rauch v. Zayas, 284 S.C. 594, 597, 327 S.E.2d 377, 378 (Ct. App. 1985) (“[A]n alleged error in a portion of the charge *must be prejudicial* to the appellant to warrant a new trial.” (emphasis added)).

Analysis

The purpose of a trial judge’s jury instructions is “to enlighten the jury and to aid it in arriving at a correct verdict.” State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). To carry out that purpose, a trial judge is required to charge the jury on the current and correct South Carolina law applicable to the case based on the evidence presented. State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 2 (2003); see State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge is required to instruct the jury on sound principles of law that are applicable to the case based on the evidence presented). In doing so, the trial judge is only required to instruct the jury on the substance of the law and does *not* have to use any particular verbiage. State v. Burkhardt, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002). Importantly, so long as the trial judge’s jury instructions are substantially correct and adequately cover the applicable law, those instructions are considered to be appropriate and not erroneous. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) (“A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.”).

As far as jury instructions on circumstantial evidence are concerned, a variety of different circumstantial evidence charges have been recognized as proper throughout the course of South Carolina history. See State v. Lynch, 412 S.C. 156, 176-177, 771 S.E.2d 346, 357 (Ct. App. 2015) (outlining the different circumstantial evidence jury instructions that have been approved of in South Carolina over the years). In State v. Edwards, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989), our Supreme Court adopted “reasonable hypothesis” language from an earlier appellate decision as the appropriate standard to be charged to juries in cases involving circumstantial evidence. See Littlejohn, 228 S.C. at 328, 89 S.E.2d at 926 (“[I]t is necessary that every circumstance relied upon by the state be proven beyond a reasonable doubt; and that all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that they create a probability, though a strong one; and if, assuming them to be true, they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed.”). Thereafter, in State v. Grippon, 327 S.C. 79, 83-84, 489 S.E.2d 462, 464 (1997), our Supreme Court determined a charge on the “reasonable hypothesis” language was unnecessary in cases in which the jury was properly instructed on reasonable doubt and further proposed the following circumstantial evidence charge for use in future cases:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant

beyond a reasonable doubt, you must find [the defendant] not guilty.

Subsequently, in State v. Cherry, 361 S.C. 588, 597, 606 S.E.2d 475, 480 (2004), our Supreme Court determined the charge from “Grippon [was] the sole remaining charge to be utilized by the courts of [South Carolina] in instructing juries in cases relying, in whole or in part, on circumstantial evidence.” See also Holland v. United States, 348 U.S. 121, 139-140 (1954) (“The petitioners assail the refusal of the trial judge to instruct that where the Government’s evidence is circumstantial it must be such as to exclude every reasonable hypothesis other than that of guilt. There is some support for this type of instruction in the lower court decisions, . . . but the better rule is that where the jury is properly instructed on the standards for reasonable doubt, such an additional instruction on circumstantial evidence is confusing and incorrect[.]” (citations omitted)).

Most recently, in State v. Logan, 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013), our Supreme Court again considered an issue involving the propriety of a circumstantial evidence jury instruction. In that case, the Supreme Court affirmed Logan’s conviction after recognizing the continuing accuracy of the circumstantial evidence charge articulated in Grippon. Id. at 100, 747 S.E.2d at 452-453. However, the Supreme Court further articulated a new circumstantial evidence jury instruction and explained it “should” be given when requested by defense counsel in future cases:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State

relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Id. at 99-100, 747 S.E.2d 452-453. Importantly though, despite articulating that new charge, the Supreme Court expressly recognized any error that occurs through the manner in which a jury is instructed on circumstantial evidence can nonetheless still be harmless beyond a reasonable doubt so long as the jury was properly instructed on the law as a whole, including in regard to the reasonable doubt standard. Id. at 94, n. 8, 747 S.E.2d at 449, n. 8.

In the case sub judice, the trial judge's jury instructions as presented thoroughly conveyed the applicable law on the reasonable doubt standard, the burden of proof, and the presumption of innocence to the jurors. Likewise, the trial judge's jury instructions ensured the jurors understood they could not convict Appellant of the indicted offenses if the evidence presented only supported a conjectural or speculative possibility of Appellant's guilt. Furthermore, the trial judge's jury instructions contained much of the language from our Supreme Court's proposed charge in Logan and ensured the jurors were aware Appellant could not be convicted based on direct evidence or circumstantial evidence unless that evidence established Appellant's guilt beyond a reasonable doubt. Under those circumstances, the trial judge's jury instructions were sufficient to adequately convey the relevant and applicable South Carolina law to the jurors and ensure they were equipped to properly render a verdict in Appellant's case. See Sheppard, 357 S.C. at 665, 594 S.E.2d at 472-473 ("A jury charge is correct if it contains the correct definition of the law when read as a whole."); State v. Holmes, 277 S.C. 232,

234, 285 S.E.2d 353, 354 (1981) (recognizing a trial judge does not have to use any particular language when instructing the jury on the law so long as the instructions given adequately cover the relevant and applicable law); see also Burkhart, 350 S.C. at 263, 565 S.E.2d at 304 (“Failure to give requested jury instructions in not prejudicial error where the instructions given afford the proper test for determining the issues.”); cf. Victor v. Nebraska, 511 U.S. 1, 5 (1994) (“The beyond a reasonable doubt standard is a requirement of due process, but the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course. Indeed, so long as the court instructs the jury on the necessity that the defendant’s guilt be proved beyond a reasonable doubt, . . . the Constitution does not require that any particular form of words be used in advising the jury of the government’s burden of proof. Rather, taken as a whole, the instructions must correctly convey the concept of reasonable doubt to the jury.” (citations, brackets, and internal quotations omitted)).

Because the trial judge’s jury instructions as presented were sufficient to adequately and correctly convey the applicable law to the jury, any conceivable error in the trial judge’s decision not to present a jury instruction on the exact language proposed in Logan was harmless beyond a reasonable doubt and could not have resulted in any prejudice to Appellant. See State v. Jenkins, 408 S.C. 560, 573, 759 S.E.2d 759, 766 (Ct. App. 2014) (“[A]ny error in the omission of other language from the Logan instruction was harmless beyond a reasonable doubt because the trial judge’s instruction, as a whole, properly conveyed the applicable law.”); cf. Brandt, 393 S.C. at 551, 713 S.E.2d at 604 (“[T]he judge’s denial of Brandt’s request to charge does not warrant reversal as the charge as a whole afforded the jury the proper test for determining the issues presented at trial.”); State v. Rabon, 275 S.C. 459, 462, 272 S.E.2d 634, 636 (1980) (“The defendant requested the judge to charge the jury that a signed Miranda warning alone does not

admit a confession. While the charge would not have been inappropriate, we are of the opinion that the judge's charge, when considered as a whole, adequately covered the applicable law under the facts of this case. The Constitution of this State requires that the trial judge declare the law, but no particular verbiage is necessary. It is sufficient if the precepts stated to the jury adequately cover that law which is applicable.”). Accordingly, just as our Supreme Court found in Logan itself, the jury instructions presented in Appellant's case were sufficient such that a reversal of Appellant's convictions is not warranted on appeal. See Logan, 405 S.C. at 94, n. 8, 747 S.E.2d at 449, n. 8 (“In the instant case, the trial clearly instructed the jury regarding the reasonable doubt burden of proof The trial court's jury instruction, as a whole, properly conveyed the applicable law. Thus, any conceivable error was harmless beyond a reasonable doubt.” (citations omitted)); see also Ezell, 321 S.C. at 425, 468 S.E.2d at 681 (“A jury charge which is substantially correct and covers the law does not require reversal.”); cf. Jenkins, 408 S.C. at 573-574, 759 S.E.2d at 766 (“As our supreme court ultimately concluded in Logan, we conclude the trial court's instructions in the present case, as a whole, properly conveyed the applicable law.”). Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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March 30, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2018-002163

THE STATE,

Respondent,

vs.

VICTORIA LORRAINE SANCHEZ,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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March 30, 2020

APP'X 335

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Victoria Lorraine Sanchez, Appellant.

Appellate Case No. 2018-002163

Appeal From Greenville County
Letitia H. Verdin, Circuit Court Judge

Opinion No. 5875
Heard October 12, 2021 – Filed December 8, 2021

REVERSED AND REMANDED

Appellate Defender Adam Sinclair Ruffin, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia, and Solicitor William Walter Wilkins, III, of
Greenville, for Respondent.

THOMAS, J.: Victoria Lorraine Sanchez appeals her convictions for trafficking more than twenty-eight grams of heroin and unlawful conduct toward a child, arguing, *inter alia*, the trial court erred in refusing to charge her requested circumstantial evidence jury charge. We reverse and remand.

FACTS

During a pretrial motion to suppress, Andrew Reese testified he was working as a deputy on a narcotics interdiction team for the Greenville County Sheriff's Office (GCSO) and was responsible for locating and seizing narcotics and other illegal items being transported on the interstate. On June 28, 2017, the interdiction team received a tip from the Department of Homeland Security identifying a silver Kia Sorrento that had been observed at a suspected drug location in Atlanta and was headed north on I-85. Reese stopped Sanchez's silver Kia after she crossed lane lines and was too-closely following a tractor trailer as she was traveling north on I-85.

Reese approached the vehicle and Sanchez handed him her Texas identification card, insurance documentation insuring Rigoberto Guzman, Jr., registration information in another man's name, a bill of sale indicating a sale of the vehicle from Edwin Campos to Sanchez, and an offer to purchase a 2014 Chrysler for \$4,900. Sanchez told Reese she was buying the vehicle from her cousin and had put down a \$4,000 deposit. Reese began questioning Sanchez, who told him she left Laredo, Texas, for Atlanta, stayed a week with family, and was traveling to New Jersey to visit family for two weeks. She also stated a child in the vehicle was her child and her other two children were in Texas with her boyfriend. According to Reese's dash camera video, Reese asked Sanchez to exit the vehicle approximately three-and-a-half minutes into the stop. Approximately twelve minutes into the stop, Reese asked for consent and handed Sanchez warning tickets. Sanchez consented to the search. Reese described Sanchez as calm throughout the process. By the time Reese handed Sanchez the warnings, Deputy Wasserman and Deputy David Harrison, Jr., both also of the GCSO, had arrived, having been requested by Reese to assist in the search.

Reese testified he first searched the front seat area, including Sanchez's purse, and then moved to search the luggage in the trunk of the car. Harrison testified he had seventeen years of experience in highway patrol, thirteen of which were on the interdiction team. Based on his training, the tip, and Reese's suspicions, Harrison suspected the vehicle might contain an "aftermarket hidden compartment." Harrison testified that on a small SUV like the Kia, he typically looked on the floorboard, underneath the vehicle, and on the floor above the gas tank. In this case, Harrison looked underneath the vehicle and noticed the exhaust and gas tank were lower than they should have been. He also noticed unusual, elongated bolts that were freshly painted black, whereas the remainder of the undercarriage was

grimy. Harrison noticed the welding on the bolts was not factory welding. Harrison concluded the vehicle had a hidden compartment.

Harrison retrieved a crowbar, removed the backseat, and looked at the cover for the fuel pump. When he touched it to pull it open, a screw popped off. The screw contained traces of silicone indicating it had been cut off and glued onto the panel lid to make it appear as if it was in use. Packages of what tested to be heroin were inside the compartment. The trial court watched the video of the stop and search and denied Sanchez's motion to suppress the heroin.

During trial, Reese and Harrison similarly testified to the tip, stop, and search. Reese additionally testified that while Sanchez was being booked into the detention center, she admitted she had a \$20 bill with cocaine residue on it in her bra. The heroin found in the vehicle, estimated at a street value of \$1.73 million, was admitted over Sanchez's renewed objection. Reese admitted he never investigated the seller of the vehicle despite the seller's address on the bill of sale and further admitted he did not test the hidden compartment for fingerprints.

Sanchez moved for directed verdicts, arguing there was insufficient evidence of her knowledge that the vehicle contained heroin. The trial court denied the motions. Sanchez also requested the circumstantial evidence jury charge approved in *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013). The trial court denied the request. Sanchez was convicted and sentenced to thirty-two years imprisonment for trafficking in heroin and ten years concurrent for unlawful conduct toward a child. This appeal followed.

STANDARD OF REVIEW

"In criminal cases, we review the decisions of the trial court only for errors of law." *State v. Gilmore*, 396 S.C. 72, 77, 719 S.E.2d 688, 690 (Ct. App. 2011).

"Therefore, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous." *State v. Banda*, 371 S.C. 245, 251, 639 S.E.2d 36, 39 (2006). In our review, "this [c]ourt is limited to determining whether the trial court abused its discretion." *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009).

LAW/ANALYSIS

Sanchez argues the trial court erred in refusing to give her requested circumstantial evidence jury charge. We agree.

Trafficking in heroin is defined as:

Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of: . . . heroin . . . is guilty of a felony which is known as "trafficking in illegal drugs"

S.C. Code Ann. § 44-53-370(e)(3) (2018). The trafficking statute "specifically requires a person act 'knowingly.'" *State v. Taylor*, 323 S.C. 162, 165, 473 S.E.2d 817, 818 (Ct. App. 1996) (addressing a previous version of the trafficking statute). A "defendant's knowledge and possession [of illegal substances] may be inferred." *State v. Heath*, 370 S.C. 326, 329, 635 S.E.2d 18, 19 (2006). "In drug cases, the element of knowledge is seldom established through direct evidence, but may be proven circumstantially." *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). "The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two." *Logan*, 405 S.C. at 99, 747 S.E.2d at 452.

In *Logan*, our supreme court reconsidered the circumstantial evidence jury instruction given in criminal trials. 405 S.C. at 90–100, 747 S.E.2d at 448–53. The court mandated a new circumstantial evidence jury charge, "when so requested by the defendant[,]" containing the following language:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to

be given to either direct or circumstantial evidence, however, *to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt.* If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

Id. at 99, 747 S.E.2d at 452 (emphasis added). "When requested, the *Logan* charge must be given in cases based in whole or part on circumstantial evidence." *State v. Herndon*, 430 S.C. 367, 371, 845 S.E.2d 499, 501 (2020).

An erroneous failure to give the *Logan* charge upon request must be prejudicial to the defendant; thus, the appellate court must apply the harmless error analysis. *Id.* at 371, 845 S.E.2d at 502; *see State v. Jenkins*, 412 S.C. 643, 651, 773 S.E.2d 906, 909–10 (2015) (explaining a harmless error analysis looks at the prejudicial nature of the error to determine if it reasonably affected the result of the trial).

Previewing a trial judge's jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues presented at trial. *State v. Simmons*, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). "A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied." *State v. Wharton*, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009). A jury charge is appropriate if it is substantially correct and adequately covers the law applicable to the case. *State v. Foust*, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996).

As previously stated, our supreme court in *Herndon* stated that "the *Logan* charge must be given in cases based in whole or part on circumstantial evidence." *Herndon*, 430 S.C. at 371, 845 S.E.2d at 501. The State's case against the defendant in *Herndon* was "almost exclusively circumstantial." *Id.* at 373, 845 S.E.2d at 502. In applying the harmless error test, the court noted it "must be careful not to weigh the evidence." *Id.* at 373 n.6, 845 S.E.2d at 502 n.6. In *State v. Dent*, this court likewise found the trial court erred in refusing to give the *Logan* charge upon request. 434 S.C. 357, 362–63, 863 S.E.2d 478, 481 (Ct. App. 2021), *reh'g denied*, Oct. 18, 2021. In determining the error was not harmless, this court in *Dent* relied in part on the fact that "[t]here was no physical evidence, and the State spent substantial time in summation explaining to the jury that the case was 'about circumstantial evidence.'" *Id.* at 363, 863 S.E.2d at 481.

In this case, Sanchez requested the *Logan* charge. The court denied the request and charged the following:

There are two types of evidence which are generally presented during a trial: direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of the chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred.

Circumstantial evidence is based on inference and not on personal knowledge or observation.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

The trial court's charge neglected to include the language from *Logan*, "to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt." *Logan*, 405 S.C. at 99, 747 S.E.2d at 452. Based on the omission of the mandatory language in *Logan*, and after a review of the trial court's instructions as a whole, we agree with Sanchez that the trial court erred in refusing to give the *Logan* charge upon her request, and Sanchez was prejudiced by the error. *See Dent*, 434 S.C. at 362, 863 S.E.2d at 480–81 ("To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." (quoting *State v. Adkins*, 353 S.C. 312, 319, 577 S.E.2d 460, 464 (Ct. App. 2003))).

Similar to *Herndon*, the evidence of Sanchez's knowledge of the drugs was largely circumstantial. The State's witness admitted there was no investigation of the

seller of the vehicle or tests on the hidden compartment. Furthermore, there was no direct evidence of Sanchez's knowledge of the hidden compartment or drugs. As in *Dent*, the State spent a significant portion of its closing argument on circumstantial evidence. We find the trial court erred in failing to grant Sanchez's request to charge the jury with the *Logan* instruction on circumstantial evidence. In addition, we find the error was not harmless.

CONCLUSION

Based on the foregoing, Sanchez's convictions are

REVERSED AND REMANDED.¹

HUFF and GEATHERS, JJ., concur.

¹ Because this finding is dispositive, we decline to address Sanchez's remaining issues on appeal. *See State v. Hepburn*, 406 S.C. 416, 428 n.14, 753 S.E.2d 402, 408 n.14 (2013) (declining to review remaining issues when a determination of a prior issue was dispositive of the appeal).

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2018-002163

THE STATE,

Respondent,

vs.

VICTORIA LORRAINE SANCHEZ,

Appellant.

RESPONDENT'S PETITION FOR REHEARING

Through a published decision issued on December 8, 2021, this Court reversed Appellant Victoria Lorraine Sanchez's convictions for trafficking in heroin and unlawful conduct toward a child and remanded her case for a new trial based solely on the manner in which the trial judge instructed the jury on the law regarding circumstantial evidence. State v. Sanchez, Op. No. 5875 (S.C. Ct. App. filed Dec. 8, 2021). In doing so, this Court correctly concluded the trial judge committed an error by refusing defense counsel's request for the jury to be instructed on the circumstantial evidence language articulated in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). Furthermore, this Court found the trial judge's error resulted in prejudice to Sanchez due to the largely circumstantial nature of the evidence in her case. Finally, this Court declined to address the other issues raised, including Sanchez's argument alleging the trial judge erred by denying her directed verdict motion, based on its conclusion its resolution of the issue regarding

the jury instruction was dispositive.¹ Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondent (“the State”) respectfully petitions for rehearing because this Court appears to have overlooked the harmlessness of any error in the trial judge’s charging decisions based on the specific circumstances of Sanchez’s case.

Notably, throughout South Carolina history, a variety of different circumstantial evidence charges have been recognized by our courts as proper at different points in time. See State v. Lynch, 412 S.C. 156, 176-177, 771 S.E.2d 346, 357 (Ct. App. 2015) (outlining the different circumstantial evidence jury instructions that have been approved of in South Carolina over the years). In State v. Edwards, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989), our Supreme Court adopted “reasonable hypothesis” language from an earlier appellate decision as the appropriate standard to be charged to juries in cases involving circumstantial evidence. See Littlejohn, 228 S.C. at 328, 89 S.E.2d at 926 (“[I]t is necessary that every circumstance relied upon by the state be proven beyond a reasonable doubt; and that all of the circumstances so proven be consistent

¹ Significantly, since the reversal of a trial judge’s ruling denying a motion for a directed verdict would preclude any retrial, a decision on another issue resulting in a reversal and a remand for a new trial is not dispositive of a directed verdict claim. See Allegro, Inc. v. Scully, 408 S.C. 200, 201-202, 758 S.E.2d 716, 717 (2014) (remanding an appeal to the Court of Appeals because its decision to reverse and remand a case for a new trial based on one issue was not dispositive of the directed verdict issue that had also been raised on appeal); cf. State v. Grate, 310 S.C. 240, 423 S.E.2d 119 (1992) (addressing and rejecting an appellate challenge to the trial judge’s denial of a directed verdict motion despite reversing and remanding for a new trial based on the trial judge’s commission of an unrelated error). Therefore, this Court may wish to reconsider its decision not to address the directed verdict issue Sanchez has raised on appeal since its resolution of the issue related to the trial judge’s jury instructions was not dispositive of Sanchez’s directed verdict claim. Cf. Sluss v. Commonwealth, 381 S.W.3d 215, 218 (Ky. 2012) (“Appellant claims that the trial court’s denial of his motion for a directed verdict was reversible error. This Court chooses to address this issue first because it is potentially dispositive; if the trial court did commit reversible error, Appellant’s convictions would be vacated and he would stand acquitted, at least of the highest level of offense.”). However, for the reasons that have already been articulated on appeal by the State, the trial judge’s decision to deny Sanchez’s directed verdict motion should nonetheless be affirmed on the merits since it was correct. (Final Resp. Br. pp. 30-38).

with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that they create a probability, though a strong one; and if, assuming them to be true, they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed.”). Thereafter, in State v. Grippon, 327 S.C. 79, 83-84, 489 S.E.2d 462, 464 (1997), our Supreme Court determined a charge on the “reasonable hypothesis” language was unnecessary in cases in which the jury was properly instructed on reasonable doubt and further proposed the following circumstantial evidence charge for use in future cases:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find [the defendant] not guilty.

Subsequently, in State v. Cherry, 361 S.C. 588, 597, 606 S.E.2d 475, 480 (2004), our Supreme Court determined the charge from “Grippon [was] the sole remaining charge to be utilized by the courts of [South Carolina] in instructing juries in cases relying, in whole or in part, on circumstantial evidence.” See also Holland v. United States, 348 U.S. 121, 139-140 (1954) (“The petitioners assail the refusal of the trial judge to instruct that where the Government’s evidence is circumstantial it must be such as to exclude every reasonable hypothesis other than that of guilt. There is some support for this type of instruction in the lower court decisions, . . . but the better rule is that where the jury is properly instructed on the standards for reasonable

doubt, such an additional instruction on circumstantial evidence is confusing and incorrect[.]” (citations omitted)).

Following that, in State v. Logan, 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013), our Supreme Court again considered an issue involving the propriety of a circumstantial evidence jury instruction. In that case, the Supreme Court affirmed Logan’s conviction after recognizing the continuing accuracy of the circumstantial evidence charge articulated in Grippon. Id. at 100, 747 S.E.2d at 452-453. However, the Supreme Court further articulated a new circumstantial evidence jury instruction and explained it “should” be given when requested by defense counsel in future cases:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant’s behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Id. at 99-100, 747 S.E.2d 452-453. Importantly though, despite articulating that new charge, the Supreme Court expressly recognized any error that occurs concerning the manner in which a jury is instructed on circumstantial evidence *can nonetheless still be harmless beyond a reasonable*

doubt so long as the jury was properly instructed on the law as a whole, including in regard to the reasonable doubt standard. Id. at 94, n. 8, 747 S.E.2d at 449, n. 8.

Most recently, in State v. Herndon, 430 S.C. 367, 369-370, 845 S.E.2d 499, 501 (2020), our Supreme Court yet again addressed an issue involving a circumstantial evidence jury instruction and considered the question of whether the trial judge's decision not to instruct the jury on the language from Logan upon request constituted reversible error. In that case, the critical issue in dispute during trial centered on whether Herndon was acting in self-defense, by accident, or criminally when the victim was fatally shot. Id. at 369, n. 3, 845 S.E.2d at 501, n. 3. The largely-circumstantial evidence that was presented during Herndon's trial established the victim was physically abusive of Herndon and had been involved in a heated argument with Herndon just before the shooting, and further testimony was presented from a pathologist establishing the fatal bullet's trajectory was *equally* consistent with both the State's theory of the case and Herndon's. Id. at 369-370, 845 S.E.2d at 501. Before the case was submitted to the jury, defense counsel requested a jury instruction on the language from Logan, the trial judge denied that request, and Herndon was later convicted. Id. During the ensuing appeal, this Court affirmed, and the Supreme Court subsequently granted Herndon's petition for a writ of certiorari. Id. On certiorari, the Supreme Court reversed. Id. at 370, 845 S.E.2d at 501. In doing so, the Supreme Court explained the Logan charge "must" be given when requested pursuant to the Logan decision but reiterated the failure to give such a charge remains subject to a harmless error analysis. Id. at 371, 845 S.E.2d at 501-502. Then, looking to the specific circumstances of *Herndon's case*, the Supreme Court determined the trial judge's failure to present a Logan charge was not harmless in light of the fact the State's case was almost exclusively circumstantial *and* even the State's own witness confirmed the plausibility of Herndon's version

of events. Id. at 373, 845 S.E.2d at 502. Based on that, the Supreme Court explained: “The competing inferences involved in *this* circumstantial evidence case illustrate well the need for the Logan charge.” Id. at 373, 845 S.E.2d at 503 (emphasis added).

Unquestionably, the trial judge in Sanchez’s case did not use the precise language from the Logan decision—or the now-modified language that has now been articulated in the Herndon decision—when instructing the jury on circumstantial evidence despite defense counsel’s request for a jury instruction pursuant to Logan.² (R. pp. 149-151; pp. 204-220; pp. 230-231). However, through her jury instructions, the trial judge instructed the jurors their ultimate goal and duty was to determine whether the State met its burden of proof, explained the burden of proof was solely on the State and not on the defendant, thoroughly discussed both the reasonable doubt standard and the fact Appellant was presumed to be innocent, and advised the jurors their verdict must be a unanimous one. (R. pp. 205-210; p. 219). Additionally, the trial judge instructed the jurors on the indicted offenses and specifically advised them mere presence was not sufficient to prove possession of drugs. (R. p. 215-217). Furthermore, regarding circumstantial evidence, the trial judge instructed:

There are two types of evidence which are generally presented during a trial: direct evidence and circumstantial evidence. Direct

² In Herndon, the Supreme Court modified the Logan charge to eliminate the words “all of” from the language that had previously been articulated in the Logan decision. See Herndon, 430 S.C. at 369, n. 1, 845 S.E.2d at 500, n. 1 (“Originally, this sentence stated that ‘*all of the circumstances must be consistent with each other,*’ but we hereby modify the Logan charge by deleting the two italicized words. We make this change because we are concerned the phrase ‘all of the circumstances’ could be construed to invade the fact-finding role of the jury. It should be left to the jury—aided by argument of the lawyers—to determine whether a conflict between circumstances is sufficiently significant to give rise to reasonable doubt.”). Even if this Court is not ultimately inclined to reconsider its decision to reverse in Sanchez’s case, the State asks this Court to consider supplementing its opinion to note the Herndon decision’s modification of the Logan charge, which will help ensure this Court’s opinion could not be mistakenly read as suggesting the pre-Herndon unmodified language from Logan should be presented to a jury in some future case if requested.

evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of the chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

(R. p. 211).

Thus, despite not presenting the exact language from the Logan decision, the trial judge's jury instructions as presented thoroughly conveyed the applicable law on the reasonable doubt standard, the burden of proof, and the presumption of innocence to the jurors. Likewise, the trial judge's jury instructions ensured the jurors understood they could not convict Sanchez of the indicted offenses if the evidence presented only supported a conjectural or speculative possibility of Sanchez's guilt. In fact, the instructions presented were more instructive on that point than the requested language from Logan—which would have simply stated: “If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.”—by making it clear even a *grave* suspicion of guilt was not sufficient for Sanchez to be convicted.³ Similarly, the instructions as presented included additional language not contained in the Logan charge that explained the distinction that exist between direct and circumstantial evidence and specifically

³ Specifically, through the instructions presented, the trial judge explained: “Facts and circumstances that merely place upon the defendant a *grave* suspicion of the crime charged or that merely raise a speculation or conjecture of the defendant's guilt are not sufficient to authorize a conviction of the accused.” (R. p. 210) (emphasis added).

ensured the jurors understood circumstantial evidence was “based on inference.” Furthermore, the trial judge’s jury instructions contained much of the language from our Supreme Court’s proposed charge in Logan and ensured the jurors were aware Sanchez could not be convicted based on direct evidence or circumstantial evidence unless that evidence established Sanchez’s guilt beyond a reasonable doubt. Finally, the trial judge’s jury instructions explicitly required the jurors to consider and weigh “all of the evidence” when determining whether the State met its burden of proof and emphasized Sanchez had to be acquitted if that analysis of *all* the evidence did not convince them of her guilt beyond a reasonable doubt. Under those circumstances, the trial judge’s jury instructions were sufficient to adequately convey the relevant and applicable South Carolina to the jurors and ensure they were equipped to properly render a verdict in Sanchez’s case even without being instructed on the language from Logan. See Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472-473 (2004) (“A jury charge is correct if it contains the correct definition of the law when read as a whole.”); State v. Holmes, 277 S.C. 232, 234, 285 S.E.2d 353, 354 (1981) (recognizing a trial judge does not have to use any particular language when instructing the jury on the law so long as the instructions given adequately cover the relevant and applicable law); see also State v. Burkhardt, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002) (“Failure to give requested jury instructions in not prejudicial error where the instructions given afford the proper test for determining the issues.”); cf. Victor v. Nebraska, 511 U.S. 1, 5 (1994) (“The beyond a reasonable doubt standard is a requirement of due process, but the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course. Indeed, so long as the court instructs the jury on the necessity that the defendant’s guilt be proved beyond a reasonable doubt, . . . the Constitution does not require that any particular form of words be used in advising the jury of the government’s burden of

proof. Rather, taken as a whole, the instructions must correctly convey the concept of reasonable doubt to the jury.” (citations, brackets, and internal quotations omitted)).

Because the trial judge’s jury instructions were sufficient to adequately and correctly convey the applicable law to the jury, any error in the trial judge’s decision not to present a jury instruction on the exact language proposed in Logan was harmless beyond a reasonable doubt and could not have resulted in any prejudice to Sanchez. See State v. Jenkins, 408 S.C. 560, 573, 759 S.E.2d 759, 766 (Ct. App. 2014) (“[A]ny error in the omission of other language from the Logan instruction was harmless beyond a reasonable doubt because the trial judge’s instruction, as a whole, properly conveyed the applicable law.”); cf. State v. Brandt, 393 S.C. 526, 551, 713 S.E.2d 591, 604 (2011) (“[T]he judge’s denial of Brandt’s request to charge does not warrant reversal as the charge as a whole afforded the jury the proper test for determining the issues presented at trial.”); State v. Rabon, 275 S.C. 459, 462, 272 S.E.2d 634, 636 (1980) (“The defendant requested the judge to charge the jury that a signed Miranda warning alone does not admit a confession. While the charge would not have been inappropriate, we are of the opinion that the judge’s charge, when considered as a whole, adequately covered the applicable law under the facts of this case. The Constitution of this State requires that the trial judge declare the law, but no particular verbiage is necessary. It is sufficient if the precepts stated to the jury adequately cover that law which is applicable.”). Accordingly, just as our Supreme Court found in Logan itself, the jury instructions presented in Sanchez’s case were sufficient such that a reversal of Sanchez’s convictions was not warranted on appeal. See Logan, 405 S.C. at 94, n. 8, 747 S.E.2d at 449, n. 8 (“In the instant case, the trial clearly instructed the jury regarding the reasonable doubt burden of proof The trial court’s jury instruction, as a whole, properly conveyed the applicable law. Thus, any conceivable error was harmless beyond a reasonable

doubt.” (citations omitted)); see also State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) (“A jury charge which is substantially correct and covers the law does not require reversal.”); cf. Jenkins, 408 S.C. at 573-574, 759 S.E.2d at 766 (“As our supreme court ultimately concluded in Logan, we conclude the trial court’s instructions in the present case, as a whole, properly conveyed the applicable law.”). As a result, Sanchez’s convictions respectfully should have been affirmed.

In reaching a conclusion to the contrary, this Court determined the trial judge’s jury instructions were not sufficient to render any error in the trial judge’s failure to present the exact language of the Logan charge harmless due to the largely circumstantial nature of the evidence of Sanchez’s knowledge of the drugs and due to the absence of the language from Logan stating “to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilty of the accused beyond a reasonable doubt.” Respectfully though, there are several flaws with that determination when considering the specific circumstances of Sanchez’s case.

First, in the context of a drug case like Sanchez’s as opposed to a murder case like Herndon’s, a jury instruction suggesting all the circumstances—or even just the circumstances—must be consistent with each other in order for them to be sufficient to convict could be highly misleading and confusing. That is true because, as our Supreme Court has previously recognized in State v. Hudson, 277 S.C. 200, 203, 284 S.E.2d 773, 775 (1981), the circumstance of contraband being found on premises under the control of the accused “*in and of itself* gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury.” Thus, from that one key circumstance alone, a rational factfinder could find a defendant had the knowledge and possession necessary to support a drug conviction even if the other

circumstances involved may not have necessarily been consistent with a finding of guilt.⁴ As a result, an instruction to the jury suggesting the circumstances must be consistent with each other is not entirely accurate in a case like Sanchez’s and, therefore, should not have been presented to the jury due to the potential for confusion. See State v. Rothell, 301 S.C. 168, 169-170, 391 S.E.2d 228, 229 (1990) (“It is error to give instructions which may confuse or mislead the jury.”).

Second, as previously noted, the instructions as presented were sufficient to accurately convey the reasonable doubt standard to the jury, which is the exact same thing the missing language from Logan this Court found to be significant serves to do. Critically, the language from Logan explaining the circumstances taken together “must point conclusively to the guilt of the accused beyond a reasonable doubt” is not an explanation of what circumstantial evidence is or how the process for evaluating circumstantial evidence is analytically different from the process for evaluating direct evidence in light of the inferential nature of circumstantial evidence. Instead, it is an additional statement on the necessity for circumstantial evidence to prove the defendant’s guilt beyond a reasonable doubt and, thus, merely reemphasizes the reasonable doubt standard. And, by stating circumstantial evidence must “conclusively” establish a defendant’s guilt beyond a reasonable doubt while not making a similar statement in the context of direct evidence, it could potentially be misconstrued as implying a stronger showing than just proof beyond a reasonable doubt is necessary when circumstantial evidence—and circumstantial alone—is involved, which makes it somewhat problematic. See Logan, 405 S.C. at 97, 747

⁴ In Hudson, the fact the drugs were found in the home Hudson shared with his wife was found to be sufficient to support his conviction for possession of heroin with intent to distribute despite the fact: (1) he was not home at the time the drugs were found; (2) Hudson’s wife appeared to have been in recent actual possession of the heroin and attempted to dispose of it in a toilet after law enforcement officers came to the home; and (3) Hudson’s wife had drug paraphernalia in her purse in the form of syringes. Hudson, 277 S.C. at 202-203, 284 S.E.2d at 774-775.

S.E.2d at 451 (explaining circumstantial evidence and direct evidence “clearly” carry the same probative weight); cf. State v. Stukes, 416 S.C. 493, 499, 787 S.E.2d 480, 483 (2016) (“Specifying this qualification applies to one witness creates the inference the same is not true for others.”). Therefore, since the trial judge’s jury instructions on reasonable doubt were sufficient to ensure the jurors could have had no misunderstandings about the State’s burden of proof and the language from Logan could have only potentially confused the jury under the circumstances of Sanchez’s case, the trial judge’s jury instructions—which expressly required the jurors to consider *all* the evidence regardless of whether it was direct or circumstantial when determining whether the State met its burden of proof—were sufficient to adequately convey the applicable law such that any error in the failure to present the Logan charge was, in fact, harmless. See Ezell, 321 S.C. at 425, 468 S.E.2d at 681 (“A jury charge which is substantially correct and covers the law does not require reversal.”).

Accordingly, for all the foregoing reasons coupled with the reasons raised in the State’s appellate brief and during oral argument before this Court, the State respectfully urges this Court to reconsider this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue a new opinion finding any error resulting from the trial judge’s charging decisions was harmless beyond a reasonable doubt under the specific circumstances of Sanchez’s case. See Herndon, 430 S.C. at 371, 845 S.E.2d at 501-502 (“Notwithstanding the mandatory language in Logan, erroneous jury instructions remain subject to an appellate court’s authority to consider the trial court’s jury charge as a whole and in light of the evidence and issues presented at trial.” (citation, internal quotations, and brackets omitted)). By doing so, this Court will ensure a unanimous jury verdict is not unnecessarily overturned based on a charging error that could not have had any impact on the outcome of the case in light of the fact the jury

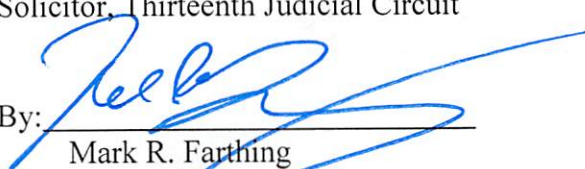
instructions actually presented were sufficient to ensure the jurors: (1) understood the difference between direct evidence and circumstantial evidence; (2) knew suspicion of guilt was not enough for Sanchez to be convicted; (3) were aware they had to look to *all* the evidence when determining whether Sanchez's guilt had been established beyond a reasonable doubt; and (4) recognized they had to acquit if Sanchez's guilt had not been proven beyond a reasonable doubt. See State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied."); see also Calderon v. California, 525 U.S. 141, 146 (1998) ("The social costs of retrial . . . are significant. . . . The State is not to be put to this arduous task based on mere speculation that the defendant was prejudiced by trial error; the court must find that the defendant was actually prejudiced by the error." (citations omitted)).

Respectfully submitted,

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January 4, 2022

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE

RESPONDENT,

V.

VICTORIA LORRAINE SANCHEZ

APPELLANT

APPELLATE CASE NO. 2018-002163

Appeal from Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

Opinion No. 5875

RETURN TO RESPONDENT'S PETITION FOR REHEARING

On December 8, 2021, this Court reversed Appellant's convictions for trafficking heroin and unlawful conduct toward a child and remanded her case to Greenville County because the trial judge failed to give Appellant's requested jury instruction on circumstantial evidence which was mandated in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013) and again in State v. Herndon, 430 S.C. 367, 845 S.E.2d 499 (2020). State v. Sanchez, Op. No. 5875 (S.C. Ct. App. filed Dec. 8, 2021) (Howard Adv. Sh. No. 43 at 77). This Court correctly concluded that the judge's error was not harmless because "there was no direct evidence of [Appellant's]

knowledge of the hidden compartment or drugs,” and therefore, the state’s evidence against Appellant was “largely circumstantial.” Id. at 83.

The state filed a petition for rehearing with this Court on January 4, 2022. Appellant’s return to the state’s petition for rehearing follows.

In its petition for rehearing, the state agreed with this Court’s conclusion that the trial judge erred by refusing to give the requested Logan charge. Petition for Rehearing at 1. However, the state argued that this error was harmless because the trial judge accurately instructed the jury as to the burden of proof, reasonable doubt, the presumption of innocence, mere presence, and that the verdict must be unanimous. Petition for Rehearing at 6. Contrary to the state’s position, accurately charging the jury on other matters of law does not obviate the requirement that the judge also give an accurate charge on circumstantial evidence. See Herndon, 430 S.C. 367, 371-73, 845 S.E.2d 499, 502-03 (2020).

The specific portion of the Logan charge that this Court noted was absent from the trial judge’s instructions in this case was the portion that states that “to the extent the state relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt.” Logan, 405 S.C. at 99, 747 S.E.2d at 452. This Court noted that this omission was particularly significant in light of the state’s heavy reliance on circumstantial evidence in its attempt to prove the element of knowledge.

This Court also correctly applied the Supreme Court’s decision in State v. Herndon, 430 S.C. 367, 845 S.E.2d 499 (2020). As this Court noted, in Herndon, the Supreme Court stated that “[w]hen requested, the Logan charge must be given in cases based in whole or part on circumstantial evidence.” Id. at 371, 845 S.E.2d at 501. While a trial judge’s failure to give a

requested Logan charge is still subject to a harmless error analysis, this Court correctly found that the error in Appellant's case was not harmless.

As this Court noted, Appellant's case was like Herndon in that the state relied very heavily on circumstantial evidence. Just like in Herndon, there were "competing inferences" that could be drawn from the circumstantial evidence presented in Appellant's case. The competing inferences that Appellant either did or did not know about the drugs in the car "illustrate well the need for the Logan charge." Herndon, 430 S.C. at 373, 845 S.E.2d at 503.

Having failed to persuade this Court that the trial judge's error was harmless in Appellant's case, the state has now adopted an entirely new argument in its petition for rehearing. The state has now taken the position that this Court's analysis was flawed because "in the context of a drug case like [Appellant's] as opposed to a murder case like Herndon's, a jury instruction suggesting all the circumstances – or even just the circumstances – must be consistent with each other in order for them to be sufficient to convict could be highly misleading and confusing." Petition for Rehearing at 10. The state further argued that "an instruction to the jury suggesting the circumstances must be consistent with each other is not entirely accurate [in a drug case] and, therefore, should not have been presented to the jury due to the potential for confusion." Petition for Rehearing at 11. Finally, the state insinuated that the Logan charge itself "could have only potentially confused the jury" in a drug case.¹ Petition for Rehearing at 12.

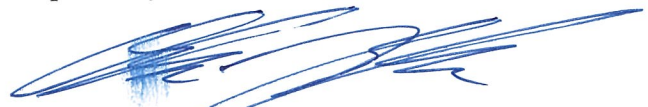
The state's petition for rehearing strongly insinuated that a Logan charge should not be given in drug cases because, in the context of a drug case, the language is misleading and

¹ The state's new argument appears to cut directly against the core holding in Herndon and Logan that the new circumstantial evidence charge must be given in circumstantial evidence cases by advocating for an exception to this rule in drug cases that neither this Court nor the Supreme Court has endorsed.

confusing. Because the state has taken this position for the very first time in its petition for rehearing, this Court should decline to entertain this argument. See State v. Primus, 349 S.C. 576, 583, 564 S.E.2d 103, 107 (2002) (holding the state’s argument to the Supreme Court was unpreserved for review where the state offered its argument for the first time in its petition for rehearing in the Court of Appeals); Kleckley v. Northwestern Nat. Cas. Co., 338 S.C. 131, 526 S.E.2d 218 (2000) (holding that an issue involving standing for a negligence action was not preserved because it was raised for the first time in the petition for rehearing and was not addressed by either the trial court or the Court of Appeals); see also Rule 242 (d)(2), SCACR (“Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court”). Simply put, this Court cannot have “overlooked” or “misapprehended” an argument that the state never made until its petition for rehearing.

Appellant submits that this Court thoroughly considered the state’s harmless error argument and correctly found it unpersuasive. Appellant respectfully asks this Court to deny the state’s petition for rehearing. In the event this Court grants the state’s petition for rehearing, Appellant respectfully requests this Court to rule on Appellant’s two remaining issues raised in the briefs and at oral argument.

Respectfully Submitted,



ADAM SINCLAIR RUFFIN
Appellate Defender

This 20th day of January, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2018-002163

THE STATE,

Respondent,

vs.

VICTORIA LORRAINE SANCHEZ,

Appellant.

**REPLY TO RETURN TO
RESPONDENT'S PETITION FOR REHEARING**

Following this Court's issuance of its decision reversing Sanchez's trafficking in heroin and unlawful conduct toward a child convictions based solely on the manner in which the trial judge instructed the jury on circumstantial evidence, the State submitted a petition for rehearing raising several points it believed were overlooked by this Court when it was conducting its harmless error analysis. In response, this Court asked Sanchez to submit a return to the State's petition, and Sanchez subsequently complied with that request.

Through her return, Sanchez first contends the State's position in its petition for rehearing is substantively unpersuasive because this Court's purportedly correctly determined the trial judge's failure to instruct the jury on the language from the decision in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), did not constitute a harmless error due to the circumstantial nature of the evidence in her case. As support for that particular contention, Sanchez—like this Court in

its decision—points to the language from Logan stating “to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilty of the accused beyond a reasonable doubt” as the omitted language that was crucial and necessary in her case.

To the extent Sanchez has raised substantive arguments in her return addressing the merits of the State’s petition for rehearing, the State does not believe an additional response is necessary and reasserts the positions raised in its petition coupled with those raised in the Brief of Respondent and during oral argument before this Court. However, the State again notes the jury instructions that were presented specifically instructed the jurors they must consider *all* the evidence presented—or, stated differently, the evidence “taken together”—when deciding Sanchez’s case and were required to acquit her after conducting such a holistic evidentiary analysis unless they were convinced of her guilt beyond a reasonable doubt. (R. p. 211). Furthermore, the State similarly notes our Supreme Court—in its decision in State v. Herndon, 430 S.C. 367, 845 S.E.2d 499 (2020), which was issued well after Sanchez’s 2018 trial—has now abandoned the language from the Logan decision misleadingly suggesting “*all of the circumstances must be consistent*” in order for circumstantial evidence to found to be sufficient to meet the State’s requisite burden of proof. See State v. Herndon, 430 S.C. 367, 369, n. 1, 845 S.E.2d 499, 500, n. 1 (2020) (“Originally, this sentence stated that ‘*all of the circumstances must be consistent with each other*,’ but we hereby modify the Logan charge by deleting the two italicized words. We make this change because we are concerned the phrase ‘all of the circumstances’ could be construed to invade the fact-finding role of the jury. It should be left to the jury—aided by argument of the lawyers—to determine whether a conflict between circumstances is sufficiently significant to give rise to reasonable doubt.”). In light of that, it

remains unclear exactly how the missing language from Logan identified by Sanchez in her return—and by this Court in its decision—was not adequately covered by the jury instructions that were actually presented during Sanchez’s trial such that the jurors’ deliberations would have been analytically altered in some impactful way by the missing language’s inclusion.¹ See State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010) (“A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused. However, if the trial judge refuses to give a specific charge, there is no error if the charge actually given sufficiently covers the substance of the request.” (citations and internal quotations omitted)); cf. State v. Logan, 405 S.C. 83, 94, n. 8, 747 S.E.2d 444, 449, n. 8 (2013) (concluding “any conceivable error” resulting from the trial judge’s refusal to give the requested circumstantial evidence jury instruction was harmless beyond a reasonable doubt because “the trial court clearly instructed the jury regarding the reasonable doubt burden of proof” and the jury instructions as a whole properly conveyed the applicable law).

Next, through her return, Sanchez contends the State’s arguments concerning the problems that would have flowed—and will flow in the event of a retrial—from the presentation of the exact language from Logan under the specific circumstances of Sanchez’s case should be rejected as procedurally barred because they were purportedly raised for the first time in the State’s petition for rehearing. Meanwhile, beyond raising that limited—and inaccurate—contention, Sanchez, perhaps tellingly, did not include any meaningful substantive response to the State’s arguments in that regard.

¹ Supporting the State’s position concerning the sufficiency of the jury instructions presented, Sanchez’s appellate counsel correctly acknowledged during oral argument “no particular wording has to be used to convey [the Logan charge] concepts.” (State v. Sanchez Oral Argument Recording, 6:40 to 6:59).

Contrary to Sanchez’s contention, the State’s arguments concerning the problematic nature of the supposedly-significant missing language from the Logan charge when that language is considered in conjunction with the issues and evidence involved in Sanchez’s case were neither raised for the first time in the petition for rehearing nor procedurally barred. Instead, those arguments were expressly raised by the State during oral argument to distinguish Sanchez’s case from the Herndon decision, which, significantly, was not issued until several months *after* final briefing was fully completed in the current appeal.² (State v. Sanchez Oral Argument Recording, 25:50 to 26:25 and 27:14 to 28:10). And, those arguments were only raised for the first time during the oral argument because the State’s need to distinguish Sanchez’s case from Herndon did not arise—and could not possibly have arisen—until after that decision was issued, which, as already noted, occurred at a time that resulted in oral argument being the State’s first effective opportunity to address the matter. Under such circumstances, those arguments—which, contrary to Sanchez’s contention, were unquestionably raised prior to the State’s petition for rehearing—were properly raised on appeal such that they are not procedurally barred and could, can, and should be considered by this Court in resolving Sanchez’s case. See Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (expressing concern about “hypertechnical application” of procedural bars on appeal); cf. State v. Brown, 401 S.C. 82, 95, n. 3, 736 S.E.2d 263, 270, n. 3 (2012) (rejecting Brown’s contention the State’s arguments related to Davis v. United States, 564 U.S. 229 (2011), were not properly preserved for appellate review due to the fact they had not been

² Notably, those arguments were also raised during oral argument to respond to Sanchez’s appellate counsel’s oral argument remarks, which included—for the first time—contentions that were not raised in Sanchez’s appellate brief concerning the three specific “concepts” from Logan appellate counsel believed were prejudicially not covered by the jury instructions presented during trial. (App. Br. pp. 26-28; State v. Sanchez Oral Argument Recording, 6:18 to 8:02).

included in the State’s petition for a writ of certiorari because the Davis decision had not yet been issued at the time the State filed its petition). Moreover, even if those arguments had not been raised at all by the State, this Court could *still* properly consider them because an appellate court can *affirm* a conviction for any ground appearing in the record whether raised on appeal or not. See Rule 220(c), SCACR (“The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.”); see also I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 420–21, 526 S.E.2d 716, 723 (2000) (“[I]t is not always necessary for a *respondent*—as the winning party in the lower court—to present his issues and arguments to the lower court and obtain a ruling on them in order to preserve an issue for appellate review. This approach is in keeping with the view, as expressed in Rule 220(c), SCACR, that an appellate court may affirm the lower court’s judgment for any reason appearing in the record on appeal.”).

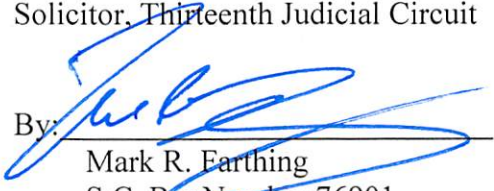
Accordingly, for all the foregoing reasons coupled with the reasons articulated in the State’s petition for rehearing, included in the Brief of Respondent, and presented during oral argument before this Court, the State respectfully asks this Court to rehear this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, reconsider its decision, vacate its previous opinion, and affirm Sanchez’s convictions after finding any error resulting from the trial judge’s charging decisions was harmless beyond a reasonable doubt under the specific circumstances of Sanchez’s case.

Respectfully submitted,

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By: 

Mark R. Farthing
S.C. Bar Number 76901

January 27, 2022

The South Carolina Court of Appeals

The State, Respondent,

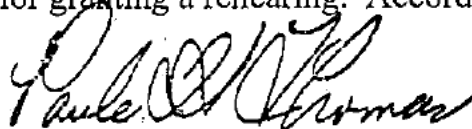
v.

Victoria Lorraine Sanchez, Appellant.

Appellate Case No. 2018-002163

ORDER

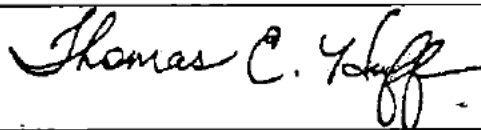
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



A.J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Adam Sinclair Ruffin, Esquire
Mark Reynolds Farthing, Esquire
William Walter Wilkins, III, Esquire
The Honorable Letitia H. Verdin

FILED
Feb 01 2022

APP'X 366