

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lexington County

Honorable R. Lawton McIntosh, Circuit Court Judge

LANCE LEON MILES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000821

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED FEBRUARY 11-12, 2015	1
FINAL BRIEF OF APPELLANT	365
FINAL BRIEF OF RESPONDENT	402
FINAL REPLY BRIEF OF APPELLANT	451
<u>STATE V. MILES</u> , 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017)	468
PETITION FOR REHEARING.....	478
ORDER DENYING PETITION FOR REHEARING	488
PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS	490
RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS ..	518
ORDER DENYING CERTIORARI.....	545
APPLICATION FOR POST-CONVICTION RELIEF	546
RETURN.....	563
AMENDED POST-CONVICTION RELIEF APPLICATION	571
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 15, 2021 ..	573
ORDER OF DISMISSAL	648
INDICTMENT AND SENTENCE SHEET	665

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

State of South Carolina) In the Court
County of Lexington) Of General Sessions

Indictment No.: 2014-GS-32-00603

State of South Carolina,)
Plaintiff,)
vs.) Transcript of Record
Lance Leon Miles,)
Defendant.)

February 11, 2015 through February 12, 2015
Lexington, South Carolina

BEFORE:

The Honorable Thomas A. Russo, Judge

APPEARANCES:

Micah Caskey, Assistant Solicitor
Casey Rankin, Assistant Solicitor
Attorneys for the State

Robert Theo Williams, Sr., Esquire
Attorney for the Defendant

ORIGINAL

1	INDEX	
2	FEBRUARY 11, 2015	
3		PAGE
4	JURY SELECTION	14
5	JACKSON V. DENNO HEARING	
6	WITNESS	PAGE
7	DOUGLAS EDMONSON	
8	Direct Examination by Mr. Caskey	28
9	Cross Examination by Mr. Williams	36
10	Redirect Examination by Mr. Caskey	48
11	MARC MIRAMONTES	
12	Direct Examination by Mr. Caskey	49
13	Cross Examination by Mr. Williams	51
14	TRAVIS BASS	
15	Direct Examination by Mr. Caskey	54
16	Cross Examination by Mr. Williams	57
17	Redirect Examination by Mr. Caskey	60
18	DOUGLAS EDMONSON RECALLED	
19	Redirect Examination Continued by Ms. Rankin	64
20	Recross Examination Continued by Mr. Williams	69
21	DENNIS TRACY	
22	Direct Examination by Ms. Rankin	75
23	Cross Examination by Mr. Williams	80
24	Redirect Examination by Ms. Rankin	81
25	JURY SWORN	85

1		PAGE
2	COURT'S OPENING COMMENTS	85
3	OPENING STATEMENT BY MS. RANKIN	93
4	OPENING STATEMENT BY MR. WILLIAMS	96
5	WITNESS	PAGE
6	DOUGLAS EDMONSON	
7	Direct Examination by Mr. Caskey	101
8	Cross Examination by Mr. Williams	133
9	Voir Dire Examination by Mr. Caskey	170
10	FEBRUARY 12, 2015	
11	DOUGLAS EDMONSON CONTINUED	
12	Redirect Examination Continued by Mr. Caskey	189
13	Recross Examination by Mr. Williams	198
14	TRAVIS BASS	
15	Direct Examination by Ms. Rankin	206
16	Cross Examination by Mr. Williams	213
17	MARC MIRAMONTES	
18	Direct Examination by Mr. Caskey	219
19	Cross Examination by Mr. Williams	226
20	Redirect Examination by Mr. Caskey	237
21	THEODORE XANTHAKIS	
22	Direct Examination by Mr. Caskey	238
23	Cross Examination by Mr. Williams	247
24	Redirect Examination by Mr. Caskey	252
25		

	WITNESS	PAGE
1		
2	BETH HOLLIMAN	
3	Direct Examination by Ms. Rankin	256
4	Cross Examination by Mr. Williams	262
5	Redirect Examination by Ms. Rankin	265
6	EMILY HOMES-CONRAD	
7	Direct Examination by Ms. Rankin	266
8	Cross Examination by Mr. Williams	273
9	Redirect Examination by Ms. Rankin	282
10	PLAINTIFF RESTS	282
11	DEFENDANT RESTS	300
12	CLOSING ARGUMENT	
13	By Mr. Caskey	301
14	By Mr. Williams	308
15	CHARGE OF THE COURT	322
16	VERDICT OF THE JURY	356
17	SENTENCE OF THE COURT	363
18	CERTIFICATE OF REPORTER	364
19		
20		
21		
22		
23		
24		
25		

EXHIBITS			
NO.	DESCRIPTION	ID.	EVIDENCE
Court's			
#1	LCSD Written Statement Unredacted	28	
#2	LCSD Written Statement Redacted	28	
#3	Search Warrant	47	
#4	Drugs	68	
#5	Jury Question	350	
State's			
#1	Drugs	84	269
#2	Mailing Box	84	118
#3	Photo	84	119
#4	"	84	119
#5	"	84	119
#6	"	84	119
#7	"	84	119
#8	Chain of Custody	110	259
#9	Photo	84	122
#10	LCSD Written Statement Redacted	124	124
#11	LCSD Written Statement Unredacted	84	124
#12	Large Aerial Photo	84	

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BAILIFF: Court is now in session.

THE COURT: Please have a seat folks. All right. Welcome back, ladies and gentlemen. I appreciate everyone checking in and being back here this morning. We'll go ahead and get started and get right into the selecting of the jury so we don't have to waste your time. Solicitor, you may call the next case.

MR. CASKEY: Thank you, Your Honor. At this time the State would call indictment 2014-GS-32-00603. The State of South Carolina versus Lance Leon Miles who is indicted for trafficking in illegal drugs.

THE COURT: Thank you, sir. Let me get the lawyers to step up here real quick.

(Side bar off the record.)

THE COURT: All right. Ladies and gentlemen, you heard the Solicitor call the case of State of South Carolina versus Lance Leon Miles on indictment 2014-GS-32-603 and that indictment is a charge or an allegation of trafficking in illegal drugs. As I told you, I guess it was Monday now, that the indictment is merely the piece of paper that brings this allegation into court. It is not in any sense evidence of the allegations which it contains, but it is the allegations that the State has made against Mr. Miles to which Mr.

1 Miles has pled not guilty and that plea of not guilty
2 places the burden of proof upon the State to prove the
3 elements of these allegations.

4 I'm going to read to you what the allegations are so
5 that you can answer questions that I will have after I
6 have read this to you. The allegations are as follows:
7 That Lance Leon Miles did in Lexington County South
8 Carolina on or about September the 13th of 2013 did
9 knowingly, intentionally, willfully and unlawfully sell,
10 cultivate, manufacture, deliver, purchase or bring into
11 this state or did provide financial assistance or
12 otherwise aid, abet, attempt or conspire to sell,
13 manufacture, cultivate, deliver, purchase, or bring into
14 this state or was knowingly and intentionally in actual
15 or constructive possession of or did knowingly and
16 intentionally attempt to become in actual or
17 constructive possession of any morphine, salt, isomer,
18 or salt of an isomer thereof as described in Section
19 44-53-190 or Section 44-53-210 or any mixtures
20 containing any of these substances, to wit, Oxycodone in
21 a quantity of four grams or more but less than 14 grams
22 in violation of Section 44-53-370(e)(3)(a) of the Code
23 of Laws of South Carolina 1976 as amended.

24 That's the allegations contained in the indictment,
25 ladies and gentlemen, to which Mr. Miles has pled not

1 guilty.

2 Is there any member of the jury panel who knows
3 anything about this case based on what you have heard
4 here this morning? If so, please stand. Thank you.
5 There are none.

6 I'm going to have the attorneys introduce
7 themselves. If you would please listen carefully.
8 Gentlemen.

9 MR. CASKEY: Thank you, Your Honor. My name Micah
10 Caskey and I represent the State of South Carolina. I
11 will be assisted by my co-counsel Casey Rankin.

12 THE COURT: All right. Mr. Williams.

13 MR. WILLIAMS: I'm Theo Williams and I practice law
14 across the street in the firm of Williams, Hendrix,
15 Steigner and Brink.

16 THE COURT: Mr. Williams, I'm going to get you to
17 introduce your client as well while you have the floor,
18 sir.

19 MR. WILLIAMS: This is my client Lance Miles.

20 THE COURT: All right. Thank you, gentlemen. You
21 may have a seat.

22 Ladies and gentlemen, with regard to the Solicitors,
23 is there any member of the jury panel who is related by
24 blood, connected by marriage or who has any close
25 business or personal relationship with or who has ever

1 been prosecuted by or represented by either Mr. Caskey
2 or Ms. Rankin? If so, please stand.

3 Your name, ma'am.

4 CRYSTAL TORRES: Crystal Torres. Juror 204.

5 THE COURT: Ms. Torres, which one of those folks do
6 you know?

7 CRYSTAL TORRES: Theo Williams.

8 THE COURT: All right. Well, I haven't gotten there
9 yet.

10 CRYSTAL TORRES: Sorry.

11 THE COURT: You're okay. Tell me how you know
12 Mr. Williams.

13 CRYSTAL TORRES: He's represented someone in my
14 family.

15 THE COURT: All right. The fact that Mr. Williams
16 has represented a member of your family, is it currently
17 or in the past?

18 CRYSTAL TORRES: In the past.

19 THE COURT: Would that, ma'am, in any way have any
20 effect on your ability to be fair and impartial giving
21 both the State and the defense a fair trial?

22 CRYSTAL TORRES: Absolutely not.

23 THE COURT: Thank you very much, Ms. Torres. You
24 may have a seat. And that brings me to Mr. Williams.
25 Is there any member of the jury panel who is related by

1 blood, connected by marriage or has any close business
2 or personal relationship with or who has ever been.
3 represented by Mr. Williams? If so, please stand. Sir,
4 your name please?

5 JUSTIN SLYCORD: Justin Slycord. 187.

6 THE COURT: Okay. Mr. Slycord, has Mr. Williams
7 represented you or a member of your family?

8 JUSTIN SLYCORD: Me.

9 THE COURT: Currently or in the past?

10 JUSTIN SLYCORD: In the past.

11 THE COURT: Would that in any way affect your
12 ability to be fair and impartial giving both the State
13 and the defense a fair trial, sir?

14 JUSTIN SLYCORD: Not at all.

15 THE COURT: Thank you very much. You may have a
16 seat. Anyone else? There are none. Folks, you have
17 met Mr. Miles. Is there any member of the jury panel
18 who is related by blood, connected by marriage or has
19 any close business or personal relationship with the
20 Defendant in this case Mr. Lance Leon Miles? If so,
21 please stand. All right. Thank you. There are none.

22 That question that I just asked you with regards to
23 Mr. Miles is the question that I will be asking as I
24 call out these names. These folks are potential
25 witnesses that may testify during the course of this

1 trial. I have no idea whether all of these folks will
2 testify or just some of them, but these are potential
3 witnesses so if you please keep that question in mind as
4 I go through this list of names and if you hear a name
5 and it applies to you, please stand. Candy Kyzer.
6 Dennis Tracy. Doug Edmonson. Emily Homer-Conrad. Marc
7 Miramontes. Matt Paulda. Ted Xanthakis. Travis Bass.
8 Any member of the panel related by blood, connected
9 by marriage, or have any close business or personal
10 relationship with any of those folks? Oh, and Margaret
11 Holliman. Anybody? All right. Thank you. There are
12 none.
13 Is there any member of the jury panel who has formed
14 or expressed any opinion about this case or about this
15 matter prior to this morning? If so, please stand.
16 Thank you. There are none.
17 Is there any member of the jury panel who is aware
18 of any bias or prejudice either for or against the State
19 or for or against the Defendant in this matter? If so,
20 please stand. Thank you. There are none.
21 Is there any member of the jury panel who is a
22 member of or a contributor either by way of financial
23 means or volunteering of your time, a contributor to any
24 organization or concern that promotes law enforcement or
25 victims' rights such as Mothers Against Drunk Drivers,

1 SADD, Students Against Drunk Drivers, CAV, Citizens
2 Against Violence, the South Carolina Troopers
3 Association, the Fraternal Order of Police. These are
4 just some examples. There may be other types of
5 organizations that have that cause. But if you are a
6 contributor to any type of organization such as that,
7 please stand. Your name please?

8 CYNTHIA CONNELLY: Cynthia Connelly, 38.

9 THE COURT: Ms. Connelly, the fact that you are a
10 contributor to either one or more of those types of
11 organizations, would that in any way affect your ability
12 to be fair and impartial, ma'am?

13 CYNTHIA CONNELLY: No, sir.

14 THE COURT: Thank you, ma'am. You may have a seat.
15 Sir, your name please?

16 CRAIG BRANDT: 16, Craig Brandt.

17 THE COURT: Mr. Brandt, the fact that you are a
18 contributor, would that in any way affect your ability
19 to be fair and impartial, sir?

20 CRAIG BRANDT: No, Your Honor.

21 THE COURT: Thank you very much. Folks, I'm just
22 going to go to that catch all question because as I told
23 you on Monday I could probably ask questions all day and
24 try to figure out if anyone has any bias or issue that
25 would affect your ability. Like I said on Monday, our

1 goal is to always select a panel that can set aside the
2 experiences that you have had personally outside of this
3 courtroom and to judge this case based solely on the
4 evidence that is presented during the course of this
5 trial. Is there any member of the jury panel who knows
6 of any reason regardless of whether it's a reason I have
7 already addressed or not, but of any reason why you
8 could not give both the State and the defense a fair and
9 impartial trial? If so, please stand. Thank you.
10 There are none.

11 Any additional questions from the State?

12 MR. CASKEY: Nothing from the State, Your Honor.

13 THE COURT: Anything additional from the defense?

14 MR. WILLIAMS: None by the Defendant, Your Honor.

15 THE COURT: All right. Five and five. Ladies and
16 gentlemen, we'll go through the process the same as we
17 did on Monday. Madam Clerk is generating this new list
18 which is basically our jury list but in random order.
19 So I notice that on our jury list Robin Adcock is juror
20 number 1. Well, if Robin Adcock ends up as juror number
21 1 on this new list, I'll be shocked because the computer
22 supposedly completely reorganizes the list. But when
23 she gets that list printed out, she will then call the
24 first name on that list. Just like we did on Monday,
25 you will come forward if your name is called. You will

1 stand here and you will face the back of the courtroom.
2 She will first inquire of the State. Words along the
3 lines of what say you for the State? The State can
4 either excuse you or they can present you. If they
5 excuse you, you will just go back and have a seat. If
6 they present you, you just remain standing and then
7 she will look to the defense with the same two options.
8 The defense can either excuse you. If they do, you will
9 go back and have a seat. Or they can seat you. If they
10 do that, you will come around here and you will have a
11 seat in the jury box, and we'll go through that process
12 until we have selected our jury panel.

13 As I said on Monday, there is no way to know whether
14 or not if your name is called whether you're going to be
15 excused or seated so please bring any personal
16 belongings that you brought to the courtroom with you
17 because it may be that you won't be returning to your
18 seat. So is the State is ready to proceed with jury
19 selection?

20 MR. CASKEY: We are, Your Honor.

21 THE COURT: Is the Defendant ready?

22 MR. WILLIAMS: The Defendant is ready, Your Honor.

23 THE COURT: Hope, if you would.

24 THE CLERK: Number 183, Jene Schwind.

25 (Whereupon, Jene Schwind, a white male, was called

1 forward.)

2 THE CLERK: What say for the State?

3 MR. CASKEY: Please present the juror.

4 THE CLERK: What say for the defense?

5 MR. WILLIAMS: Please excuse the juror from the

6 trial of this case..

7 THE CLERK: Please return to your seat, sir. 186,

8 Brandon Skelly.

9 (Whereupon, Brandon Skelly, a white male, was called
10 forward.)

11 THE CLERK: What say for the State?

12 MR. CASKEY: Please present the juror.

13 THE CLERK: What say for the defense?

14 MR. WILLIAMS: Please swear the juror.

15 THE CLERK: Have a seat in the jury box, sir.

16 Number 128, Tara Lentz-Friedrichs.

17 (Whereupon, Tara Lentz-Freidrichs, a white female,
18 was called forward.)

19 THE CLERK: What say for the State?

20 MR. CASKEY: Please present the juror.

21 THE CLERK: What say for the defense?

22 MR. WILLIAMS: Please swear the juror.

23 THE CLERK: Have a seat in the jury box, ma'am.

24 180, Billy Rogers.

25 (Whereupon, Billy Rogers, a white male, was called

1 forward.)

2 THE CLERK: What say for the State?

3 MR. CASKEY: Please excuse the juror.

4 THE CLERK: Return to your seat, please, sir. 93,
5 Lakaisha Houser.

6 (Whereupon, Lakaisha Houser, a black female, was
7 called forward.)

8 THE CLERK: What say for the State?

9 MR. CASKEY: Please present the juror.

10 THE CLERK: What say for the defense?

11 MR. WILLIAMS: Please swear the juror.

12 THE CLERK: Have a seat in the jury box, ma'am.

13 Number 101, David Jeffcoat.

14 (Whereupon, David Jeffcoat, a white male, was called
15 forward.)

16 THE CLERK: What say for the State?

17 MR. CASKEY: Please present the juror.

18 THE CLERK: What say for the defense?

19 MR. WILLIAMS: Please swear the juror.

20 THE CLERK: Have a seat in the jury box, sir. 38,
21 Cynthia Connelly.

22 (Whereupon, Cynthia Connelly, a white female, was
23 called forward.)

24 THE CLERK: What say for the State?

25 MR. CASKEY: Please present the juror.

1 THE CLERK: What say for the defense?

2 MR. WILLIAMS: Please excuse the juror from the
3 trial of this case.

4 THE CLERK: Return to your seat, please, ma'am.
5 110, Elizabeth Joslin.

6 (Whereupon, Elizabeth Joslin, a white female, was
7 called forward.)

8 THE CLERK: What say for the State?

9 MR. CASKEY: Please present the juror.

10 THE CLERK: What say for the defense?

11 MR. WILLIAMS: Please swear the juror.

12 THE CLERK: Have a seat in the jury box, ma'am. 28,
13 Shannon Carder.

14 (Whereupon, Shannon Carder, a white female, was
15 called forward.)

16 THE CLERK: What say for the State?

17 MR. CASKEY: Please present the juror.

18 THE CLERK: What say for the defense?

19 MR. WILLIAMS: Please swear the juror.

20 THE CLERK: Have a seat in the jury box, ma'am. 67,
21 Mark Furtick.

22 (Whereupon, Mark Furtick, a white male, was called
23 forward.)

24 THE CLERK: What say for the State?

25 MR. CASKEY: Please present the juror.

1 THE CLERK: What say for the defense?

2 MR. WILLIAMS: Please swear the juror.

3 THE CLERK: Have a seat in the jury box, sir. 66,
4 Jeremy Fuller.

5 (Whereupon, Jeremy Fuller, a white male, was called
6 forward.)

7 THE CLERK: What say for the State?

8 MR. CASKEY: Please excuse the juror.

9 THE CLERK: Return to your seat, sir. 115, Tessa
10 Kelly.

11 (Whereupon, Tessa Kelly, a white female, was called
12 forward.)

13 THE CLERK: What say for the State?

14 MR. CASKEY: Please excuse the juror.

15 THE CLERK: Return to your seat please, ma'am. 61,
16 James Epting.

17 (Whereupon, James Epting, a white male, was called
18 forward.)

19 THE CLERK: What say for the State?

20 MR. CASKEY: Please present the juror.

21 THE CLERK: What say for the defense?

22 MR. WILLIAMS: Please excuse the juror from the
23 trial of this case.

24 THE CLERK: Return to your seat, please, sir. 216,
25 Jennifer Whitesides.

1 (Whereupon, Jennifer Whitesides, a white female, was
2 called forward.)

3 THE CLERK: What say for the State?

4 MR. CASKEY: Please present the juror.

5 THE CLERK: What say for the defense?

6 MR. WILLIAMS: Please swear the juror.

7 THE CLERK: Have a seat in the jury box, ma'am.
8 158, Michael Ornelas.

9 (Whereupon, Michael Ornelas, a white male, was
10 called forward.)

11 THE CLERK: What say for the State?

12 MR. CASKEY: Please present the juror.

13 THE CLERK: What say for the defense?

14 MR. WILLIAMS: Please swear the juror.

15 THE CLERK: Have a seat in the jury box, sir. 121,
16 Brittany Knowles.

17 (Whereupon, Brittany Knowles, a white female, was
18 called forward.)

19 THE CLERK: What say for the State?

20 MR. CASKEY: Please present the juror.

21 THE CLERK: What say for the defense?

22 MR. WILLIAMS: Please swear the juror.

23 THE CLERK: Have a seat in the jury box, ma'am.
24 Number 11, Tariqua Bennett.

25 (Whereupon, Tariqua Bennett, a black female, was

1 called forward.)

2 THE CLERK: What say for the State?

3 MR. CASKEY: Please excuse the juror.

4 THE CLERK: Return to your seat, please, ma'am.

5 Number 70, Ronnie Gantt.

6 (Whereupon, Ronnie Gantt, a white male, was called
7 forward.)

8 THE CLERK: What say for the State?

9 MR. CASKEY: Please present the juror.

10 THE CLERK: What say for the defense?

11 MR. WILLIAMS: Please swear the juror.

12 THE CLERK: Have a seat in the jury box, sir. 182,
13 Nathan Sanders.

14 (Whereupon, Nathan Sanders, a white male, was called
15 forward.)

16 THE CLERK: What say for the State?

17 MR. CASKEY: Please present the juror.

18 THE CLERK: What say for the defense?

19 MR. WILLIAMS: Please swear the juror.

20 THE CLERK: Have a seat in the jury box, sir.

21 Alternates, Your Honor?

22 THE COURT: One alternate, one and two.

23 THE CLERK: 166, Maria Phelps.

24 (Whereupon, Maria Phelps, a black female, was called
25 forward.)

1 THE CLERK: What say for the State?

2 MR. CASKEY: Please present the juror.

3 THE CLERK: What say for the defense?

4 MR. WILLIAMS: Please excuse the juror from the
5 trial of this case.

6 THE CLERK: Return to your seat, please, ma'am.
7 Number 7, Carol Bain.

8 (Whereupon, Carol Bain, a female, was called
9 forward.)

10 THE CLERK: What say for the State?

11 MR. CASKEY: Please present the juror.

12 THE CLERK: What say for the defense?

13 MR. WILLIAMS: Please excuse the juror from the
14 trial of this case.

15 THE CLERK: Return to your seat, ma'am. 157,
16 Michael Oneal.

17 (Whereupon, Michael Oneal, a white male, was called
18 forward.)

19 THE CLERK: What say for the State?

20 MR. CASKEY: Please excuse the juror.

21 THE CLERK: Return to your seat, please, sir.
22 Number 1, Robin Adcock.

23 (Whereupon, Robin Adcock, a white female, was called
24 forward.)

25 THE CLERK: What say for the State?

1 MR. CASKEY: Please present the juror.

2 THE CLERK: What say for the defense?

3 MR. WILLIAMS: Please swear the juror.

4 THE CLERK: Have a seat in the jury box. Your
5 Honor, that's the alternate.

6 THE COURT: All right. Are there any motions
7 regarding jury selection first from the State?

8 MR. CASKEY: None from the State, Your Honor.

9 THE COURT: Anything from the defense?

10 MR. WILLIAMS: Yes, Your Honor.

11 THE COURT: All right. Ladies and gentlemen, I'm
12 going to get you to step back into the jury room.
13 Please have no conversation about the case. And while I
14 take up this matter of law, folks, I'm going to have to
15 ask you all to step out into the hallway. Please don't
16 go anywhere because I'll have you back in here shortly,
17 okay?

18 (Whereupon, the prospective jury goes into the jury
19 room.)

20 THE COURT: Mr. Williams, I'll be happy to hear from
21 you, sir.

22 MR. WILLIAMS: Yes, sir. Under Batson, Your Honor,
23 we would question the Solicitor's exclusion of juror
24 number 11 who appears to be a black female.

25 THE COURT: All right. Mr. Caskey?

1 MR. CASKEY: Your Honor, juror number 11 had
2 indicated that she lives in an area, a known high crime
3 area previously. Additionally, we sat similarly
4 demographic -- We have sat black women on the jury as
5 well, Your Honor, so...

6 THE COURT: I think -- Now, of course, it had
7 nothing to do with this case, but the case we pulled on
8 Monday involved assault and battery of a high and
9 aggravated nature that occurred in an area of the
10 community that I guess you're referring to.

11 MR. CASKEY: That's correct, Your Honor.

12 THE COURT: She did stand in reference to a question
13 about that.

14 MR. CASKEY: She had indicated in Ms. Mayes' case
15 that she was living in a high crime area, Your Honor.

16 MR. WILLIAMS: Your honor, if she stood on another
17 case where the crime was alleged to have been committed
18 and she stands because she lives in that area, may be
19 concerned about that particular area, that's a different
20 case where the allegation involves a black male accused
21 of selling drugs, there is no connection to a particular
22 area so that exception that she lived in a different
23 area where the crime might have been committed is a
24 little bit different from exclusion in this particular
25 case.

1 THE COURT: All right. And I understand your
2 position on that, but I do - I am going to deny your
3 motion. Whether I agree with it or whether I think it's
4 a great reason, it is a race neutral, gender neutral
5 reason for the strike. She did stand in reference to a
6 question regarding a high crime area and her residence
7 there and that appears to be the State's concern with
8 that and so that does appear to be race and gender
9 neutral. I'm going to respectfully deny the motion.

10 Anything else before we bring the jury panel in?

11 MR. WILLIAMS: Nothing from the Defendant, Your
12 Honor.

13 MR. CASKEY: Your Honor, if you want to take up
14 issues with the trial now, but we don't have anything
15 with regard to jury selection.

16 THE COURT: Okay. No. We will do that in a moment,
17 but what I think we are going to do is I'm going to
18 bring the jury back in - bring the panel back in, send
19 this jury back to the jury room. I feel like I need to
20 bring them back out so that I can give them instructions
21 and everything and send them back before we get started.
22 But then I want to pull Ms. Davis' and Mr. Rast's case.
23 We are going to pull that jury. We're not going to
24 swear it. If we get to it, great. If we don't get to
25 it, then we don't, okay?

1 MR. WILLIAMS: Your Honor, I do have one matter I
2 would like to address the Court about and that is that
3 my law partners and I are supposed to conduct a closing
4 at 12:30 at Bert Dookey's office.

5 THE COURT: I'm aware of that. How long does it
6 take you to get there?

7 MR. WILLIAMS: It's across the street.

8 THE COURT: Okay. I'll get you out of here by
9 12:25, I promise. No. I was aware that you had that
10 going on so we will be done.

11 MR. WILLIAMS: Thank you, Judge.

12 THE COURT: Okay. Dee, bring this jury back in.
13 Hold them out for just a moment. Bring them back in.
14 I'll give them some instructions and then I'm going to
15 send them back out.

16 (Whereupon, the prospective jury returns to the
17 courtroom.)

18 THE COURT: All right. Folks, thank you for your
19 patience. I was able to resolve that matter of law.
20 Now we are ready to proceed to the next phase which is
21 to send you out of here. I'm going to bring the other
22 jury panel back in and we are going to select a jury on
23 another case. Obviously that doesn't involve you
24 because you're going to be the panel on this case, and I
25 don't want to treat you like a yo-yo. You will get

1 treated enough like a yo-yo by the time the week is
2 over. So I don't want to send you back into the jury
3 room, select that jury, bring you back in, then send you
4 out to lunch because I have other matters that I have to
5 take up so I'm going to excuse you at this time and ask
6 you to be back here at 2:00, okay? When you come back,
7 if you will just come up the elevator to the fourth
8 floor here. There will be a bailiff out there to direct
9 you straight back into the jury room.

10 Now, here's what's important, folks. You are going
11 to be the panel that's going to preside over this case.
12 It's very important that you do not allow anyone to have
13 any conversation with you about the case. I don't
14 anticipate anyone would. But if anyone tries to speak
15 to you at all about the case, you need to let them know
16 that you are a juror and you are not allowed to have
17 conversation about the case. Just don't address anybody
18 with regards to this trial. Do whatever -- I just tell
19 juries all the time, when you're not sitting here in the
20 courtroom and you're outside the courthouse, you need to
21 do everything within your power to protect your ability
22 to remain fair and impartial and judge this case based
23 solely on the evidence as presented during the course of
24 this trial.

25 So I'm going to excuse you until 2:00. When you

1 return, that instruction to not have any conversation
2 about the case, it will remain in place throughout this
3 trial so that when you return to your jury room and you
4 can introduce yourselves to each other and get to know
5 each other, please do not talk about the case at all.
6 Now, you don't know anything other than what I have
7 shared with you, but you're not even to talk about those
8 things. The case is off limits until the time is
9 appropriate. I'll let you know when that is, all right?
10 So talk about anything else you want when you're back
11 there, but just don't have any conversation about the
12 case.

13 The simplest way to say all this is to simply say I
14 need you back at 2:00 not knowing anything more about
15 this case than you know right now, okay? So everyone
16 else please remain seated. Folks, we'll see you back at
17 2:00.

18 (Whereupon, the prospective jury was excused until
19 2:00 p.m.)

20 THE COURT: Lawrence, if you would, let's go ahead
21 and bring the jury panel back in and we'll pick this
22 other jury.

23 * * * * *

1 (Whereupon, Court's Exhibit #1 and #2 marked for
2 Identification.)

3 MR. CASKEY: Your Honor, we are prepared to begin
4 when the Court is ready.

5 THE COURT: All right. I'm ready to go. Tell me
6 what we've got.

7 MR. CASKEY: Your Honor, the Defendant made
8 statements to officers on the scene and we think a
9 Jackson v. Denno hearing would be appropriate as to the
10 statements.

11 THE COURT: All right. Ready to proceed?

12 MR. CASKEY: Yes, Your Honor.

13 THE COURT: Call your first witness.

14 MR. CASKEY: Thank you, Your Honor. At this time
15 the State calls Doug Edmonson.

16 Thereupon,

17 DOUGLAS H. EDMONSON, II

18 after having been first duly sworn, testified as follows,

19 THE CLERK: Once you're seated, state your full
20 name spelling your last name for the record, please.

21 THE WITNESS: My name is Douglas H. Edmonson the
22 Second. Last name spelled E-d-m-o-n-s-o-n.

23 DIRECT EXAMINATION

24 BY MR. CASKEY:

25 Q. All right. Thank you. Agent Edmonson, where are

1 you currently employed?

2 A. Lexington County Sheriff's Department.

3 Q. With whom were you employed on September 13th,
4 2013?

5 A. Lexington County Sheriff's Department.

6 Q. Were you on duty that day?

7 A. I was.

8 Q. Did you have occasion to see the Defendant?

9 A. I did.

10 Q. Could you tell the Judge a little bit about what
11 happened that day?

12 A. That morning we started a -- I'm part of the parcel
13 unit for the narcotics team. We go to various locations to
14 screen for parcels that may be containing some type of
15 illegal narcotic inside. I did see a box go by that had
16 indicators of maybe containing some type of illegal narcotic.
17 I recorded the address and started surveillance for the
18 delivery of that parcel which happened to be the U.S. Parcel
19 Service that day. Saw the Defendant a while later take
20 possession of the parcel. Talked to him. Stopped him. Told
21 him who I was. Told him why I was here. Engaged in
22 conversation with him about the parcel. I told him I felt
23 like it had narcotics inside of it. Got a dog. He gave me
24 permission to look inside the box. In turn I called the K-9
25 unit. Got a K-9 unit out there. Went around the parcel.

1 Gave a positive alert to the K-9 handler. Even with his
2 consent I still got a warrant based off all the evidence I
3 had on the scene to get into the parcel. Opened it up.
4 Found it contained a number of pills, scheduled pills inside
5 of a wax sarcophagus type thing and from there we talked. He
6 and I talked. I Mirandized him. We talked about the parcel
7 and he wrote me a statement.

8 Q. Let me slow you down and just go through a couple of
9 things. Were you in uniform that day?

10 A. I was not.

11 Q. What were you wearing?

12 A. We were plain clothes. We don't wear standard like
13 a deputy would. We just wear regular clothes. That's our
14 uniform.

15 Q. Was your badge visible?

16 A. It was.

17 Q. Were you armed that day?

18 A. I was.

19 Q. Was your weapon visible? Could you see your gun on
20 your side?

21 A. Sometimes you could and then if I'm not using it,
22 then it's usually covered up with a shirt so...

23 Q. Okay. Who else was with you there that afternoon?

24 A. I had Marc Miramontes was on the NET Team with me at
25 the time. I also had Travis Bass was on the team.

1 Q. Okay. I want to slow you down, sir. At the moment
2 that you stopped the Defendant, describe what happened at
3 that point.

4 A. We approached him. We secured him meaning putting
5 him in handcuffs. Set him up. Identified who we were. I
6 already knew the name on the box and I knew that he did not -
7 he was not the person the name was for on the box so at that
8 point I was trying to figure out if I was investigating maybe
9 two fold at that time. Stealing mail, somebody else's
10 property because it was on the porch. Or he was taking
11 liberty of a box full of narcotics. So I asked him what was
12 going on about that.

13 Q. Sir, what did the Defendant say to you at that
14 point?

15 A. At first he said he didn't know. He didn't know
16 anything about what was in the box. Then I told him that I
17 felt it had narcotics inside the box. I asked him again. He
18 said maybe so.

19 Q. During that time, was the Defendant handcuffed?

20 A. He was.

21 Q. Okay. Had he been Mirandized at that point?

22 A. After he told me that it might have drugs in it,
23 then I Mirandized him and I asked him, you know, do you still
24 want to talk about this? What's going on? He told me he
25 did. And he told me again that it possibly could have

1 something in there, but he didn't know what it would be.

2 Q. Okay. How did you administer Miranda Rights?

3 A. We've got a card that they issue us that I read off
4 of.

5 Q. Do you have that card with you today?

6 A. I do.

7 Q. Who provided you with that card?

8 A. That's standard issue with Lexington County
9 Sheriff's Department. It's laminated and everything.

10 Q. All right. At the point that you said that you had
11 Mirandized him and he offered you a statement. Could you
12 tell the Court what was that statement that he said to you
13 after Miranda was administered?

14 A. I asked him, I said, does this contain drugs? I
15 said I think it does. Does this have drugs in here? I asked
16 him straight up. And he said probably. And I said, well,
17 what's in it? I don't know. But I said probably has drugs,
18 but you don't know what type it is?

19 Q. Did the Defendant appear to be under the influence
20 of alcohol or drugs?

21 A. He did not.

22 Q. Did you threaten him in any way?

23 A. No.

24 Q. Were there any promises given in exchange for his
25 statement?

1 A. No.

2 Q. Were there any other misrepresentations by yourself
3 or any other law enforcement officer?

4 A. No.

5 Q. I'm sorry. I skipped one of my questions here.
6 When you administered Miranda, did the Defendant acknowledge
7 that he understood his rights?

8 A. Yes.

9 Q. Did he indicate to you that he wished to waive those
10 rights?

11 A. Yes.

12 Q. Subsequent to the oral statement, did the Defendant
13 offer any other statements to you?

14 A. A written statement.

15 Q. You took a written statement from him?

16 A. I did.

17 Q. Would you describe for the Judge the circumstances
18 surrounding that written statement?

19 A. Okay. After we got into the parcel and discovered
20 the narcotics inside, I said, I told him, I said, we need to
21 talk about this. I took him back to a vehicle. Took him out
22 of one handcuff. He sat in the passenger seat. I said
23 I want to talk about this. I want you to tell me everything
24 that you know about this and write it down for me. But
25 before we did that, I reread him his Miranda Rights because

1 the statement form that I use has Miranda Warnings on it and
2 then on each line he has to sign off that he read it and he
3 understood it. I would read it to him in full first. Then I
4 would have him read it and have him initial it. After he did
5 that, I said, now, do you understand them? Yes. That's what
6 he told me. Do you want to talk about it? Yes. He wrote me
7 a statement. Then in that statement he admitted to what he
8 did.

9 Q. Agent Edmonson, I'm handing you what's been marked
10 as Court's exhibit number 1. Do you recognize that
11 document?

12 A. This is the statement form I'm talking about.

13 Q. Okay. Does that appear to be the original or a
14 copy?

15 A. It's a copy.

16 Q. All right. If you would, please, could you indicate
17 to the Judge where handwriting from law enforcement is and
18 handwriting from the Defendant is?

19 A. Your Honor, the date, the top part here we usually
20 fill out address. We also fill out who is making the
21 statement to you. They obviously don't know our names a lot
22 of times and can't spell them correctly. But this is his
23 handwriting, all this here: Like I say, I read this line to
24 him. You have the right to remain silent. And he will
25 initial that. Anything you say can be used in a court of

1 law. He initials that and so forth and so forth. Then after
2 he read all of that, he told me he understood and I had him
3 write all this here, his handwriting telling me his
4 perspective of what happened.

5 Q. Agent, for the sake of the record, on that form
6 beside each of those rights did you witness the Defendant
7 initial beside those?

8 A. Yes. And sign. Yes.

9 Q. Okay. And what do those initials indicate?

10 A. That he understood each line that was - that he read
11 and that I read it to him.

12 Q. And after acknowledging those rights that he
13 understood them and they had been administered, did he
14 voluntarily and freely waive those rights?

15 A. Yes.

16 Q. Did he write a statement after that?

17 A. Yes.

18 Q. Did he sign that statement?

19 A. Yes, he did.

20 Q. Agent, on the second page of that document there
21 appears to be some questions that were written in a different
22 handwriting. Would you tell the Court what those are?

23 A. That's my handwriting.

24 Q. What do those say?

25 A. I wrote question. Then I wrote, did you know drugs

1 were in the parcel? Then I put in quotation "box". A lot of
2 times they refer to it as a box, but we call it a parcel.
3 Then I wrote answer. Then I handed it to him and I told him,
4 I said, I read him the question out loud. Told him you read
5 over it and you answer it for me the way you want to and he
6 wrote in his own handwriting "yes" indicating that he knew
7 drugs were in the box.

8 Q. The next question there, what does that say?

9 A. It's the same format. I wrote the question. How
10 many times have you picked up, quotation marks "boxes" in the
11 past for payment? And his answer was, "Three times that I
12 have knowledge of" in his handwriting.

13 Q. While the Defendant sat in the truck, what was the
14 temperature like in the truck?

15 A. It was comfortable. Our standard procedure is if
16 it's hot outside, the vehicle is going to be cool. If it's
17 cold outside, the vehicle is going to be warm. Climate
18 control to keep people comfortable.

19 MR. CASKEY: Thank you. I don't have any further
20 questions.

21 THE COURT: Mr. Williams, cross examination.

22 MR. WILLIAMS: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. WILLIAMS:

25 Q. Do you go by Special Agent? Sergeant?

1 A. Just agent.

2 Q. Agent?

3 A. Yes, sir.

4 Q. Agent Edmonson, when we started off with your
5 testimony, I just kind of wanted to get it straight in my
6 head how this went down. You say you work with the parcel
7 unit at UPS?

8 A. No. We go to -- our parcel unit goes to UPS, Fed-Ex,
9 DHL, United States Postal Service, places like that.

10 Q. I understand you work for the Sheriff's Department,
11 but on that particular date you went to Fed-Ex?

12 A. Fed-Ex.

13 Q. You went to Fed-Ex?

14 A. Yes.

15 Q. Where is that located at?

16 A. The one where we got this one 3525 Airport Boulevard
17 in West Columbia.

18 Q. Did I understand that you saw a box down there that
19 you thought looked suspicious?

20 A. Yes.

21 Q. And what was the indications that indicated it was
22 suspicious?

23 A. We have a litany of checks that we look for. On
24 every parcel -- The majority of the parcels you have a
25 waybill and it has information on how they paid for it, when

1 they want it delivered and so forth like that. Then we look
2 at other outside indicators as well that will further enhance
3 my curiosity if I want to look at this box a little more and
4 it demonstrated multiple signs of that so...

5 Q. Okay. Is this the box that you're referring to?

6 A. Yes.

7 Q. This box is sent to a Renita Davis; is that
8 correct?

9 A. Yes.

10 Q. At [REDACTED] Villas Court, Apartment [REDACTED]?

11 A. Yes.

12 Q. Okay. And were you there with Miramontes at that
13 location?

14 A. I was close by. We had radio contact.

15 Q. I meant at Fed-Ex. Were you at Fed-Ex with
16 Miramontes?

17 A. No. I was not.

18 Q. Did I understand you to say that you actually had a
19 dog come out to Fed-Ex?

20 A. No.

21 Q. So you didn't have two dogs involved in hitting on
22 the box?

23 A. No.

24 Q. So as far as you're concerned, you saw this box.
25 You thought it looked suspicious so you went to the location

1 of ■ Villas Court, Apartment ■?

2 A. Yes.

3 Q. So at that time no dog had ever hit on the box?

4 A. No.

5 Q. Okay. So you sit out there. You see it delivered.

6 After it's delivered, then you - tell me what you observed?

7 A. We sat there for a while and we watched a young lady
8 come out. She was on the phone. She looked down at the box.
9 I'm getting this relayed to me because I actually can't see
10 this.

11 Q. So you don't see this?

12 A. Miramontes sees this because his vehicle can get
13 into that location. I drive a white Tahoe. They'll see me
14 coming a mile away.

15 Q. So he says he sees a lady on the phone and then what
16 happens?

17 A. She's on the phone. She looks down at the box. She
18 looks back up. From what I understand she goes inside. Then
19 the Defendant comes out. Picks up the box and walks back to
20 his house, toward his house.

21 Q. So he doesn't live at ■ Villas Court, Apartment
22 ■?

23 A. Where the box was dropped off at he does not live
24 there.

25 Q. Okay. So do you stop him on the sidewalk?

1 A. We stopped him in the - not the sidewalk. He's
2 cutting through so on the main road. The way he came back,
3 he went the same way. We stopped him on the same path he was
4 coming back.

5 Q. So his apartment is behind this?

6 A. It's beside.

7 Q. Okay. So he's walking back to his apartment?

8 A. Right.

9 Q. Then you stop him. And do you ask him is this box
10 yours?

11 A. Well, he threw it down when he saw me.

12 Q. Okay.

13 A. So.

14 Q. And based on that you thought he was stealing the
15 box?

16 A. No. I didn't think that at first. I asked him. I
17 asked him point blank. I said, told him who I am and so
18 forth like that. I'm here about this box. And I took -- The
19 first response was, what box? Obviously the box was just
20 threw trying to hide underneath the car so...

21 Q. It's kind of a hard thing to hide, isn't it?

22 A. Very.

23 Q. So he threw the box down when you came up there?

24 A. Yes.

25 Q. And then after you asked him about the box, what did

1 he say?

2 A.. Well, initially I don't know nothing about it.

3 Q. Okay. He didn't know anything about the box
4 itself?

5 A. Right.

6 Q. All right. Then what happened?

7 A. Then I told him that -- I explained to him what I
8 thought was going on.

9 Q. That there was narcotics in the box?

10 A. Possibly.

11 Q. Did you tell him I think there's narcotics in the
12 box?

13 A. I told I believe it was.

14 Q. Okay. And then did you handcuff him at this point
15 in time? When did you first handcuff him?

16 A. I got there -- When we first got there because he
17 threw it and then he had a thousand yard stare like he was
18 about to run because he looked back toward the wood line so
19 he was handcuffed.

20 Q. So he was actually handcuffed before you had any
21 conversations?

22 A. Yes.

23 Q. Did you tell him why you were handcuffing him?

24 A. Yes.

25 Q. Because he was under suspicion or he was being

1 arrested or what did you tell him?

2 A. Under suspicion.

3 Q. Was he free to leave?

4 A. He was handcuffed.

5 Q. So he wasn't free to leave?

6 A. Right.

7 Q. But you had not given him any Miranda Warnings at
8 that point in time?

9 A. No. Not when I handcuffed him, no.

10 Q. Okay. So after you did that and after you told him
11 that you thought that there was drugs in the box, then what
12 did he say?

13 A. After I told him that I thought there were drugs in
14 the box, then that's when he told me probably so, but I don't
15 know what kind they are.

16 Q. Probably so?

17 A. Right. That's when he got Mirandized.

18 Q. That's when you Mirandized him?

19 A. The first time, yes.

20 Q. When does the dog get there?

21 A. After he tells me, he gives me consent to open the
22 box.

23 Q. Had you already called for a dog?

24 A. No. I hadn't called for it. He was advised, Ted
25 was advised that he might be used. That's the standard thing

1 we do because they are limited, you know? So I'm like we
2 call them Alpha Bravo areas. If you're hovering around this
3 area, I might need you later on. I might not, you know? So
4 he can be close by so we don't have to wait 40, 50 minutes
5 for somebody to get on the scene.

6 Q. Is it your testimony that the dog hit on the box?

7 A. It alerted. It alerted. It gave a positive alert
8 to the handler.

9 Q. Who is the handler?

10 A. Ted Xanthakis.

11 Q. All right. And he hit on the box?

12 A. He gave a positive alert.

13 Q. Why did you go -- If the guy said that I don't care
14 if you open it or you can open it as far as I'm concerned,
15 why, if you thought he was the owner of the box, why did you
16 bring the dog out there?

17 A. Well, you know, I have no problem going the extra
18 mile. I mean, just because somebody gives me a verbal
19 statement, just to have -- just to have more to go on, I run
20 it past a judge to make sure that everybody is tracking, you
21 know. A search warrant can go along with that.

22 Q. So when did you get the search warrant?

23 A. When we got on scene.

24 Q. After the dog hit on it?

25 A. Yes.

1 Q. All right. So when you say you got it on the scene

2 --

3 A. While we were still there. The search warrant was
4 executed there.

5 Q. You had a judge out there on the scene?

6 A. No. No. Dennis Tracy was at the judge's office. I
7 telephoned him, told him what I had and we got the warrant.
8 I believe it was Judge Johnson I do believe.

9 Q. So you anticipated from the beginning that you would
10 get a search warrant, get a dog and check that package?

11 A. No. No. Not at all. Not at all. But it's fluid
12 and it's what I do for a living six days a week so when I do
13 know what I'm doing, it happens fast.

14 Q. All right. Did you have the search warrant before
15 you opened the box up?

16 A. Yes. Well, I was called and told the search warrant
17 was signed, then we opened the box.

18 Q. So you didn't have the search warrant at the time
19 that you opened up the box?

20 A. I was called from the judge's office and told the
21 judge signed the search warrant. A short while later the
22 search warrant arrived on scene.

23 Q. When you opened up the box, there were no drugs
24 readily available, were there? You couldn't see the drugs
25 when you opened up the box?

1 A. Well, they conceal them all the time.

2 Q. But you couldn't see the drugs when you opened up
3 the box, could you?

4 A. No.

5 Q. What were the drugs located in?

6 A. It was located in wax.

7 Q. So you had to open up whatever the container
8 contained, right? It was wax. Was it like a wax candle?

9 A. Yes. Yes.

10 Q. So did you cut the wax candle?

11 A. Myself and Teddy did, Xanthakis because he had a
12 knife and I did not so he helped me with cutting it open.

13 Q. Okay. And I assume you counted the drugs out at
14 that point in time? Whatever was in the -- Pills. It was
15 pills in there, right?

16 A. Right. Yes.

17 Q. And how many pills did you say were in there?

18 A. I can't remember off the top of my head. It was
19 over a hundred though.

20 Q. Over a hundred pills?

21 A. I believe so. It was a lot. Couldn't give you an
22 exact number right now.

23 Q. And you noted all that information in your report --

24 A. Yes, sir.

25 Q. -- that you counted out. There was over a hundred

1 pills. Then after you did that, when did you place him under
2 arrest?

3 A. After he wrote me the statement.

4 Q. So all this is going on and he's still not under
5 arrest. He's cuffed there and he's filling out all this
6 information or telling you all this stuff, then he does a
7 written statement?

8 A. Well, he gives me - when he gives me concrete proof
9 that he knew about it. When he -- The exact point I knew -
10 he knew he was under arrest is when I told him - is when he
11 told me as he was writing I knew drugs were in the box. I
12 have done this before, but I can't get a job. This is all I
13 know how to do. I said, well, you can't do this. This is
14 illegal. You're under arrest for this.

15 Q. Did you ever make the comment to him that before he
16 gave you any statement that do you want to be charged with
17 PWID marijuana or be charged with how many states the box
18 came through? Did you ever make that statement to him?

19 A. No. No.

20 Q. Before he gave any kind of written statement?

21 A. Mmm-mmum.

22 Q. Did you arrest the lady that came out of -- It was
23 addressed to Ms. Davis, Renita Davis at that location where
24 she lives, right?

25 A. I'm not familiar with who came out. You're talking

1 about the lady that was on the phone?

2 Q. Yes.

3 A. Yes. No, I did not arrest her.

4 Q. Did you talk to her?

5 A. I did not talk to her.

6 Q. Do you know if anybody talked to her?

7 A. I know contact was tried to be made with her.

8 Nobody came to the door when I was there.

9 Q. But you knew that somebody was in the building;
10 right?

11 A. I did. I did. But you get to a point where when
12 you take sole responsibility for the package and what's
13 inside of it and he does it on a regular basis, that's all I
14 had - I felt that's all I needed to have.

15 Q. Did you check to see if Renita Davis actually lives
16 at ■■■ Villas Court, Apartment ■■?

17 A. That would be Dennis Tracy. We do the checking on
18 CLEAR, which is a clearinghouse program. We use it to tell
19 where people live and so forth like that. We use that every
20 morning. If we do get something that we think is suspicious,
21 we check.

22 Q. To your knowledge, did anyone ever talk to her?

23 A. I couldn't tell you. I don't know.

24 Q. Are you the agent in charge of this file?

25 A. I am.

1 MR. WILLIAMS: Okay. That's all the questions I
2 have, Your Honor.

3 MR. CASKEY: One brief follow up, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. CASKEY:

6 Q. Agent Edmonson, I'm handing you what's been marked
7 as State's exhibit 2. Do you recognize that document?

8 A. Yes. The same statement.

9 Q. If you turn to the second page, what's been marked
10 as Court's exhibit number 2, does it appear to be different
11 than Court's exhibit number 1?

12 A. Yes.

13 Q. What's different about it?

14 A. The second question is blacked out about how many
15 times have you picked up boxes in the past for payment.

16 Q. Would it be accurate to say that Court's exhibit
17 number 2 is a redacted version of the Defendant's statement
18 that he gave to you that day?

19 A. Correct.

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

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

22 MR. WILLIAMS: No further questions, Your Honor.

23 THE COURT: Thank you very much, sir. You may step
24 down. Call your next witness.

25 MR. CASKEY: Your Honor, the State calls Officer

1 Marc Miramontes.

2 Thereupon,

3 MARC MIRAMONTES

4 after having been first duly sworn, testified as follows,

5 THE CLERK: Please have a seat, sir. Once you're
6 seated state your full name spelling your last, please.

7 THE WITNESS: My name is Marc Antonio Miramontes,
8 M-i-r-a-m-o-n-t-e-s.

9 DIRECT EXAMINATION

10 BY MR. CASKEY:

11 Q. Is it Officer Miramontes?

12 A. Yes, sir.

13 Q. Where were you employed on September 13, 2013?

14 A. For the Town of Lexington.

15 Q. How did you come to be involved in this case?

16 A. I was assigned to the NET Team to the town and on
17 that day Officer Edmonson asked me if I could assist him with
18 this case that he was working on.

19 Q. Do you recognize this photo?

20 A. Yes, sir.

21 Q. What does that appear to be?

22 A. It appears to be a picture from Google Maps of the
23 area where we were at that morning.

24 Q. Do you recognize this to be an accurate and fair
25 depiction of the scene that day?

1 A. Yes, sir.

2 Q. Okay. Could you point out to the Court where you
3 were positioned during all this?

4 A. I was across the street from [REDACTED] which would have
5 been on this house right here (indicating.)

6 Q. What did you observe when you were positioned
7 there?

8 A. I was -- When I was there, there were no other
9 vehicles parked there. I was the only one parked there. I
10 was actually able to see in the mirrors and also just looking
11 to the side of my vehicle I could see [REDACTED] Villas Court and
12 everything up and down this street.

13 Q. Okay. What happened that day?

14 A. On that day I was keeping an eye out for a delivery
15 that was coming to [REDACTED] Villas Court. I was able to see a
16 black male from this direction. After the mailman came up to
17 [REDACTED] and dropped off the package at the front door, he walked
18 up here and picked up the package and started walking back to
19 where he came from (indicating.)

20 Q. Agent Edmonson just testified that he was unable to
21 drive his vehicle into this neighborhood because it's
22 distinctly police characteristics. How were you able to
23 position yourself here?

24 A. The vehicle that I was driving it's able to blend in
25 more for the area. It was a beat up Honda Civic vehicle that

1 we have to drive.

2 Q. Had you ever been in this neighborhood before?

3 A. Yes, sir.

4 Q. For what purpose?

5 A. There was a meth lab that I got called to a prior
6 time.

7 Q. How would you describe the character of that
8 neighborhood?

9 A. A lot of drug activity going on in that
10 neighborhood. There's a lot of calls to that neighborhood.

11 Q. Did you have any involvement at all in the interview
12 process with the Defendant?

13 A. No, sir.

14 MR. CASKEY: Thank you, Your Honor. No further
15 questions.

16 THE COURT: Cross examination.

17 CROSS EXAMINATION

18 BY MR. WILLIAMS:

19 Q. You have a rank, right? You're a sergeant?

20 A. I'm an investigator.

21 Q. An investigator?

22 A. Yes, sir.

23 Q. And you're with the Town of Lexington?

24 A. Yes, sir.

25 Q. And the location that you actually went to, was it

1 outside of Lexington Town limits?

2 A. Yes, sir.

3 Q. And the location that -- You said that you were
4 assigned to the NET Team and you were working with the other
5 officer. When did you first learn that you needed to be
6 there on that particular occasion?

7 A. That morning he asked me if I was available.

8 Q. And is it my understanding that you could see the
9 [REDACTED] and could see where my client lived?

10 A. Yes, sir.

11 Q. Did you see the other lady come out of the house?

12 A. Yes, sir.

13 Q. And she was on the phone?

14 A. Yes, sir.

15 Q. And you saw my client come out of his house?

16 A. No. He was standing in the parking lot of the
17 apartment complex.

18 Q. On his cell phone?

19 A. Yes. He eventually got on his phone.

20 Q. Did you see him pick up his cell phone after the
21 lady was on the phone?

22 A. No. I didn't see him.

23 Q. But you clearly observed both of those individuals
24 on the cell phone?

25 A. I saw the female on the phone and then she hung up

1 and then I saw him on his cell phone.

2 Q. So you would assume he wasn't talking to her at the
3 same time?

4 A. Yeah. I assumed that he wasn't talking - that she
5 wasn't talking to him, to the guy.

6 Q. Could you observe him at the same time that you
7 observed her on her phone? When you were looking at her on
8 the phone, could you see him?

9 A. Yeah, I could see him. He was walking around.

10 Q. Did he have the cell phone at the time?

11 A. No.

12 Q. So he was not on the phone with her?

13 A. He was - I could tell that he wasn't - that they
14 weren't on the phone together.

15 Q. Unless she sent a voice mail or something?

16 A. Yeah.

17 Q. So you see him walk up to the apartment, right?

18 A. Yes.

19 Q. And do you see him pick up the package?

20 A. Yes, sir.

21 Q. Do you see him leave with the package?

22 A. Yes, sir.

23 Q. Are you involved in the case anymore after that?

24 A. No, sir.

25 Q. So you're not involved in giving him his rights?

1 A. No, sir.

2 Q. You're not involved when he's being interviewed?

3 A. No, sir.

4 Q. That's your total amount of involvement?

5 A. Yes, sir.

6 MR. WILLIAMS: That's all the questions I have.

7 MR. CASKEY: No further questions, Your Honor.

8 THE COURT: Thank you very much, sir. You may step

9 down. Anything further?

10 MR. CASKEY: Just one more witness, Your Honor.

11 THE COURT: All right.

12 MR. CASKEY: The State calls Travis Bass to the

13 stand.

14 Thereupon,

15 KENNETH TRAVIS BASS

16 after having been first duly sworn, testified as follows,

17 THE CLERK: Once you're seated, state your full name

18 spelling your last, please.

19 THE WITNESS: Kenneth Travis Bass, B-a-s-s.

20 DIRECT EXAMINATION

21 BY MR. CASKEY:

22 Q. You go by officer? Deputy?

23 A. Deputy.

24 Q. Deputy Bass, where were you employed on September

25 13th, 2013?

1 A. I was employed with the Lexington County Sheriff's
2 Department as a narcotics investigator.

3 Q. And you were on the scene that we have been talking
4 about?

5 A. Yes.

6 Q. Okay. I want to talk specifically about the
7 Defendant's statements that were given to law enforcement.
8 Were you physically or within ear shot of the Defendant at
9 the time he gave oral statements to Agent Edmonson?

10 A. I was.

11 Q. Could you hear the conversation?

12 A. Vaguely. What was actually talked about, no, I
13 can't recall.

14 Q. Okay. As to the written statement, where were you
15 when that was done?

16 A. I was standing by with the Defendant while he
17 prepared the statement.

18 Q. Did you have any involvement in the preparation of
19 that statement?

20 A. Yes. I actually filled out part of the statement as
21 far as the date and the time that the statement was
22 started.

23 Q. I'm handing you what's been marked as Court's
24 exhibit number 1. If you would just point out to the Judge
25 real quick where you wrote in on that sheet.

1 A. The date. The place where it was actually written
2 at. The time. Mr. Miles actually put a phone number in here
3 that was belonging to him, but it was for an alternate
4 contact person so we went back and I actually wrote in two
5 different alternate contact numbers where he had initialed
6 beside those saying that those were true and correct. He
7 also wrote his name in here for a phone number and when I
8 asked him whose number they were, he said they were
9 Jennifer's which was his wife so I scratched his name out and
10 put Jennifer and he initialed beside that making the
11 corrections as such. I also made the notations here for
12 before answering any questions or making any statements,
13 Detective Edmonson and Bass, the person who identified him,
14 herself as a Lexington County Sheriff's Department.

15 Q. Did you observe the Defendant initial beside the
16 acknowledgement of these rights?

17 A. Yes.

18 Q. Did you observe the Defendant fill out the
19 substantive parts of this form?

20 A. Yes.

21 Q. Did you make any threats to the Defendant?

22 A. No, sir.

23 Q. Did you make any promises?

24 A. No, sir.

25 Q. Was the Defendant handcuffed when he filled all this

1 out?

2 A. At the time of making the report, no, sir. Or the
3 statement, no, he was not.

4 MR. CASKEY: No further questions, Your Honor.

5 CROSS EXAMINATION

6 BY MR. WILLIAMS:

7 Q. Deputy Bass, at this time you were with narcotics.
8 What do you do now?

9 A. I'm a school resource officer for Nursery Road
10 Elementary School.

11 Q. Still working for Lexington County?

12 A. Yes, sir.

13 Q. Did you get the call to be at this location after
14 the box was found?

15 A. I was already at our office, our offsite office.
16 Agent Edmonson came to the office and made a comment that he
17 had a package that he saw and they were gonna try to deliver
18 it to the UPS Postal Service.

19 Q. So he basically came to you once he saw the package
20 at Fed-Ex and then you went to that location?

21 A. Right. We met up. He told us a little bit about
22 what was going on and that we needed to try to get set up on
23 it.

24 Q. Did you drive your own vehicle out there?

25 A. I did.

1 Q. It's my understanding that you could not hear what
2 the Defendant was telling the other officer, but the only
3 thing that you were capable of attesting to would be the
4 written statement that my client gave?

5 A. Yes, sir. I was standing closer than you and I are
6 together right now from where Agent Edmonson was, but
7 they were conversing with each other.

8 Q. Did you hear the officer make any comments about
9 that my client would be charged with PWID marijuana or
10 charged with the number of states that the box came
11 through?

12 A. No, sir.

13 Q. Did you observe my client being stopped? You didn't
14 stop him when he picked up the box, right?

15 A. I did.

16 Q. You were the one that stopped him?

17 A. Myself and Agent Edmonson did, yes.

18 Q. So the two of you all were together at that point in
19 time?

20 A. Whenever Officer Miramontes called and said that a
21 black male had picked the box up, Agent Edmonson and I came
22 into the neighborhood. As we came down we were getting a
23 description of what the individual looked like. We ended up
24 converging on this individual.

25 Q. How did you stop him? Did you pull your gun when

1 you stopped him?

2 A. Yes, sir.

3 Q. But at that point in time he wasn't under arrest for
4 anything, right?

5 A. No, sir.

6 Q. And you made him get down on the ground?

7 A. Yes.

8 Q. Then you cuffed him?

9 A. Agent Edmonson did, yes.

10 Q. And you questioned him or he was questioned,
11 right?

12 A. After he was given Miranda, yes, sir, he was
13 questioned.

14 Q. Well, you've already stated he was questioned
15 before. You just couldn't hear what he was questioned about.
16 You couldn't hear the conversation going on between the
17 officer and my client up until the time he gave the written
18 statement, right?

19 A. No, sir. Whenever he was stopped originally by us,
20 he was given the Miranda Warnings. Then later on whenever he
21 did the statement in my vehicle, he was regiven his Miranda
22 Warnings that are on that statement form.

23 Q. So it's your testimony he was Mirandized first,
24 right?

25 A. Yes, sir.

1 Q. As soon as he went to the ground?

2 A. Not as soon as he went to the ground, no, sir. We
3 ended up getting him off of the ground.

4 Q. And then you Mirandized him?

5 A. Sometime shortly after that period, yes, sir.

6 Q. And you're the one that Mirandized him?

7 A. No, sir, I was not.

8 Q. But you heard the officer Mirandize him?

9 A. Yes, sir.

10 Q. Did you have any other involvement with this case?

11 A. Other than standing by while he prepared the
12 statement and stopping him with the package, no, sir. That's
13 all.

14 MR. WILLIAMS: That's all I have, Your Honor.

15 THE COURT: Anything further?

16 REDIRECT EXAMINATION

17 BY MR. CASKEY:

18 Q. You can't testify to conversations you didn't hear;
19 is that correct?

20 A. Correct.

21 MR. CASKEY: Thank you. No further questions, Your
22 Honor.

23 THE COURT: Thank you very much, sir. You may step
24 down.

25 MR. CASKEY: We don't have any further witnesses,

1 Your Honor, as to the Denno hearing.

2 MR. WILLIAMS: Your Honor, I will not be calling the
3 Defendant to testify in the hearing.

4 THE COURT: Okay. All right. You wish to be heard
5 as far as the admissibility of the statement?

6 MR. WILLIAMS: Yes, sir. We would move to suppress
7 the oral and the written statement on the basis it
8 wasn't freely given. From the facts elicited he clearly
9 had the gun pointed at him immediately. He was
10 obviously under duress at that point in time. He gave
11 some sort of statements before he was Mirandized if you
12 believe one officer's statement which is a little bit in
13 conflict because you have one officer who is saying that
14 some questions were asked about him and he answered them
15 and then after those conversations, then he was
16 Mirandized. Then you have another officer saying that
17 he was Mirandized immediately.

18 The other item, Your Honor, if Your Honor decides to
19 allow the statements into evidence, and I think the
20 Solicitor has anticipated this, we would move that the
21 section of the written statement that deals with the
22 three times be redacted or be suppressed because from
23 that you might think that he has been convicted of a
24 crime before which would clearly be putting his record
25 into evidence before he's testified.

1 So it's like I have just kind of covered everything
2 all at once depending which way the Court rules.

3 THE COURT: All right, sir. Mr. Caskey.

4 MR. CASKEY: Your Honor, the testimony, the
5 Defendant, as to the initial oral statement was in
6 custody. We are not seeking to admit those oral
7 statements, but we do maintain that the Defendant freely
8 and voluntarily gave the statement orally that's
9 reflected substantively in the written statement as to
10 his knowledge of the contents of the parcel.

11 THE COURT: So your purpose is to move in the
12 written statement?

13 MR. CASKEY: Yes, Your Honor, and to the extent that
14 he made those oral statements that reflect the same
15 thing post Miranda we are seeking to admit those. His
16 statements initially to the officer of I don't know, we
17 are not seeking to admit those because we concede that
18 those statements were elicited while the Defendant was
19 interrogated while he was detained.

20 THE COURT: All right. What about the issue
21 regarding the redaction or the request that the three, I
22 think it was I have done this two or three times before
23 or something like that? I can't remember exactly, but
24 that's what you're referring to.

25 MR. WILLIAMS: It's not exactly that. It says

1 something about that I have received -- It's best, I
2 guess, Your Honor, for Your Honor to see it. It says --
3 It's the last question on the page, Your Honor.

4 MR. CASKEY: Your Honor, we intend to initially
5 introduce the redacted version. We want to make the
6 Court aware of the full version in the event that the
7 occasion arises that we would need to talk about the
8 content of that redacted statement.

9 THE COURT: All right. So your intention is to
10 introduce a copy of this statement that eliminates that
11 question?

12 MR. CASKEY: Correct, Your Honor.

13 THE COURT: All right. And that's the concern that
14 you have?

15 MR. WILLIAMS: That is my concern.

16 THE COURT: All right. Okay. All right. I'm going
17 to overrule your objection. I think the statement was
18 based upon the testimony entered into freely and
19 voluntarily without coercion after having been
20 appropriately advised of his rights and I think it was
21 all done appropriately and I will allow it in with the
22 redaction of the final question regarding the number of
23 times that he's picked up packages before.

24 MR. CASKEY: Your Honor, we would just reserve the
25 position that in the event the defense opens the door to

1 matters that would, that we would need to impeach, that
2 we would certainly seek to introduce the full document.

3 THE COURT: Sure. That's always available if it's
4 there. All right. What else do we have?

5 MS. RANKIN: Your Honor, next we have the search
6 warrant, Your Honor, if the defense intends to challenge
7 that search warrant.

8 THE COURT: Are you challenging the search warrant?

9 MR. WILLIAMS: Yes, Your Honor. If the drugs don't
10 come in, then my client can't be convicted, so I guess I
11 would be challenging the search warrant.

12 THE COURT: All right. Well, let's move on then and
13 deal with that.

14 MS. RANKIN: Thank you, Your Honor. The state calls
15 Doug Edmonson.

16 THE CLERK: Still under oath, Your Honor?

17 THE COURT: Yes.

18 DOUGLAS EDMONSON (RECALLED)

19 REDIRECT EXAMINATION CONTINUED

20 BY MS. RANKIN:

21 Q. Agent Edmonson, you work parcel interdiction for the
22 Sheriff's Department; is that correct?

23 A. I do.

24 Q. All right. And how did this case begin?

25 A. Morning sort, in a particular sort that morning in

1 Aircraft Boulevard in West Columbia and I noticed that
2 package come down that displayed signs of possibly containing
3 some type of narcotic.

4 Q. Let me stop you right there. What do you mean by
5 signs?

6 A. The way the parcel looked. The information on the
7 parcel are all indicators that we go by that cue us in on it
8 possibly containing narcotics.

9 Q. What were the particular indicators of this?

10 A. Let me show you.

11 Q. Is this the box?

12 A. Yes. All right. First and foremost is the way it's
13 taped. It's excessively taped. People - for the most part
14 people who ship things don't really tape it up using so much
15 tape. We also will look at the address where it's coming
16 from and where it's going up here coming from California.

17 Q. Okay. And is California important?

18 A. It is. It is. It's a known source state for
19 narcotics. I would say I get a fair amount of parcels coming
20 from California containing narcotics. Then if you look at
21 the way it's paid and so forth like that. It's paid in cash.
22 How much they paid, 36.50. The waiver for no signature
23 required is also another indicator that we also look for.
24 And then we also look at the names to see if the names check
25 out both the sender name and the recipient name.

1 Q. All right. Once you noticed all these indicators,
2 what did you do?

3 A. I took the address and then notified my NET Team
4 that I had a possible good target location for delivery and
5 we did a, we met at the office, talked about it real quick.
6 We went out to the scene and I set up surveillance.

7 Q. All right. When you got the address off the box,
8 did you pick that box up?

9 A. No. It comes down the line real slow, so slow most
10 of the times you can just take a snapshot of it. This is a
11 mail thing and the Postal Service at the time they give us
12 permission to photograph if we needed to the way bills they
13 call this right here.

14 Q. But you didn't pick that box up or anything like
15 that to get any of the information off of it?

16 A. No. The only one to touch the box would be the
17 actual employees for this one.

18 Q. Did you touch base with Dennis Tracy at some
19 point?

20 A. Yes.

21 Q. What did you ask him to do?

22 A. The first thing he did for me was to check the names
23 through CLEAR.

24 Q. What is CLEAR?

25 A. It's a - from - the best way I can explain it to you

1 is it's like a clearing house. You can put somebody's name
2 in there. You can see whether it's a real name. You can put
3 utilities, phone numbers, where they live, current address,
4 previous addresses. It's like doing a public index on
5 somebody.

6 Q. What were the results of that report?

7 A. The name did not check out for the, from what I was
8 told the name did not check out for the recipient where it
9 was going so that was my key. I went on that right there.

10 Q. All right. You testified earlier you were on scene.
11 Were you involved in the search warrant for this case?

12 A. Yes.

13 (Whereupon, Court's exhibit #3 marked for
14 identification.)

15 BY MS. RANKIN:

16 Q. I'm handing you Court's exhibit 3. Do you recognize
17 that?

18 A. Yes.

19 Q. All right. What is that?

20 A. That's a search warrant.

21 Q. Is it a search warrant for this case?

22 A. It is.

23 Q. Did you obtain the search warrant yourself for this
24 case?

25 A. Through Dennis Tracy.

1 Q. What information did you relay to Dennis Tracy about
2 this package?

3 A. I can read verbatim what I relayed to him on the box
4 here. Pretty much what I told him was we got the parcel. I
5 got a dog alert through Ted Xanthakis that indicated that the
6 parcel contained, probably contained narcotics inside and
7 then based off of that and also the indicators and everything
8 like that that we saw from that morning I asked to be granted
9 a search warrant off of that.

10 Q. Were you with that package the entire time?

11 A. Yes.

12 Q. Did anybody open that package before the search
13 warrant was in hand?

14 A. In hand, yes. He called me back after it was signed
15 and he told me it was signed and that he was on the way with
16 it. Then we in front of the Defendant myself and Xanthakis
17 opened the package.

18 Q. All right. What was in that package once you all
19 opened it?

20 A. We end up finding pills in it.

21 (Whereupon, Court's Exhibit #4 marked for
22 identification.)

23 BY MS. RANKIN:

24 Q. Take a look in there. Are those the drugs that you
25 all found in that box?

1 A. Yes.

2 Q. All right. And you have looked at the box and you
3 have looked at the drugs. Was that the evidence that was
4 collected?

5 A. Yes.

6 Q. Was a return filled out for that search warrant?

7 A. Yes.

8 Q. Who filled that return out?

9 A. Be myself who signed.

10 Q. All right. Did you leave a copy of that search
11 warrant with anyone?

12 A. Yes. It should be left on scene.

13 Q. Was the Defendant arrested as a result of the search
14 warrant and the execution?

15 A. Yes.

16 MS. RANKIN: I have no further questions, Your
17 Honor.

18 MR. WILLIAMS: Just briefly, Your Honor. Extremely
19 brief.

20 RECROSS EXAMINATION

21 BY MR. WILLIAMS:

22 Q. On the active part of the search warrant where you
23 list numerous indicators of narcotic parcel trafficking
24 number 1, 4, 5, and 9, are those like code things for you?
25 Do you have a list of things that you check for?

1 A. It's on the actual search warrant, yes. It's on
2 this -- I don't know if you have --

3 Q. Can I see what you're talking about? Because I
4 don't know that I understand. I see the numbers in the face
5 of the affiant deal.

6 A. (Indicating.)

7 MR. WILLIAMS: Oh. I don't have this. Your Honor,
8 could I get a copy of this to look at this? Because
9 this wasn't provided..

10 THE COURT: Absolutely. You should have had a copy
11 of that.

12 MR. CASKEY: It should be in your discovery
13 materials, but I'll give you a copy.

14 THE CLERK: Just this page?

15 MR. WILLIAMS: Yes, ma'am.

16 BY MR. WILLIAMS:

17 Q. Now, these narcotic parcel indicators which I'm
18 looking at is a basis for your belief that a search warrant
19 should be issued and why the package itself should be
20 searched because you list those in your search warrant. And
21 one of things that -- I have the Solicitor's highlighted
22 copy. It says the phone number was either disconnected or
23 illegitimate. Did you place a phone call to make sure that
24 the phone number was not correct?

25 A. It's not on there. It's not listed.

1 Q. ... So you didn't place a phone number?

2 A. No. But if you read number 4, it says was called or
3 not listed.

4 Q. Okay.

5 A. So I offered not listed.

6 Q. So it's not the highlighted portion from the
7 Solicitor then. That would be the basis. The parcel had
8 tape covering the seams of the parcel. You have already
9 talked about that.

10 A. Yes.

11 Q. And the names listed for the shippers and or
12 recipients were bogus, vague or incomplete. What was vague
13 about the parcel?

14 A. And/or being on the part of the sender.

15 Q. So are you saying that that shipper or sender,
16 that's what we are using, there was something defective about
17 the shipper or the sender?

18 A. From the names we ran through CLEAR, the database,
19 Ms. Davis was no - Ms. Davis had lived at [REDACTED] at the time.
20 We didn't have any phone number to verify.

21 Q. That wouldn't be the shipper or the sender. That
22 would be the recipient, right?

23 A. The recipient would be Renita Davis. There's two
24 Davises on there.

25 Q. Okay. So who was the sender?

1 A. Theresa.

2 Q. All right. And where does she live at?

3 A. [REDACTED]. It's faded now. Something Avenue, San
4 Bernardino, California.

5 Q. What efforts did you take to verify that that person
6 did not exist at that location?

7 A. Dennis Tracy ran that name through several databases
8 to try to verify that. Obviously if it's South Carolina I
9 could go through extreme measures to find out, but being out
10 of state you're kind of limited. But we use a national
11 database, CLEAR.

12 Q. So you did not provide the basis for the search
13 warrant to be issued?

14 A. I did.

15 Q. Dennis Tracy provided the information?

16 A. No. He's my partner, my teammate per se, so me and
17 him together investigating this work together. We work
18 together as a team.

19 Q. So he would be the one to testify in regards to what
20 he did?

21 A. He could testify as to how he got the name
22 definitely. All the other ones I know firsthand. I did
23 that.

24 Q. So give me the indicators that you said. The fact
25 that it was packaged with too much tape?

1 A. Yes. Excessively taped. Excessively taped.

2 Q. Anything else?

3 A. Excessive tape be would number 1. Or number 1 would
4 be the part about how it's paid for and the amount that it's
5 paid for and the fact that it was overnighted.

6 Q. How it was paid for?

7 A. Yes.

8 Q. What's wrong about how it's paid for?

9 A. If you look at how things are paid for and you at
10 when they want to have it. That's just an indicator that we
11 use. How it was paid for in this plays as big a part as when
12 they want it to get there. They wanted it there as soon as
13 possible so they paid more money to have this thing shipped
14 overnight.

15 Q. So it was overnight shipping?

16 A. Right. Express, yes.

17 Q. Now, is that listed as one of the indicators for the
18 basis for the issuance of the search warrant?

19 A. It's number 1.

20 Q. Next day delivery?

21 A. Yes.

22 Q. So, so far it's packaging, it's too much tape and
23 the fact that somebody wanted it delivered the next day. And
24 what else?

25 A. You look at the names. You use common sense, I

1 guess, kind of per se, you know, not to try to say anything,
2 but if I'm sending you something that's important overnight
3 coast to coast, I would probably have my real name on there
4 and a contact phone number in case it gets lost. The postal
5 service is known for losing packages. They are renowned for
6 that so you would want to have as much information, as much
7 pertinent real information on the face of your package just
8 in case it gets missed.

9 Q. Because they lose stuff all the time?

10 A. All the time.

11 Q. Send it to the wrong address?

12 A. All the time. It happens.

13 MR. WILLIAMS: That's all the questions I have, Your
14 Honor.

15 THE COURT: Anything further of this witness?

16 MS. RANKIN: Nothing, Your Honor.

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

18 MS. RANKIN: The State calls Dennis Tracy.

19 Thereupon,

20 DENNIS TRACY

21 after having been first duly sworn, testified as follows,

22 THE CLERK: Once you're seated, state your full name
23 spelling your last, please.

24 THE WITNESS: Dennis Alan Tracy, T-r-a-c-y.

25 DIRECT EXAMINATION

1 BY MS. RANKIN:

2 Q. Where do you work?

3 A. I work for the State of South Carolina in the Law
4 Enforcement Division.

5 Q. Okay. Are you a special agent?

6 A. Yes.

7 Q. What do you do for SLED?

8 A. I'm assigned to narcotics and I run a parcel
9 interdiction unit.

10 Q. You work with Agent Edmonson?

11 A. I do.

12 Q. How did you become involved in this case?

13 A. We were out there working at the Fed-Ex sort that
14 morning. I was not working the conveyor belt where Detective
15 Edmonson was at. I knew that he had located a suspicious
16 package. I knew he had enough manpower to effectively
17 investigate this case. About somewhere around 11:30 or noon
18 I gave him a call just to checkup to see how things were
19 going with his case. He advised me that they had somebody
20 detained. The package had been delivered and they obtained a
21 dog alert on the parcel. I then offered my assistance in the
22 fact that I was about five minutes from the judge's office
23 and I suggested and Detective Edmonson agreed that it's
24 always better to get a search warrant if you can so I said
25 ship me what you've got on it. Tell me your indicators and

1 I'll go swear out a search warrant for you.

2 Q. Back to the sorting facility. You guys have an
3 agreement to be there at the sorting facilities?

4 A. We do. We've worked for the past 11 and a half
5 years with Fed-Ex, UPS, DHL, and the Postal Service so all of
6 the companies are on board with our efforts.

7 Q. All right. And when Doug Edmonson found that
8 package, did you run a report?

9 A. Did I write a report?

10 Q. Run a report?

11 A. Oh, run a report. When I offered to go to the
12 judge's office, he sent me a copy of the way bill. I put up
13 a picture of it on my phone. I then took the data off of
14 that and transposed that into the boiler plate search warrant
15 we had to put obviously the name, name of the recipient,
16 tracking numbers and things like that as opposed to him
17 typing them so there's no errors. I then took it upon myself
18 to take the names and input them into a law enforcement
19 database to vet the information to see if it was correct or
20 not.

21 Q. All right. Now, you're familiar with the CLEAR
22 database?

23 A. I am.

24 Q. Okay. Did that happen earlier that day?

25 A. No.

1 Q. Doug Edmonson, did he call you?

2 A. No. Once -- Out of our team I'm the only person
3 that has access to the CLEAR database so I can run it when
4 we're out at parcel facilities themselves, but this one here
5 was not run until I got the information to write the search
6 warrant.

7 Q. Okay. I believe that State's exhibit 3, do you have
8 that?

9 A. Yes.

10 Q. Court's exhibit. I'm sorry. Take a look at that.

11 A. Yes, ma'am.

12 Q. Is that the search warrant for this case?

13 A. It is.

14 Q. Are you the affiant on that search warrant?

15 A. I am.

16 Q. All right. Were you present at the scene for any of
17 that?

18 A. No. I showed up after the warrant was signed by the
19 judge. I took the warrant to the scene, but I was not there
20 prior to or I had no other involvement prior to that.

21 Q. All right. But the information that you provided
22 was relayed to you by who?

23 A. Detective Edmonson.

24 Q. What's the date on that search warrant?

25 A. September 13th, 2013.

1 Q. Who is the magistrate judge that you presented the
2 search warrant?

3 A. The magistrate's name is Matthew Johnson out of
4 Lexington County.

5 Q. Were you placed under oath?

6 A. I was.

7 Q. What does being under oath mean to you?

8 A. To tell the truth, the whole truth and nothing but
9 the truth.

10 Q. What was the property that you were looking for?

11 A. The property sought was any illicit narcotics that
12 may or may not be contained inside the parcel itself and any
13 paperwork or documentation inside the parcel to show
14 ownership or any involvement of any person involved in the
15 trafficking or shipping of those narcotics.

16 Q. Did you get specific information for the description
17 of the premises to be searched?

18 A. I did.

19 Q. What was some of that specific information?

20 A. It's listed as one cardboard box shipped U.S. Postal
21 Service Express Mail. Tracking number EG539315392US.
22 Addressed to Renita Davis, [REDACTED] Villas Court, Apartment number
23 [REDACTED], West Columbia, South Carolina 29170.

24 Q. Okay. When you take a look at that box, does that
25 stuff match?

1 A. Yes, ma'am.

2 Q. All right. Back to the search warrant itself. Have
3 you been before Judge Johnson before?

4 A. I have.

5 Q. Would you recognize his signature?

6 A. I would.

7 Q. Is that his signature on the signature line for the
8 judge issuing the search warrant?

9 A. It is.

10 Q. What date is next to that signature?

11 A. September 13, 2013.

12 Q. Do you know Judge Johnson to be a fair and impartial
13 magistrate?

14 A. I do.

15 Q. You said your signature is on the affiant's line?

16 A. It is.

17 Q. Once you had that search warrant, what did you do?

18 A. Once it was signed by the magistrate, I called
19 Detective Edmonson and advised him that I had a signed search
20 warrant for the parcel in hand and that I would be bringing
21 it to him.

22 Q. All right. Did you go to the scene?

23 A. I did.

24 Q. Did you hand that search warrant over?

25 A. I did.

1 Q. Did you help search the package?

2 A. No, ma'am.

3 Q. Did you have any other involvement in this case?

4 A. No, ma'am.

5 MS. RANKIN: No further questions, Your Honor.

6 MR. WILLIAMS: Just a couple questions.

7 CROSS EXAMINATION

8 BY MR. WILLIAMS:

9 Q. Dennis, did you check the address from the sender?
10 Did I understand you to say that you went on your criminal
11 computer and you checked that address?

12 A. I checked both addresses and what the system does is
13 it checks - it takes a bunch of data whether it be from the
14 postal service, whether it be from utilities, whether it be
15 from tax records, and it vets the address versus known people
16 that are supposed to have connection to that address and the
17 CLEAR search showed no connection with either address to the
18 listed names that are on the parcel.

19 Q. Would both of those addresses have been apartment
20 addresses?

21 A. I'm not sure. I can't speak with any certainty to
22 the San Bernardino, California address. It looks like a
23 residential address to me. But obviously the one on Villas
24 Court is an apartment address.

25 Q. And you relayed that information to the judge before

1 the search warrant was issued?

2 A. I did.

3 Q. Did you type in the search warrant or did someone
4 else or did his secretary type it?

5 A. I typed in the search warrant.

6 Q. And then you brought the search warrant to him?

7 A. Correct.

8 MR. WILLIAMS: No other questions, Your Honor.

9 MS. RANKIN: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. RANKIN:

12 Q. The search warrant that you handed in has that extra
13 page on it?

14 A. The narcotic parcel indicators page?

15 Q. Yes.

16 A. Yes, ma'am.

17 Q. That page, is that your doing?

18 A. It is. Over the past ten years we have looked at
19 ways to simplify this process and instead of typing X number
20 of paragraphs into our affidavit every time, we have had no
21 issues in the state of just making a check list and then
22 attaching that checklist to the warrant as basically an
23 attachment.

24 Q. Because as you do these things over time you start
25 to see common things related to narcotics trafficking --

1 A. Yes, ma'am.

2 Q. -- and packages?

3 A. Yes, ma'am.

4 Q. And these are some of those things?

5 A. Yes, ma'am.

6 Q. Okay. And the boxes that you have checked, are
7 those the indicators on this case?

8 A. Yes, ma'am. In reference to this case those are the
9 four main indicators. There is a whole slew of other
10 indicators that looking at the package now I would think it
11 would be suspicious to me or would cause me to look at it
12 further or to set it up for further investigation, but for
13 this case the four that are listed here along with the dog
14 alert established probable cause for us.

15 Q. Okay. And but you weren't there so you can't check
16 those extra boxes?

17 A. Correct.

18 Q. You can only say what was relayed to you?

19 A. Correct.

20 Q. Do you know when the search warrant was returned?

21 A. Looks like it was returned on the 16th of September
22 by Detective Edmonson to the judge.

23 Q. Okay. How do you know that?

24 A. It's on the return page. The date is signed 16
25 September 2013. I recognize the signature as the judge's

1 signature and I recognize the signature as the executing
2 officer as Detective Edmonson's signature.

3 MS. RANKIN: Thank you. I have no further
4 questions.

5 MR. WILLIAMS: No questions, Your Honor.

6 THE COURT: Thank you very much, sir. You may step
7 down.

8 MS. RANKIN: Your Honor, we have no further
9 witnesses.

10 THE COURT: All right. Mr. Williams, anything from
11 the defense?

12 MR. WILLIAMS: Nothing from the Defendant, Your
13 Honor.

14 THE COURT: All right. I'll hear from you, sir.

15 MR. WILLIAMS: I think based on what they have
16 testified to that they probably had probable cause to
17 issue the search warrant.

18 THE COURT: I think you're right. So I agree. I
19 think there is certainly probable cause for issuance of
20 the warrant. Anything else before we adjourn?

21 MR. CASKEY: Nothing from the State, Your Honor.

22 THE COURT: Mr. Williams?

23 MR. WILLIAMS: One matter from the Defendant, Your
24 Honor, that is prior to -- I know the jury is going to
25 be sworn. We would move to sequester the witnesses.

1 THE COURT: All right. That's appropriate, I
2 believe, so we'll -- Obviously your lead investigator
3 can remain present throughout the proceedings but
4 everyone else will need to be sequestered.

5 MR. CASKEY: Yes, sir.

6 THE COURT: If there is nothing else, then I believe
7 we have them coming back at 2:00 so we'll get started at
8 2:00.

9 MR. CASKEY: Thank you.

10 THE COURT: Thank you ladies and gentlemen. Court
11 is in recess until that time.

12 MS. RANKIN: Thank you, Your Honor.

13 (Whereupon, there was a luncheon recess.)

14 THE COURT: Back on the record.

15 (Whereupon, State's Exhibits #1 through #12 marked
16 for Identification.)

17 THE COURT: Thank you, ladies and gentlemen. Take a
18 seat. All right. Anything we need to take up from the
19 State before we start?

20 MR. CASKEY: Nothing from the State, Your Honor.

21 THE COURT: How about from the defense?

22 MR. WILLIAMS: Nothing from the Defendant, Your
23 Honor.

24 THE COURT: All right. Let's bring the jury in,
25 please.

1 (Whereupon, the prospective jury entered the
2 courtroom.)

3 THE COURT: All right. Ladies and gentlemen, I
4 appreciate everyone getting back here in a timely
5 fashion. We are ready to proceed and before we do that,
6 I'm going to get you to give Ms. Frick your attention as
7 she places you under your oath for your role as jurors
8 in this case.

9 (The jury was duly sworn by the Clerk of Court at
10 2:05 p.m.)

11 THE COURT: All right. Folks, to the few of you
12 that were on the jury earlier this week, I apologize for
13 you having to go through and listen to this again
14 because my opening remarks are pretty much the same in
15 all cases so just bear with me as I share with the new
16 members of the jury.

17 Ladies and gentlemen, the reason that these comments
18 are typically the same is because, and I will tell you
19 in a little bit greater detail later on, you are the
20 judges of the facts of the case so my opening remarks
21 will not deal at all with the trial as far as any facts
22 or any evidence in the case. This is just a general
23 charge that I give. It's really intended to give you
24 kind of an overview of what a trial looks like or what
25 we are going to go through so that you can follow along.

1 Most folks have not had the opportunity to sit
2 where you are sitting. Most folks have never sat in on
3 a real jury trial. Their experiences are limited to
4 television or movies or books and as we all know those
5 trials, they are meant to entertain you or at least to
6 attempt to entertain you and so they are full of high
7 drama and wailing and gnashing of teeth and all kind of
8 things.

9 Now, while any number of those things may occur
10 during the course of this case, what's important for you
11 to understand is this, and that is that this trial is
12 not for your entertainment. This trial is a fundamental
13 part of our democracy. It is a search for the truth in
14 an effort to make sure that justice is done between the
15 parties.

16 Oftentimes searching for the truth and going through
17 that process can be slow. Sometimes it can be
18 deliberate. Sometimes it's repetitive. In other words,
19 it's very different from the movies, the television or
20 the books. This courtroom is a place of honor that is
21 dedicated to the protection and to the preservation of
22 citizens' rights through what many folks have called the
23 greatest justice system ever created.

24 The attorneys that appear before you are advocates
25 for the parties that they represent, but first and

1 foremost they are officers of the Court sworn to uphold
2 the integrity and the fairness of our judicial system
3 and to help you in your role as the fact finders. You
4 should expect them to be professional, competent and
5 ethical in the representation of their client's
6 interests.

7 Now, you have taken an oath to try this case and to
8 reach a fair and a just verdict so you are also expected
9 to be professional and reasonable in the performance of
10 your duties and I have absolutely no doubt that you will
11 do just that. And I want to take this chance or this
12 opportunity to thank you for your contribution to our
13 system of justice here in Lexington County.

14 Now, as I said earlier, these remarks are really
15 meant to give you an overview of the trial that we are
16 going to be going through. This is not a charge on the
17 law. I will give you a charge on the law at the close
18 of the case after all the evidence has been presented.
19 But in this matter, ladies and gentlemen, as you heard
20 when we got started this is a case that involves the
21 State versus Mr. Lance Miles. Mr. Miles is charged by
22 an indictment which brought this case into court and I
23 shared that with you earlier. Let's see if I still have
24 it here. Hope, did you steal my indictment back?

25 THE CLERK: Yes, sir, I did.

1 THE COURT: She's bad about that. She likes to come
2 up her and take papers that are important which I
3 support her a hundred percent in that. I trust her a
4 lot more than I trust me as far as keeping up with
5 things.

6 But this indictment as I said earlier charges Mr.
7 Miles with the offense of trafficking in illegal drugs.
8 The elements to that charge I will explain to you when I
9 give you the charge on the law later on, but what is
10 important for you to understand is that the indictment
11 is simply the charge which brings this case into court
12 and it is not, as I said earlier, any indication or in
13 any way evidence of the allegations that are contained
14 in the indictment. These are merely allegations.

15 The Defendant, Mr. Miles, has pled not guilty to
16 those allegations and that plea of not guilty places the
17 burden of proving each and every element of that charge
18 on the State. It's going to be your duty, ladies and
19 gentlemen, to decide whether or not the State has met
20 that burden. Your purpose as jurors is to find and to
21 determine the facts of this case. You are the sole
22 judges of the facts in this case. If at any time I make
23 any comment about the facts, you must disregard those
24 comments because only you the jury can decide what the
25 facts are in this case. You determine those facts from

1 the testimony, from witnesses who take the stand, as
2 well as any other evidence that may be entered in during
3 the course of this trial. It is up to you, ladies and
4 gentlemen, to determine what inferences that you feel
5 may be properly drawn from that evidence. It is
6 especially important that you perform your duty of
7 determining the facts diligently and conscientiously
8 because ordinarily there is no way that I can correct an
9 erroneous determination of facts by a jury.

10 Now, on the other hand but with equal emphasis the
11 same law that makes you the judges of the facts makes me
12 the judge of the law. The law as given to you by this
13 Court is the only law that you may consider. You must
14 accept it and you must follow it even though you may
15 disagree with it. I'm not allowed to tell you what I
16 think about the facts of this case and you're not
17 allowed to disagree with me about what the law is or
18 what you think the law should be. Your job is to take
19 the law as I give it to you, apply it to the facts as
20 you find the facts to be from the testimony of the
21 witnesses and any other evidence that may be introduced
22 and to apply that law to those facts in arriving at your
23 verdict.

24 Now, until I tell you it's an appropriate time to
25 begin, you must not begin your deliberations or have

1 deliberations or discussions about the case at all.
2 It's going to be important that you keep an open mind
3 throughout the course of this trial and that you do not
4 decide any issue in this case until all of the evidence
5 has been presented, the parties have had an opportunity
6 to address you with their closing remarks, and that I
7 have given you the charge on the law. It's going to be
8 your solemn responsibility to determine the guilt or
9 innocence of the Defendant and your verdict must be
10 based solely on the evidence as it is presented during
11 the course of this trial.

12 Now, in just a moment I'm going to recognize the
13 Solicitor and he or she, whichever one of these good
14 lawyers are going to make the opening statement, they
15 will present to you what we call an opening statement.

16 Now, in that statement they will basically share
17 with you what they believe the evidence in this case is
18 going to show. Once they have had that opportunity to
19 address you, then Mr. Williams on behalf of the defense
20 will have an opportunity to address you if he chooses to
21 do so. He's not required to, but he certainly would
22 have that opportunity if he chooses to. The important
23 thing for you to understand is this: That what the
24 attorneys share with you in their opening statements is
25 not evidence. They are not under oath. It is merely

1 their contention as to what they believe the evidence in
2 this case may show. The evidence in this case will be
3 presented to you by the testimony of witnesses who are
4 placed under oath and who take the witness stand and
5 testify from this stand as well as any other exhibits
6 that may be introduced during the course of the trial.

7 Now, during the course of the case there may become
8 occasion where the lawyers may say something along these
9 lines. Judge, we've got a matter of law we need to take
10 up with the Court. Or, Your Honor, may we approach the
11 bench? During those time, ladies and gentlemen, if I
12 need to take up a matter of law, if I can do it up here
13 at the bench and just let you remain where you're at, I
14 will do that. However, sometimes it's a little bit more
15 complex and it would require me to ask you to step into
16 the jury room. And the reason, if I did do that, the
17 only reason I would ask you to do that is simply this:
18 There are times when I'm taking up matters of law that
19 it requires me to make a comment about the testimony or
20 to make a comment about some of the evidence that is
21 being discussed during the course of that matter. As I
22 told you earlier, I'm not to have any influence over you
23 about the facts in this case, but sometimes I'm required
24 to make a comment about the facts in connection with the
25 legal ruling and so to protect you from that I may ask

1 you to step back into the jury room, let me resolve the
2 legal matter; and then bring you back out and we'll
3 continue the trial where we left off.

4 In determining the true facts of this case you must
5 decide whether or not the testimony of the witnesses is
6 believable. It's going to be my job to rule as a matter
7 of law whether certain testimony is allowed into this
8 record at all or not. But once testimony is allowed
9 into the record, whether or not you believe it is solely
10 up for you to decide. In deciding whether to believe a
11 witness you have the right to consider the interest of a
12 witness, the bias of any witness, the opportunity for
13 the witness to have seen the matters and the things
14 about which that witness testifies, and the way that the
15 witness acts on the witness stand.

16 You have the right, ladies and gentlemen, to
17 consider anything in this record that will help you to
18 evaluate the credibility and the believability of the
19 witnesses. That means that it's your duty to pay close
20 attention to these witnesses. Observe them. Listen
21 carefully to the witnesses and to the attorneys as well
22 as to the Court. Try not to let your thoughts wander,
23 but pay strict attention to all of the testimony and the
24 evidence in this case so that at the conclusion of the
25 evidence the lawyers will have an opportunity to address

1 you with their closing remarks and then I'll give you
2 the charge on the law and once you have all of that,
3 then you will be in a position to go back into the jury
4 room and to discuss the case, talk about the evidence,
5 deliberate, apply the law to the evidence, and arrive at
6 a verdict.

7 Now, that's kind of an overview of what we are going
8 to do over the next day or two. But before I turn it
9 over to the attorneys, let me first inquire of the
10 State. Are there any objections or exceptions to the
11 Court's opening remarks?

12 MR. CASKEY: None from the State, Your Honor.

13 THE COURT: Anything from the defense?

14 MR. WILLIAMS: None from the Defendant, Your Honor.

15 THE COURT: All right. Thank you very much, folks.
16 All right. Ladies and gentlemen, please, if you would,
17 give the attorneys your close and undivided attention as
18 they address you with their opening remarks. Ms.
19 Rankin.

20 MS. RANKIN: Thank you, Your Honor. May it please
21 the Court.

22 THE COURT: Yes, ma'am.

23 MS. RANKIN: Good afternoon. Fast, easy,
24 convenient, next day delivery. That's what you get when
25 you go to the post office and you ship something express

1 mail. The Defendant, September 13, 2013, he got one of
2 those fast shipping boxes, but it wasn't cookies from
3 grandma. No. In his box 300 pills of Oxycodone
4 overnight from California. Now, you're going to hear
5 from law enforcement in this case, Doug Edmonson and the
6 Sheriff's Department work parcel interdiction cases.
7 He's going to tell you that when he saw that box come
8 down the line, that he saw indications that there may be
9 narcotics in that box. Had a lot of tape on the box.

10 He called Dennis Tracy from South Carolina Law
11 Enforcement Division, he also works in parcel
12 interdiction and that he would check those addresses at
13 some point on the shipping labels and that they would
14 come back incomplete or bogus. Doug Edmonson, Marc
15 Miramontes from law enforcement, they go to the
16 residence, the shipping address and they set up shop and
17 they wait. They just wait for it to be delivered.

18 That package gets delivered at the residence. A
19 black female comes out. She's on the phone. The next
20 thing you know the Defendant, he comes from an apartment
21 next door and he picks up that box and he walks off with
22 it. Police, they come in. He sees them coming and he
23 throws it. Throws it up under a car. Not my box. I
24 didn't have anything to do with that. But it wasn't
25 quick enough. They get him. They get that box. They

1 Mirandize him. And in response to, did you know drugs
2 are in that box? Yes. His answer, yes. I know there
3 are drugs in that box.

4 They don't open it yet. They run a K-9 around the
5 box. Narcotics dog. It hits on the box. Alerts.
6 Possible narcotics. They don't open it yet. They go
7 get a search warrant for the box. Search warrant comes
8 back. They open the box and inside that box is exactly
9 what they thought would be in there, drugs, in a flower
10 pot filled with candle wax and a wick. Inside that wax
11 300 pills.

12 Now, you're going to hear from Emily Homer-Conrad.
13 She's a chemist at the Sheriff's Department. She tested
14 those pills and they came back as Oxycodone. 300 30
15 milligram Oxycodone pills. Approximately nine grams.

16 Now, ladies and gentlemen, that's pretty much the
17 facts in this case. I want to talk to you a little bit
18 about reasonable doubt. Beyond a reasonable doubt is
19 the State's burden and I want to talk to you a little
20 bit about what it is and what it isn't. Beyond a
21 reasonable doubt is something that leaves you firmly
22 convinced. It's not beyond all doubt.

23 Recently I listened to a pod cast serial. For those
24 of you who aren't familiar with it, it is essentially a
25 weekly broadcast, chronicles a criminal case. The host

1 of that show said something very curious. She said I'm
2 having a hard time believing that this man committed
3 this crime. I'm having doubt. Not the courtroom kind,
4 but the normal person kind. Ladies and gentlemen, make
5 no mistake. There is no difference. There is no
6 courtroom doubt and normal people doubt. It is the same
7 thing. We are not asking you to come in here and
8 redefine your common sense and your life experiences.
9 Those are important. We want you to use those in your
10 role as the fact finders in this case.

11 At the end of this case we are going to come back
12 before you and ask that you find the Defendant guilty of
13 trafficking in illegal drugs. Thank you.

14 THE COURT: Thank you. Mr. Williams.

15 MR. WILLIAMS: May it please the Court.

16 THE COURT: Yes, sir.

17 MR. WILLIAMS: Ladies and gentlemen of the jury,
18 it's Wednesday. Hump day. I want to thank you for
19 being here. I know some of you all have already been on
20 the jury and you probably were selected and you were
21 saying, hoping you would get by the week, but you're
22 stuck here today. But I don't want that hump day
23 attitude to slide into your decision making and I don't
24 think it will. I don't think it will. Because we have
25 got smart jurors in Lexington County. We have got

1 jurors who are going to pay attention to what the Judge
2 tells them when he gives them an instruction about
3 listening to what the facts are and making decisions
4 based on what the facts are and apply the law to what
5 the facts are. I expect each and every one of you all
6 to do that.

7 You saw the process that we went through and that is
8 essentially why we chose you 12 plus one alternate juror
9 that we felt would be the fairest and most impartial
10 jurors that could listen to the facts and make a
11 decision. Part of that decision making is determining
12 what the facts are. You know, when the Solicitor stands
13 up here and makes an argument, an opening statement,
14 if you will, in the law we call it an argument, that's
15 an opinion just like when I stand up here and make a
16 statement. We are supposed to, when we give those
17 opening statements, have a statement about what we
18 believe the facts will be. And sometimes the Solicitor
19 and the defense lawyer will differ in regards to what
20 they think the facts are. So in that case that's why we
21 have jurors. Jurors make that decision and you make
22 that decision based on what is good facts, what are true
23 facts.

24 But you have to remember that the reason why we have
25 a trial in the criminal system, we talk about beyond a

1 reasonable doubt. We try to water that down by.
2 whatever, any number of ways you can talk about, but we
3 have to remember that there are many circumstances where
4 a person can be accused of committing a crime and he
5 may be unable to present evidence to show that he is not
6 guilty. So you have to look at everything to make a
7 decision as to whether or not the person has been proven
8 guilty beyond a reasonable doubt or not. Because we
9 differ on what the facts in this particular case are.

10 You have met Lance Miles. He's sitting over there.
11 His wife is back there in the back. Got two kids. So
12 these are regular people. You're not just looking at
13 the TV. My wife has got me watching something known as
14 Mid Summer Murders which is some British complicated
15 thing that goes on for about two hours and it's got more
16 twists and turns than you can think of. But these are
17 basic facts that you see everyday.

18 But the Solicitor is right on one thing. That is
19 you have to focus on what the facts are, what the
20 Solicitor proves, and what the Solicitor doesn't prove.
21 What witnesses come forward. What witnesses don't come
22 forward. Because what we as defense would contend is
23 that there was a box which was shipped from somewhere in
24 California. We heard the comment that it was from some
25 easy convenient delivery item, and that it was shipped

1 from California to a location in Lexington County, to a
2 person in Lexington County with a name and an address
3 and that box is delivered to that address regardless of
4 what goes on before, because I bet we'll have witnesses
5 who will come forward and they'll testify they saw
6 something strange about the box because it was wrapped
7 with a bunch of tape on it. Well, they better not check
8 my boxes out because I put a lot of tape on them.

9 But I'm not arguing that point because, you know, if
10 it's got drugs in it, it's got drugs in it. To be
11 guilty of a crime you have to know that you are doing
12 something illegal. You have to know that whatever
13 you're possessing is illegal. Because the facts in this
14 case are just a little squirrely. This package is
15 delivered to an address in West Columbia. A lady comes
16 out. There will be testimony that she is observed on
17 the phone talking to someone and after she is observed
18 on the phone talking to someone, that my client will be
19 seen walking up the driveway and he'll pick up a box,
20 presumably it's this box and he'll start walking and the
21 next thing that happens is some police officer comes out
22 and jumps at him with a gun and he goes down on the
23 ground, and I think it's a little bit different from
24 what we heard.

25 I think that the original statement from my client

1 will be that he didn't know what was in there. He
2 didn't know drugs was in there. He didn't know anything
3 about what was in there. And that subsequently after
4 some period of time they'll say, well, you knew
5 something was in it. Well, unfortunately sometimes
6 people are caught in a situation where they might not
7 know everything that's going on because when you're
8 called to go pick up something for somebody, you don't
9 necessarily know what the deal is at all times. And
10 there are some little things which I will mention to you
11 at the conclusion of this case which will verify that as
12 the other evidence that's presented in this case.

13 But I want you to ask in your minds what was the
14 name of the lady who came out of the apartment? Where
15 did she live? What was her phone number? What
16 conversation did law enforcement have with the lady who
17 received the package at that address? What do they know
18 about that lady? What is the name of the person who
19 shipped the package? Where does that person live? What
20 do they look like? What do they know about them? How
21 is it paid for? Is there anything that ties my client
22 to this package other than the fact that he picked up a
23 box. There but for the grace of God do I.

24 They have to prove my client knew what was in this
25 box and that he was involved in something. And simply

1 because you touch something doesn't mean that you're
2 guilty of something. I'm sorry if I have been long, but
3 I want you to pay attention to everything that comes in.
4 Thank you.

5 THE COURT: Thank you, Mr. Williams.

6 MR. WILLIAMS: Thank you, Your Honor.

7 THE COURT: All right. You may call your first
8 witness.

9 MR. CASKEY: Thank you, Your Honor. The State calls
10 Agent Doug Edmonson.

11 Thereupon,

12 DOUGLAS EDMONSON, II
13 after having been first duly sworn, testified as follows,

14 THE CLERK: Once you're seated, state your full name
15 spelling your last, please.

16 THE WITNESS: Douglas Edmonson the Second.
17 E-d-m-o-n-s-o-n.

18 DIRECT EXAMINATION

19 BY MR. CASKEY:

20 Q. Agent Edmonson, where are you currently employed?

21 A. Lexington County Sheriff's Department.

22 Q. How long have you been there?

23 A. Going on nine years.

24 Q. Would you tell the jury a little bit about your
25 background and education?

1 A. Started law enforcement back in 2005 in Sumterville.
2 Prior to that I was a college student. Graduated with a
3 degree major in physics. Applied mathematics as a minor.
4 Certified. Inducted into the Physics Honor Society back in
5 2004 of that year as a physicist. Worked up the ranks.
6 Became a narcotics investigator for Lexington County focusing
7 solely on parcel interdiction which is what we're dealing
8 with today and I do that five to six days a week. That's all
9 I do.

10 Q. Agent Edmonson, are you the largest physicist in the
11 world?

12 A. Probably one of them. One of the strongest ones in
13 the world. That's a fact..

14 Q. Jokes aside, Agent Edmonson, could you tell the jury
15 a little bit about your present assignment at the Lexington
16 County Sheriff's Department?

17 A. I'm on, actually even on a grant through the
18 Department of Justice where all I do is parcel interdiction
19 which means I check parcels, shipping parcels, even large
20 freight companies, DHL, UPS, Fed-Ex, United States Postal
21 Service, for shipments of narcotics and proceeds of narcotics
22 being money and so forth like that.

23 Q. Parcel interdiction for those of us who aren't a
24 physicist, that means what, looking at the mail?

25 A. Just looking at the flow of all parcels. Boxes.

1 Anything that comes by on the belt, the conveyor belts that
2 you see in like on an assembly line. We watch those. We
3 have indicators that we look for that make us discriminate on
4 a box and investigate it further.

5 Q. Tell the jury a little bit about how your operation
6 here in Lexington County works.

7 A. We'll start usually between 4:00 in the morning,
8 early a.m. at a source. I have a team. Dennis Tracy from
9 State Law Enforcement Division, we'll go and just pick a site
10 for the day. Sometimes we'll hit two to three. We'll watch
11 anywhere between three, there thousand to five thousand boxes
12 go by, parcels go by. We'll sit there for hours and then
13 we'll see one. Sometimes we won't see any for days, and then
14 we'll see one or we'll see seven that peak our interest and
15 we'll pull it to the side. Sometimes we'll let it go
16 depending on which service it is. This one happened to be a
17 U.S. Postal Service box so we just let those go through the
18 chain and get delivered by the postal service themselves. We
19 just do research on it during the day and if we feel it's
20 credible, we'll set up a little surveillance team and just
21 take it from there.

22 Q. You just said you pick a site or two a day. What do
23 you mean by that?

24 A. There's so many places we go. Like that day we went
25 to Fed-Ex ramp that was in West Columbia.

1 Q. What are some of the other sites you might go to?

2 A. Queens Parkway. That's Fed-Ex Express. We go to
3 Fed-Ex Ground. We go to the UPS Hub. We go to DHL. We'll
4 go out to Dixiana Road to the postal plant. RNL Freight.
5 Side Freight. Places like that. UPS Ground.

6 Q. What are you looking for? Tell the jury a little
7 bit about how you begin to develop your suspicions?

8 A. Well, you know, obviously the first thing you cue in
9 on is something visual. And people tend to ship things the
10 same way and it's not so much as how you yourself ships it,
11 but a lot of times people bring a box to Kinkos or the Postal
12 Service and they have a standard on how they box it for you
13 or make sure it is boxed and shipped especially if you're
14 using postal tape and so forth like that because believe it
15 or not over the course of a year the amount of tape, foam and
16 stuff like that that you use for shipping things, the least
17 you use, that's more revenue for you at the end of the year
18 so they really watch that. If somebody is shipping something
19 and it's narcotics especially like marijuana or something
20 like that, they want to try to mask that odor because it's
21 very pungent so they'll tape the seams five or six times
22 over which to us we notice that it's unnecessary and it
23 sticks out because you look at that, you look at how it's
24 positioned, the labels are positioned, how people write on
25 it, the lack of information on them and so forth like that

1 all are indicators for us to take a closer look at that
2 box.

3 Q. Is it a single factor that you key in on?

4 A. It's not just a single. You can't just have a
5 single factor. Everything adds up, you know? Like I say,
6 you start off with visual, okay? That looks good except for
7 tape wise, okay? So you look at it a little closer. That
8 gives me a reason to look at it a little closer. I look and
9 I say, okay, you have a box maybe like this. I have seen
10 boxes this size here coming from Washington State or
11 California shipped overnight. It costs up to \$102.00
12 depending on what time of day you send it off and how fast
13 you want it. Early a.m., mid day, or afternoon. So you have
14 to ask yourself what's in this box this small that you're
15 gonna ship for \$102.00 overnight. They won't have the name
16 on the box, who the sender is. They won't have phone number,
17 contact information or they'll waive the signature
18 requirement. You would think that common sense to me and my
19 partner tells us that --

20 MR. WILLIAMS: Objection to hearsay, Your Honor.

21 BY THE WITNESS:

22 A. Well, common sense to me tells me that --

23 THE COURT: Sustained. Go ahead.

24 BY THE WITNESS:

25 A. Common sense to me tells me that if I'm shipping

1 something to you and I'm paying that much money to get it
2 there as quick as I possibly can, I want all the pertinent
3 information on there in case it gets misplaced, lost or
4 undeliverable so they know who to get it back to.

5 BY MR. CASKEY:

6 Q. Agent Edmonson, generally speaking in the course of
7 your assignment there at Lexington County in parcel
8 interdiction, how many operations or investigations have you
9 been part of?

10 A. In excess of a hundred.

11 Q. Agent Edmonson, I want to shift our focus here
12 specifically to this case. Do you recall the date of
13 September 9th, 2013?

14 A. I do.

15 Q. September 13th, 2013. Do you recall that day?

16 A. Yes, I do.

17 Q. Okay. Tell the jury a little bit about how that day
18 started?

19 A. Routine. I was out on the belt and I saw this box
20 go by. I was sitting right there. The first thing that
21 caught my eye like I said was the taping of the box as it was
22 going by. I had my cell phone and standard practice when we
23 do, with permission through the inspection service is I take
24 a photo of the way bill which is the label on the face of the
25 box that tells you who it came from, how they paid for it,

1 where is it going, and what time, if there's a time, and if
2 it does require a signature or if does not require a
3 signature. I took a picture of that, allowed the box to
4 continue on down the line unmolested and continued to watch
5 other boxes.

6 Q. Let me pause you there for a second. Where were you
7 that morning?

8 A. Air Commerce Boulevard at the airport at the Fed-Ex
9 sort.

10 Q. You testified it's the Fed-Ex facility, but you have
11 indicated it was a U.S. Postal Service box?

12 A. Right.

13 Q. Why is that?

14 A. The U.S. Postal Service, that's their whole plane
15 fleet. They do not have the ability to do overnight air
16 anymore so they contract it out. Fed-Ex currently has the
17 contract. They just renewed the contract last year. They're
18 the ones who handle all their express ingoing and outgoing
19 mail which means flying in an airplane.

20 Q. Would it be accurate to say Fed-Ex - excuse me - the
21 postal service contracts their next day service to Fed-Ex?

22 A. Yes.

23 Q. Okay. I'm going to hand you what's been marked as
24 State's exhibit number 2. Do you recognize that?

25 A. Yes.

1 Q. How do you recognize that?

2 A. This is the box in question here on the day of the
3 incident.

4 Q. Was that, in fact, the box you identified at the
5 facility on that day?

6 A. Yes.

7 Q. Going back to the list of factors you said are
8 indicative of narcotics shipment or narcotics trafficking,
9 what are those factors that you recognize on that box?

10 A. Like I say, we have got the tape. It's taped over
11 and over again all through the seams here, up top, wrapped
12 around a couple times, multiple times across the front so my
13 initial thought is, okay, they're trying to mask something in
14 here, an odor in here because they are paranoid about the
15 scent getting out. So I take a closer look at it. I see
16 where it's coming from. It's going down the line so I can't
17 really look at it like I usually do, pick it up and
18 manipulate it or something. I look at it. I see it's coming
19 from California going to a Villas Court address that I'm very
20 familiar with. The location I'm very familiar. So I took a
21 snapshot of it so I can continue later on to do some more
22 looking into it.

23 Q. Let me ask you, Agent Edmonson, in your training and
24 experience as an officer intimately involved in parcel
25 interdictions and particularly narcotics trafficking, do drug

1 dealers, drug traffickers typically use their actual names
2 when sending these packages through the mail?

3 A. No.

4 Q. So let me bring you back down to the day of
5 September 13. That morning you said you took a picture of
6 the label. What happened then?

7 A. Like I said, it goes down the line. I continue to
8 look at some other parcels for about another hour or two,
9 somewhere along those lines. As I was done with that, I ran
10 some information on it and determined that it's vague. It
11 fits my criteria for to be investigated and so I set up a
12 team to do some surveillance on the target location meaning
13 where the package is being delivered at.

14 Q. And where is the location that you elected to
15 further the investigation?

16 A. On Villas Court [REDACTED]

17 Q. Is that in Lexington County?

18 A. It is.

19 Q. Let me give you a little bit of space here. Take
20 this back. Agent Edmonson, do you recognize this?

21 A. Yes. That's Villas Court.

22 Q. What does this appear to be?

23 A. It's an aerial shot. One of them Google shots
24 showing what the aerial view looked like.

25 Q. I realize that this photo wasn't taken that day.

1 Does this fairly and accurately depict the area of ■ Villas
2 Court that day, September 16th, 2013?

3 A. It does. A lot of things in there are the same
4 so...

5 Q. Let me back up. I meant to say September 13th.

6 A. I knew what you were saying.

7 Q. Okay. This is what it looked like that day?

8 A. Right.

9 MR. CASKEY: Your Honor, request permission to
10 publish the map to the jury.

11 MR. WILLIAMS: Your Honor, obviously we would
12 request before he publishes something that it be
13 introduced into evidence.

14 THE COURT: Correct. Are you introducing it into
15 evidence?

16 MR. CASKEY: We will do that, Your Honor. At this
17 time the State would move what's marked as State's 8
18 into evidence.

19 MR. WILLIAMS: We have no objection to that, Your
20 Honor.

21 THE COURT: All right. Without objection. You may
22 publish it.

23 MR. CASKEY: Thank you, Your Honor. If I can move
24 this easel. Your Honor, we request permission to have
25 the witness step down from the stand.

1 THE COURT: Sure.

2 (Witness steps down from the stand.)

3 THE COURT: Officer, stand on the other side and
4 face the court reporter and keep your voice up, okay?

5 THE WITNESS: Yes, sir.

6 THE COURT: Thank you, sir.

7 BY MR. CASKEY:

8 Q. Now, to make sure, let me move this out of your way.
9 Just position yourself to make sure that the gentleman on the
10 end of the jury box can see. Now, if you would, tell the
11 jury how you set up your operation on September 13th.

12 A. All right. I had one of my agents, Marc Miramontes

13 --

14 Q. Let me pause you real quick. There is a laser
15 pointer on that.

16 A. I thought it was a pen. I apologize. All right.

17 Q. It does everything.

18 A. Right here.

19 Q. I want to make sure they can see.

20 A. I'm kind of large. I apologize that I'm in your
21 way. Right here, okay (indicating)? He was in an undercover
22 car that could kind of get in there where people wouldn't
23 notice, wouldn't stick out. Me and another gentleman, Travis
24 Bass, were over here off the map stationary getting a play by
25 play via a radio to what was going on and waited for the

1. delivery to take place.

2. Q. Who relayed that play by play to you?

3. A. Miramontes.

4. Q. Okay. Where was the package delivered?

5. A. All right. What happens is when the postal service,
6. they have a community mailbox. This is probably going to be
7. right here somewhere (indicating). Probably here. The lady
8. stops first and delivers flat mail like letters, envelopes
9. and so forth. Then she rides down, cuts through the yard as
10. I have been told my Miramontes --

11. MR. WILLIAMS: Objection to hearsay, Your Honor.

12. BY THE WITNESS:

13. A. -- via the radio.

14. THE COURT: Sustained as to any hearsay.

15. BY MR. CASKEY:

16. Q. Describe what happens with package delivers there?

17. A. All right. They drive through here. The mail gets
18. delivered. They get back in their vehicle and they drive off
19. (indicating.)

20. Q. What happened next?

21. A. All right. Shortly after that a black female comes
22. out of the house, looks down at the box, talking on the
23. phone. A short while after that right here a gentleman from
24. this location comes and picks up the package and proceeds to
25. come back to where he came from (indicating.)

1 Q. And while he's walking back to the house, what
2 happened that day?

3 A. Made contact with him right about here (indicating.)

4 Q. What do you mean made contact?

5 A. Me and Travis Bass, we pulled up to talk to him.

6 Q. You were in the same vehicle or separate vehicles?

7 A. Separate vehicles.

8 Q. Would you show the jury the path that your vehicle
9 came into?

10 A. My vehicle came down here and turned in right here.
11 I'm sorry. Down here and turned in right here (indicating.)

12 Q. Where did you see Deputy Bass' vehicle pull into?

13 A. Right about here (indicating.)

14 Q. Okay. Would it be accurate to say the two of you
15 converged on the individual?

16 A. Correct.

17 Q. Okay. Why weren't you parked somewhere closer in
18 your vehicle?

19 A. I drive an unmarked Tahoe. It's white and it
20 screams police and in this type of neighborhood here they
21 would see me coming a mile away.

22 Q. Have you had occasion to be in this neighborhood
23 previously?

24 A. Yes.

25 Q. How would you describe the character of this

1 neighborhood?

2 MR. WILLIAMS: Your Honor, objection to the
3 characterization of the neighborhood. If we can
4 approach?

5 THE COURT: Yes.

6 (Side bar off the record.)

7 THE COURT: Back on the record.

8 BY MR. CASKEY:

9 Q. Now, Agent Edmonson, you said that as you pulled in,
10 you stopped that black male at that place you pointed to.
11 If you would, just mark that again.

12 A. Right there (indicating.)

13 Q. Okay. All right. That black male, do you recognize
14 him?

15 A. I do.

16 Q. Do you see him today?

17 A. Yes. Sitting right there (indicating.)

18 MR. CASKEY: Let the record reflect, Your Honor,
19 that the agent has pointed to the Defendant.

20 THE COURT: All right.

21 BY MR. CASKEY:

22 Q. All right. Let me have you take the stand again.

23 Now, Agent Edmonson, as you pulled into this area, you said
24 the package was delivered, the individual came out, you

25 stopped the individual so the individual comes out, gets the

1 package, comes back and you stop him. When you stopped him,
2 what did you see the Defendant do?

3 A. When he recognized who I was being law enforcement,
4 we made eye contact and he threw the box.

5 Q. How did he recognize you as law enforcement?

6 A. My car.

7 Q. Were you in uniform that day?

8 A. No. But I have got lights and all that in the
9 car.

10 Q. Did you have a badge on that day?

11 A. I did.

12 Q. Did you say anything to the Defendant?

13 A. When I got out I did, yes.

14 Q. What did you say?

15 A. I told him stop. Identified who I was. I secured
16 him, myself and Travis Bass secured him and then explained to
17 him why we were there.

18 Q. What do you mean by secured him?

19 A. Handcuffs.

20 Q. Now, when you began to talk with the Defendant, did
21 you administer Miranda Rights?

22 A. I did.

23 Q. Did he indicate to you that he understood those
24 rights?

25 A. He did.

1 Q. Did he subsequently make the decision to waive those
2 rights and make a statement to you?

3 A. He did.

4 Q. Did he make an oral statement?

5 A. He did.

6 Q. What did he tell you?

7 A. He advised me that he knew what was inside. He knew
8 narcotics were inside the box he was in possession of.

9 Q. What did you do at that point?

10 A. After that I asked him could I open it then and he
11 gave me - he said yes. I then called a K-9 unit to come out
12 just to do a check of the box, of the parcel to see if I
13 could get a positive alert. The K-9 officer arrived a short
14 time later.

15 Q. Why did you call for a K-9 unit?

16 A. Just to go the extra mile. You know, I'm not out to
17 - I want to make sure I'm a hundred percent on what I'm doing
18 basically, you know, so if you've got a K-9 available, if I
19 can get one, I'm gonna get one.

20 Q. Why wasn't the K-9 unit with you already?

21 A. Limited resources. We only have a few for the whole
22 county so they've got to kind of stay roving around for
23 things that do come out because what I do can last all day.

24 Q. Did the K-9 unit, in fact, come to the incident
25 location?

1 A. Yes.

2 Q. What happened then?

3 A. The dog gave a positive alert.

4 MR. WILLIAMS: Your Honor, objection to his
5 statement that the dog gave a positive indication. He
6 has established no foundation that he is qualified to
7 say whether or not the dog gave a positive alert.

8 THE COURT: Sustained.

9 BY MR. CASKEY:

10 Q. Did the K-9 unit deploy to the scene?

11 A. Yes, sir.

12 Q. As a result of that, what happened next?

13 A. After the K-9 handler manipulated his dog in the
14 back, he let him out, a short while later the K-9 handler
15 told me he received a positive --

16 MR. WILLIAMS: Objection to hearsay, Your Honor.

17 THE COURT: Sustained as to hearsay.

18 BY MR. CASKEY:

19 Q. You're not going to be allowed to say what other
20 people said.

21 A. I understand. I apologize for that.

22 Q. So after the K-9 officer had done the K-9 handler
23 things, what did you do?

24 A. Got a search warrant.

25 Q. How did you go about getting a search warrant?

1 A. I contacted one of my partners Dennis Tracy.

2 Q. What happened after that?

3 A. Search warrant was sworn out. I was notified via
4 phone that it was signed by the --

5 MR. WILLIAMS: Objection to hearsay.

6 BY MR. CASKEY:

7 Q. Was it your understanding that a search warrant had
8 been authorized for search of this package?

9 A. Yes, sir.

10 Q. The same package that's marked as State's exhibit
11 number 2?

12 A. Yes.

13 MR. CASKEY: Your Honor, at this time we would move
14 State's exhibit 2 into evidence.

15 MR. WILLIAMS: No objection.

16 THE COURT: Without objection State's 2 is
17 admitted.

18 BY MR. CASKEY:

19 Q. After understanding that a search warrant had been
20 issued, what did you do?

21 A. "Opened the package.

22 Q. Who was present when you opened the package?

23 A. Myself, the Defendant and the K-9 handler.

24 Q. I'm handing you what's been marked as State's number
25 3, State's number 4, State's number 5, State's number 6, and

1 State's number 7. Do you recognize those?

2 A. Yes.

3 Q. How do you recognize those?

4 A. This is the contents of the parcel.

5 Q. Who took those photos?

6 A. I did.

7 Q. Do those photos accurately and fairly depict the
8 subject of those photos as it existed on September 13th,
9 2013?

10 A. Yes.

11 MR. CASKEY: Your Honor, at this time we would move
12 State's 3, 4, 5, 6, 7 into evidence.

13 MR. WILLIAMS: No objection, Your Honor.

14 THE COURT: Those items are in evidence without
15 objection.

16 MR. CASKEY: The State requests permission to
17 publish these to the jury.

18 THE COURT: Yes, sir.

19 BY MR. CASKEY:

20 Q. State's number 3, Agent Edmonson, what is this a
21 picture of?

22 A. That's the inside of the initial opening of the
23 parcel. That's the first thing you see.

24 Q. Now, what does that blue bag appear to be?

25 A. Just a party bag.

1 Q. I'm showing you State's number 4. What is that a
2 picture of?

3 A. Same thing just opened. The bag is opened. It was
4 folded so that's unfolded.

5 Q. It's your testimony that State's number 3, this is
6 the bottom or the folded over portion?

7 A. Right.

8 Q. The unfolded portion is reflected in State's number
9 4; is that correct?

10 A. Right.

11 Q. What are we looking at here in State's number 5?

12 A. Inside the bag. That's the contents that was inside
13 the party bag.

14 Q. And State's number 6, what does that appear to be?

15 A. That would be the candle upside down, the actual wax
16 of the candle.

17 Q. And State's 7?

18 A. That's before I dumped it out.

19 Q. Before you dumped it out. Agent Edmonson, do those
20 pictures show the entire contents of that bag?

21 A. Yes.

22 Q. Or of that box rather?

23 A. Yes.

24 Q. That box being State's number 2?

25 A. Yes.

1 Q. After opening the box and identifying those items
2 inside, what did you do next?

3 A. Talked further with the Defendant, Mr. Lance, and
4 about the discovery and asked him to talk to me further more
5 in detail about it.

6 Q. Did you administer his Miranda Rights?

7 A. Again, yes.

8 Q. How did you administer those Miranda Rights?

9 A. The first time it was on a card. The second time it
10 was on a statement form.

11 Q. Statement form. I'm going to come back to the
12 statement form in just a second.

13 A. Okay.

14 Q. The oral administration, you said it was on a card.
15 What kind of card is that?

16 A. It's a standard card the Lexington County Sheriff's
17 Department issues their employees.

18 Q. Do you have that card with you today?

19 A. It would be in my wallet. Yeah. Give me a minute.
20 This would be it.

21 Q. Read that card to the jury.

22 A. All right. It says Advisement of Rights. You have
23 the right to remain silent. Anything you say will be used
24 against you in a court. You have the right to have a lawyer
25 and to consult with your lawyer before and while answering

1 any questions. And you if you cannot afford a lawyer, one
2 will be provided to you without cost to you.

3 Q. Agent Edmonson, I'm handing you State's number 9.
4 What does that appear to be?

5 A. These are the pills that were inside the wax.

6 Q. Who took that photo?

7 A. I did.

8 Q. Does that photo accurately and fairly depict the
9 pills as you described it that day?

10 A. It does.

11 MR. CASKEY: Your Honor, at this time we move
12 State's number 9 into evidence?

13 MR. WILLIAMS: No objection, Your Honor.

14 THE COURT: Without objection.

15 BY MR. CASKEY:

16 Q. State's number 9, that's a picture of the pills in
17 this case?

18 A. Yes.

19 Q. Where was that?

20 A. Inside the wax thing. If you look closely at that
21 picture, you can actually see the wick of the candle.

22 Q. Once you discovered that, what happened next?

23 A. Let's see. We talked to Mr. Miles again and I asked
24 him to be more detailed about what was going on.

25 Q. Did he provide you with a written statement?

1 A. He did.

2 Q. Would you describe for the jury the circumstances
3 surrounding that written statement?

4 A. That was when he got Mirandized again via the actual
5 statement itself. The statement top part has like almost
6 like a checklist. It has the verbiage of the Miranda Rights
7 on them. I read those to him. I also had him read it and
8 behind each line he initialed it indicating that he read it.
9 Then after everything is initialed and read, I asked him if
10 he understood those rights that he initialed. He told me he
11 did. I said with that in mind we need to talk. I would like
12 to talk to you. Do you have a problem with that? And he
13 didn't have a problem. Wanted to talk to me. So I had him
14 write a statement detailing his side of these events.

15 MR. CASKEY: Your Honor, may we approach?

16 THE COURT: Yes, sir.

17 (Side bar off the record.)

18 THE COURT: All right. Folks, please step back into
19 the jury room. I'm going to take up this matter of law.
20 It won't take terribly long. If you need anything back
21 there, something to drink or a snack.

22 (The jury goes into the jury room.)

23 THE COURT: Now, at this time you're moving the
24 statement, the original statement into evidence; is that
25 correct?

1 MR. CASKEY: Yes, Your Honor, what's marked as
2 State's exhibit number 11 which is the unredacted copy.

3 THE COURT: All right. Mr. Williams, I will note
4 your objection to that.

5 MR. WILLIAMS: Yes, sir.

6 THE COURT: And I have ruled on that and would note
7 your exception to that so that will be in evidence. And
8 then you have the redacted?

9 MR. CASKEY: Yes, Your Honor, which is marked
10 Court's exhibit number 2 and this would be the copy that
11 I seek to publish to the jury.

12 THE COURT: All right. And subject to your
13 objections on the statement as a whole you certainly
14 don't object to the redacted portion?

15 MR. WILLIAMS: That's correct.

16 THE COURT: So we'll move that in. That will be in
17 evidence as State's 2 you said?

18 MR. CASKEY: This will be -- Well, it was marked as
19 Court's number 2, but is State's number 10.

20 THE COURT: Okay. Well, whatever order they are,
21 we'll mark that in at this point. Now, there was a
22 question as to any instruction to the jury as far as,
23 obviously you're going to publish the redacted statement
24 and they are going to see a big black void. Is there
25 any particular instruction, Mr. Williams, that you would

1 request?

2 MR. WILLIAMS: I would request no instruction on the
3 redaction.

4 MR. CASKEY: I would certainly ask, Your Honor, for
5 an instruction that pursuant to the Rules of Evidence
6 you had to make a finding that one portion of this
7 needed to be excluded from the jury's purview.

8 THE COURT: Is not admissible.

9 MR. CASKEY: Is not admissible and consequently we
10 have a redacted version.

11 THE COURT: All right.

12 MR. WILLIAMS: I was checking to see if there was
13 something on redaction in here, Your Honor.

14 THE COURT: Well, subject to you finding something
15 from the learned Judge Anderson, what I will do is when
16 it comes time for you to publish, I'll then instruct the
17 jury, ladies and gentlemen, State's exhibit 10 or
18 whatever it is, State's exhibit whatever pursuant to my
19 ruling outside your presence on a matter of law
20 regarding this statement, there was a portion of the
21 statement which was not admissible that has been
22 redacted or omitted and so that is the portion you see
23 blanked out. That's not to be considered. You're to
24 consider the statement that has been admitted.

25 MR. CASKEY: Thank you, Your Honor.

1 MR. WILLIAMS: He doesn't help much here, Your
2 Honor. He has the statement about rejected or stricken
3 evidence that you normally would throw in.

4 THE COURT: Yeah. While we have the jury out, lets
5 go ahead and take a short break.

6 (Short recess.)

7 THE COURT: Back on the record. All right. Thank
8 you, folks. Ready to proceed from the State?

9 MR. CASKEY: I believe we are, Your Honor. I just
10 wanted to reflect that the large aerial photograph is,
11 in fact, marked as State's number 12. I believe I had
12 referred to it earlier as State's 8 and it's, in fact,
13 number 12.

14 THE COURT: All right. Anything from the defense
15 before we --

16 MR. WILLIAMS: Nothing from the defense, Your Honor.

17 THE COURT: All right. Let's bring the jury back
18 in, please.

19 (The jury returns to the courtroom.)

20 THE COURT: All right. Folks, thank you for your
21 courtesy while I was able to take up that matter. We
22 are ready now to proceed. I'm going to allow the
23 statement in and I note the exception so you may
24 proceed.

25 MR. CASKEY: Thank you, Your Honor.

1 BY MR. CASKEY:

2 Q. Agent Edmonson, right before we left off we were
3 talking about the statement, the written statement that the
4 Defendant gave to you?

5 A. Correct.

6 Q. I'm handing you what's been entered into evidence as
7 State's number 10. Do you recognize that document?

8 A. That's the statement form that I use that Mr. Miles
9 filled out his statement on.

10 Q. On that document what handwriting is reflected on
11 that?

12 A. His handwriting, my handwriting, and what I know to
13 be Agent Bass' handwriting.

14 Q. Did you observe the Defendant fill out this
15 statement?

16 A. I did.

17 MR. CASKEY: Your Honor, I move to publish the
18 statement orally to the jury.

19 THE COURT: All right.

20 BY MR. CASKEY:

21 Q. Agent Edmonson, start at the top of State's number
22 10, the statement form, and read to the jury what the
23 Defendant wrote.

24 A. "I Lance Miles got a call about picking up a"
25 package "on yesterday and was going to get paid \$100.00 to

1 pick it up and hand off too the owner of the box. As soon as
2 I picked up the box cops where on the scene, so as soon the
3 mail ran I get the call from Mark the guy who had the owner
4 use his people Address he was not home so he called me to
5 pick it up and now I'm the one who got caught up in this mess
6 the Owner is this guy go by the name of Stacks from Tennessee
7 don't know any Government names."

8 Then on the next page I ask the question, "Did you
9 know drugs are in the parcel?" I put in quotations "box".
10 He answers in his handwriting "Yes."

11 Q. The question was, did you know drugs were in the box
12 and the answer in the Defendant's handwriting was what?

13 A. Yes.

14 Q. Yes. Now, Agent Edmonson, that document you have
15 there, does that appear to be the original?

16 A. Photocopy.

17 Q. Does it fairly and accurately depict the statement
18 as it was taken?

19 A. It does.

20 MR. CASKEY: Your Honor, I move to published this
21 visually to the jury.

22 THE COURT: Yes, sir. While you're getting a copy
23 or getting that ready, ladies and gentlemen, you heard
24 the Solicitor ask the witness whether that was the
25 original or not. He indicated it was a photocopy. A

1 matter of law that I took up regarding the statement
2 dealt with a portion of the statement and I ruled that
3 a portion of this statement was not admissible and so
4 the State, this document which Mr. Caskey has in his
5 hands is the redacted statement. In other words, they
6 have taken out the portion that I ruled to be
7 inadmissible. So when you see State's number 10, that's
8 why. It's a copy rather than the original, but it is an
9 exact copy of the redacted portion and so when you look
10 at the second page on the screen, you will notice that
11 black box. That's the portion that was redacted just so
12 you will understand why that's there. All right. You
13 may proceed.

14 MR. CASKEY: Thank you, Your Honor.

15 BY MR. CASKEY:

16 Q. Agent Edmonson, to clarify, who wrote this line
17 here?

18 A. After questioning and all that, I wrote all that
19 (indicating.)

20 Q. Let me hand you the laser pointer so you may be able
21 to show exactly what you're talking about.

22 A. All right. This whole section from here to there.
23 That top one.

24 Q. Who wrote that?

25 A. I did.

1 Q. Who wrote the word "answer"?

2 A. I did.

3 Q. Who wrote the word "yes"?

4 A. The Defendant.

5 Q. Did you tell him to write that?

6 A. No. No.

7 Q. What does that appear to be at the bottom?

8 A. A signature.

9 Q. Did you witness that signature?

10 A. Yes.

11 Q. Who wrote that?

12 A. The Defendant.

13 Q. Just so we are clear, if you would, could you point
14 to the areas on this document that the Defendant, that you
15 watched the Defendant fill out?

16 A. Like I say, when you read the Miranda Rights here
17 where it's like from number 1, the right to remain silent,
18 that's his initials and it goes into the verbiage and to
19 initial there, there, there, there. And the last line, "I
20 have read this statement of my rights and understand what my
21 rights are." That's his initials right there (indicating.)

22 Q. Did you threaten the Defendant to do this in any
23 way?

24 A. No.

25 Q. Did you promise him anything?

DOUG EDMONSON - DIRECT BY CASKEY

1 A. No.

2 Q. Did you misrepresent things in any way?

3 A. No.

4 Q. Did you tell the Defendant what to write?

5 A. No.

6 Q. And again, when you asked him the question if he
7 knew drugs were in the box, what did he tell you?

8 A. Yes.

9 Q. That he knew drugs were in the box. Now, Agent
10 Edmonson, after the Defendant gave you this statement, what
11 happened?

12 A. He was placed back in the handcuffs and transported
13 to Lexington County Detention Center.

14 Q. Did you collect the drugs in this case?

15 A. I did.

16 Q. How did you do that?

17 A. I put them in a BEST Kit. What we call a BEST
18 Kit.

19 Q. Could you tell the jury what a BEST Kit is?

20 A. It's an evidence bag for narcotics. We have them.
21 I keep some. Initially I just put it with the BEST Kit until
22 I can get to a secure location and do a proper count of how
23 many pills I had, then I sealed it, indicated the BEST Kit
24 control number in my report and submitted it into evidence
25 with the proper paperwork to have it analyzed to determine

1 the true substance.

2 Q. Is the BEST Kit a tamper proof evidence bag?

3 A. Yes. You can tell if you try to open it once it's
4 been closed with adhesive. If you try to take it off, the
5 paper comes off.

6 Q. I'm handing you what's been marked for
7 identification State's exhibit number 1. Do you recognize
8 that?

9 A. Yes.

10 Q. What does that appear to be?

11 A. This would be the actual BEST Kit I was referring
12 to, the actual bag that you seal the narcotics in. The
13 control number I was talking about will be this number right
14 here (indicating.)

15 Q. Would you read that, please?

16 A. Control number C020282.

17 MR. WILLIAMS: Your Honor, I would object to the
18 publication of that control number until it's placed
19 into evidence and the exhibit is placed into evidence.

20 THE COURT: Sustained.

21 BY MR. CASKEY:

22 Q. Do you recognize the markings on this bag?

23 A. Yes.

24 Q. How do you recognize them?

25 A. As far as it's my handwriting on here. I filled

1 this out. I put inside of it what I wanted to be tested and
2 so forth.

3 Q. What did you do with that BEST Kit after you
4 collected the drugs and placed them inside of there?

5 A. Sealed it with my signature, put it in another
6 envelope and then turned that into evidence.

7 Q. Were those drugs in your sole care, custody and
8 control from the point of collection until they were
9 submitted into the evidence room?

10 A. Yes.

11 Q. One more time. Where was the location where the
12 drugs were delivered?

13 A. [REDACTED] Villas Court.

14 Q. And that's in Lexington County?

15 A. It is.

16 MR. CASKEY: No further questions, Your Honor.

17 THE COURT: All right. Cross.

18 CROSS EXAMINATION

19 BY MR. WILLIAMS:

20 Q. Agent Edmonson, in your initial testimony -- I'm
21 going to take it from the beginning. You indicated that you
22 check out parcels and you do some sort of research and that
23 you determine which parcels are more than likely to be ones
24 which you would want to examine based on how they're wrapped
25 I think was one of the things you said?

1 A. Right.

2 Q. Whether or not that there was good addresses and
3 things of that nature?

4 A. Right.

5 Q. And then you went into a litany about if it's a real
6 small package and if you're spending a lot of money on it,
7 that it doesn't make sense to spend -- I assume it doesn't
8 make a lot of sense to spend that kind of money to have
9 something delivered overnight and that raises your suspicion
10 level?

11 A. No. There's times you want to ship something
12 overnight so that's why we have the service.

13 Q. Okay. So how much did it cost to ship this matter
14 from -- Where was it shipped from?

15 A. California.

16 Q. What part of California?

17 A. I would have to look on the box. I could tell you
18 it's on the top right, top corner right there. San
19 Bernardino, California.

20 Q. Who is it sent from?

21 A. The person on the name on here is Theresa Davis.

22 Q. And what's her address?

23 A. [REDACTED] North Turndale Avenue, San Bernardino,
24 California 92405 is on here.

25 Q. Where was it sent to?

1 A. [REDACTED] Villas Court, Apartment [REDACTED], West Columbia, South
2 Carolina 29170.

3 Q. And who is it addressed to?

4 A. Renita Davis.

5 Q. All right. And how much did it cost to send that
6 package?

7 A. This was \$56.50.

8 Q. So when you were describing that smaller package for
9 \$110.00 and then you were describing this for \$56.00, which
10 is a lot bigger box?

11 A. Yes.

12 Q. Do you know if that's based on weight or
13 something?

14 A. Well, that one right there is not due until 3:00.
15 You have something called early a.m. which is due at like
16 9:00 at the time business opens, that's when prices
17 skyrocket.

18 Q. So this wasn't priced to go at the quickest rate?

19 A. It was the quickest way, but not the quickest time
20 delivery because they have a 9:00, a noon and after 3:00.

21 Q. So there was no quicker time that was required on
22 the sending of this package versus some of the other things
23 that you were talking about? It didn't take as long to get
24 there, is that what you're saying? It wasn't quicker. You
25 said that there was an expense?

1 A. Yeah. It could have gotten there even quicker,
2 right.

3 Q. Right.

4 A. Right. It could have.

5 Q. But that wasn't done on this package?

6 A. No. They paid just to get it the next day.

7 Q. So your argument about that if you see something
8 that's more expensive to get there and it's normally -- It's
9 not a hundred percent because this one wasn't pushed at the
10 most expensive rate, right?

11 A. No. I'm not tracking.

12 Q. Well, let's talk about the information that's
13 included on the package. It's got the name of the person who
14 sent it and it's got the name of the person who was receiving
15 it. Both of the individuals listed were woman, weren't
16 they?

17 A. Yes.

18 Q. No man?

19 A. Right.

20 Q. And you said you did some investigating on this. I
21 believe you said that you checked out that there was no phone
22 number?

23 A. Right.

24 Q. Now, did you do this checking?

25 A. Part of it, yes.

1 Q. Tell me exactly what you did in regards to this.

2 A. The phone numbers. No phone numbers listed on
3 there. I run through my CAD database, [REDACTED]. I run through a
4 database that tracks everything that happens inside of
5 Lexington County via address, who stays there, calls and
6 service, phone numbers and so forth, if there are any
7 provided that I can put in there. No phone number is
8 obvious. That name didn't come back on my CAD for somebody
9 who was there at the time. So that was my part of the South
10 Carolina side.

11 Q. Where on this form is there a place to put phone
12 numbers?

13 A. Right here where it says to please print phone
14 number, (area code) and the line it will be both for the
15 recipient and the receiver and it's empty (indicating.)

16 Q. So did you contact the parcel service that sent it
17 out of San Bernardino, California and ask them if they had
18 any information in regards to the sending of this package and
19 why they didn't have a phone number on it?

20 A. At the time I wouldn't have been able to do that.

21 Q. Because?

22 A. I think it would have been about 3:00 in the
23 morning. The office wouldn't have been open.

24 Q. At any point in time after the delivery of this
25 package, had you contacted San Bernardino, California to find

1 out what information they had in regards to phone numbers,
2 addresses, or who may or may not have sent it and to whom?

3 A. No, I did not.

4 Q. Did you contact the express service? You can tell
5 where this is sent from, can't you?

6 A. As far as the actual location itself like a
7 building?

8 Q. Yes.

9 A. I can't, no.

10 Q. But somebody can?

11 A. That I can't answer.

12 Q. Well, I mean --

13 A. I don't know if the post office has the ability to
14 track numbers and so forth like that. I don't want to speak
15 for them.

16 Q. Well, the reason why you send this stuff express
17 mail with all these numbers on it is so that you can keep
18 track of where it is during the --

19 A. Are you talking about --

20 MR. CASKEY: Objection, Your Honor.

21 THE COURT: I'm going to sustain, I'm assuming,
22 based on speculation?

23 MR. CASKEY: That's correct, Your Honor.

24 THE COURT: He knows as much about it as you and me
25 probably.

1 MR. WILLIAMS: I was hoping he knew more, Judge.

2 THE COURT: I don't know what the Post Office
3 does.

4 BY MR. WILLIAMS:

5 Q. Let me ask you about, are there special numbers that
6 are --

7 A. Yeah. You're referring to a tracking number.

8 Q. That's what I'm talking about.

9 A. Yes. Yes. A tracking number does not tell you
10 where the box was taken to. It just gives you an origin.
11 Like Lexington postal service, if you do 29071, there are
12 several Postal Services within that zip code. It will just
13 tell you it came from a Lexington postal location. You
14 cannot narrow it down to a single brick and mortar building,
15 if that's what you're asking.

16 Q. All right. Now, you wouldn't have been able to find
17 tape from the building where this matter was mailed from to
18 see how the person looked who was mailing this matter? You
19 couldn't come up with that as far as you know?

20 A. No.

21 Q. Obviously you have to mail it. You have to go
22 somewhere to mail it?

23 A. Right.

24 Q. There would be no way that you could pick up the
25 information like we see on TV all the time --

1 MR. CASKEY: Your Honor, again, objection.

2 Speculation.

3 THE COURT: Sustained as to any speculation.

4 BY MR. WILLIAMS:

5 Q. But you didn't even call San Bernardino,
6 California?

7 A. Didn't have to. Did not have to.

8 Q. Would you have been interested in catching the
9 person who mailed this package?

10 A. Very much so.

11 Q. Did you take any steps to do that?

12 A. Yes.

13 Q. Did you arrest the person?

14 A. No. The mailer? No.

15 Q. Let's talk about the person it was sent to. As I
16 understand your testimony, you were not at the direct
17 location where the woman was that came out of the apartment
18 complex?

19 A. No.

20 Q. Someone told you that some woman came out of that
21 address; is that right?

22 A. My partner who was relaying information via radio.

23 Q. Did you go to the door and knock on the door and
24 speak to the lady who was there who came out of the
25 apartment?

1 A. My partners attempted to knock on the door
2 repeatedly in an attempt to get somebody to come to the door
3 but nobody did at the time I was there.

4 Q. But did they slip away?

5 MR. CASKEY: Objection, Your Honor. Speculation.

6 THE COURT: You can ask him what he knows.

7 BY MR. WILLIAMS:

8 Q. Did you see them leave?

9 A. I didn't see anybody leave out the front door.

10 Q. Did you see anybody leave out the back door?

11 A. I wasn't watching the back door. I was up front
12 where the incident took place.

13 Q. Did you subsequently go back at a later date to
14 knock on the apartment door to see if somebody was living
15 there?

16 A. Didn't have to.

17 Q. Well, you say you didn't have to. Tell me why you
18 say you didn't have to?

19 A. The Defendant admitted to me that he was the one
20 receiving the package and he knew what it was.

21 Q. Didn't he first say he didn't know what was in
22 there?

23 A. Yes.

24 Q. So when you got the answer you wanted, then you were
25 satisfied with that, right?

1 A. No.

2 Q. Why didn't you go and find out who that lady was
3 that it was addressed to?

4 A. Didn't have to.

5 Q. Let's talk about my client admitting that he knew
6 this. Describe again how this -- Let's see. You used the
7 words made contact with my client. Isn't that your phrase?

8 A. Yes.

9 Q. Made contact. Describe the physical movements of
10 you and your partner as you establish what made contact
11 was?

12 A. What I did was hop out of my vehicle, identified
13 myself, told him who I was and I handcuffed him. That's what
14 I did.

15 Q. What did your partner do?

16 A. My partner told him to stop moving. He kept moving
17 so therefore my partner got him on the ground while I
18 handcuffed him.

19 Q. Have you forgotten anything?

20 A. What are you asking?

21 Q. What about pulling out your gun?

22 A. Yeah. We did that. Absolutely. My partner pulled
23 his out. I had handcuffs. I couldn't get mine out.

24 Q. So you didn't pull your gun out. Your partner
25 pulled his gun out?

1 A. Yeah. We have what we call a cover officer so he
2 was the cover officer. But absolutely, yes.

3 Q. So you have a guy walking with a package in his
4 hand. Was he running at the time that you all converged on
5 him?

6 A. Attempted to.

7 Q. Was he running at the time before your cars pulled

8 --

9 A. Oh, no. No.

10 Q. He's just walking down the sidewalk?

11 A. Right. Right.

12 Q. And two cars converge on him?

13 A. Right.

14 Q. One with a rather large strong black man who comes
15 out?

16 A. Mm-hmm. Mm-hmm.

17 Q. And another guy pointing a gun?

18 A. Right.

19 Q. And he attempts to run and then he's placed on the
20 ground and handcuffed?

21 A. Throws the box, then attempts to run, correct. Yes.
22 Right.

23 Q. And then you ask him what's in the package and he
24 says I don't know?

25 A. I told him why we are here first.

1 Q. He says I don't know anything about it?

2 A. Right.

3 Q. All right. So after you handcuff him, do you put
4 him somewhere? Do you put him in your car?

5 A. No. We stand him up.

6 Q. And you don't get him to write a statement then, do
7 you?

8 A. No.

9 Q. You ask him can I look inside the box?

10 A. Later on, yes. Later on, yes.

11 Q. And he says what?

12 A. Yes.

13 Q. Okay. So he gives you permission. He's the guy
14 who is holding this box?

15 A. Right.

16 Q. He gives you permission. Go ahead and look inside
17 the box.

18 A. Right. Right.

19 Q. But you don't do that, do you?

20 A. No.

21 Q. What do you do?

22 A. I call for a K-9 unit.

23 Q. All right. And the K-9 unit is -- Who is the
24 handler of the K-9 unit?

25 A. Teddy Xanthakis.

1 Q. Where was he at the time?

2 A. Somewhere in Lexington County close by. I can't
3 tell you exactly where but somewhere close by.

4 Q. Had you previously talked to him?

5 A. I did.

6 Q. Did you tell him that you were expecting a
7 package?

8 A. Yes.

9 Q. Did you tell him that you were staking out an area
10 and you thought you may need the K-9 unit to come to that
11 area?

12 A. Yes.

13 Q. So you were counting on using the K-9 dog for the
14 package anyway?

15 A. Oh, absolutely not. Because I was counting on that
16 he would be there with me the whole time.

17 Q. All right. So you have the package. You call for
18 the K-9 unit along with the dog handler. Once you do that,
19 then you - you don't open the package yet?

20 A. No.

21 Q. So you're still looking at the package?

22 A. Right.

23 Q. And after the dog does something --

24 A. Right.

25 Q. -- you contact officer who?

1 A. Dennis Tracy and I, we get in contact with each
2 other.

3 Q. All right. So this other officer, Dennis Tracy,
4 where is he located at?

5 A. He's close by Oak Drive.

6 Q. When you say "close by Oak Drive", how close is he
7 to the magistrate's office over on Oak Drive?

8 A. I have no idea. I know he lives by there and he was
9 headed home so if he was by his house, he would be about five
10 miles.

11 Q. Okay. Well, now, Oak Drive is where the
12 magistrate's office is; isn't it?

13 A. And where Dennis lives, correct.

14 Q. So you contact him and you talk to him over the
15 phone about getting a search warrant?

16 A. Yes. At least that, yes.

17 Q. All right. And you get a search warrant. Do you
18 wait on Dennis to get back with the search warrant to open it
19 up?

20 A. No.

21 Q. Once you have a conversation with Mr. Tracy, then
22 you go ahead and open it up?

23 A. No.

24 Q. Once you think you have a search warrant coming,
25 then you open it up?

1 A. Once he calls me back and says he went in front of
2 the judge, a search warrant was sworn out, granted by the
3 judge, that's when we open up the parcel.

4 Q. Well, now who opened it up?

5 A. Myself and Teddy Xanthakis.

6 Q. Well, you say myself. If you look at State's
7 exhibit number 4, clearly you're not the one opening that
8 package, are you?

9 A. I opened it. He's holding the box open so I could
10 take the photo because the way it is, the crease down the
11 side, it would keep closing so I asked him to hold it open
12 while I hovered over and take the photo.

13 Q. Now, one of the things you said was that they used a
14 lot of tape and that's one of the main things that you hit
15 upon. No pun intended.

16 A. It's a combination. It's - it's not just that alone
17 that's gonna make you think that there's drugs inside.

18 Q. Because marijuana -- You used the word marijuana
19 smells a lot?

20 A. Right. It smells a lot, yes.

21 Q. So you were counting on finding some marijuana in
22 there?

23 A. Honestly I thought that's probably what it was going
24 to be.

25 Q. Because it was taped up so big?

1 A. Yeah. Nine times out of ten from that location the
2 way it's taped, you know, it's gonna be either that or
3 marijuana. My hunch probably marijuana because that's a lot
4 of money.

5 Q. Because pills don't smell, do they?

6 A. That I don't know. I can't smell. I have
7 sinusitis. That's why I sound so stopped up all the time.

8 Q. Well, on the statement that we were talking about
9 earlier -- How do you turn this thing back on?

10 Now, you were talking about what you wrote and what
11 my client wrote and I believe you said that you wrote part of
12 this; is that right?

13 A. The second page.

14 Q. On the second page. You didn't write anything on
15 the first page?

16 A. The very top. The very, very, very top that's out
17 of sight that says OCA number.

18 Q. Right.

19 A. That's my handwriting.

20 Q. So you filled out the top part up here?

21 A. Mm-hmm.

22 Q. And then he fills out a narrative here?

23 A. Yes.

24 Q. And now when you read this to the jury, you read, "I
25 Lance Miles got a call about picking up a package on

1 yesterday and was going to get paid \$100.00." Do you
2 remember saying that?

3 A. Yes. Yes, I read that.

4 Q. Are those the words you used?

5 A. Yes.

6 Q. Well, that's not exactly what it says, is it?

7 A. To my knowledge, it's not my handwriting, but I read
8 it the best I could. What am I missing?

9 Q. Well, it actually says "packages", doesn't it?

10 A. Oh, okay. Okay.

11 Q. It says he was "picking up a packages" on that date,
12 right?

13 A. I said package. Based on all the grammatical errors
14 I figured that's what he meant. Maybe that's just my
15 mistake.

16 Q. Well, I mean, that's what it says though, doesn't
17 it?

18 A. (Witness nodding head.)

19 Q. And he says, "and was going to get paid \$100.00 to
20 pick it up", right?

21 A. Mm-hmm.

22 Q. It being singular. Is it singular or plural?

23 A. It's an interpretation. I'm a physics major.

24 Q. "And hand off too the owner of the box." Is that
25 what it says?

1 A. Yes.

2 Q. "And hand off too the owner of the box. As soon as
3 I picked up the box cops where on the scene, so as soon the
4 mail ran I get the call." Well, that statement doesn't
5 follow in terms of sequence of events, does it?

6 MR. CASKEY: Objection, Your Honor. That calls for
7 speculation.

8 THE COURT: Overruled. He can answer that.

9 BY THE WITNESS:

10 A. You're asking me what I think of why it's written
11 like that?

12 BY MR. WILLIAMS:

13 Q. I'm asking if it follows. Just as night follows
14 after day, is this an example where the sequencing of events
15 are the same as written in this statement?

16 A. (No response.)

17 Q. Well, he says, "As soon as I picked up the box cops
18 where on the scene, so as soon the mail ran I get the call
19 from" --

20 A. Right. He's jumping around. Correct.

21 Q. Almost like he's trying to fill in events in this
22 statement. Are you asking him anything while he's writing
23 this?

24 A. I'm not. I'm not. It would incline me to believe
25 that either, A, he was trying to be partially true and omit

1 certain things and not divulge all the information that he
2 wants to give me to so his brain is trying to fill in
3 different things.

4 Q. Did you learn that as a physicist?

5 A. You take undergraduate classes. You have got to take
6 psychology and so forth.

7 Q. So you think the skipping around was done on
8 purpose?

9 A. It's not done on purpose. In my opinion it's
10 something that you don't even realize.

11 Q. So you weren't dictating to him how he wrote that?

12 A. I wouldn't do that.

13 Q. Let me ask you when he was filling out this
14 statement, how many officers were there?

15 A. While he was filling it out?

16 Q. Right.

17 A. Around him or all together?

18 Q. Around him.

19 A. When he was filling it out, it was just me standing
20 beside him and Travis Bass was in the proximity and that was
21 it. Everybody else was at the incident area.

22 Q. So Travis Bass would have been able to hear your
23 questions to the Defendant as well as the Defendant --

24 MR. CASKEY: Objection.

25 THE COURT: Sustained as to what Travis Bass could

1 hear.

2 BY MR. WILLIAMS:

3 Q. Obviously he can testify to what he could hear and
4 what he couldn't hear, right?

5 A. Exactly.

6 Q. Do you have any type of recording?

7 A. Do not.

8 Q. Let me ask you about the items that were actually
9 found in the box. What items were found in the box?

10 A. That bag, a Teddy bear and that wax candle.

11 Q. A bag?

12 A. Yeah. A little stuffed animal or something like
13 that. A blue stuffed animal.

14 Q. A blue stuffed animal. That's a Teddy bear?

15 A. Something - something, you know, a little stuffed
16 little thing. I don't know what you call it. I call
17 everything that's stuffed a Teddy bear so... Yeah, the
18 Cookie Monster. That's right.

19 Q. The Cookie Monster is different from a Teddy bear,
20 isn't it?

21 A. So you say.

22 Q. So you have got Cookie Monster and you have a candle
23 which is in a pot?

24 A. Yes.

25 Q. Those two items were in a bag; is that correct?

1 A. Right.

2 Q. And what kind of bag was it?

3 A. Those little party bags that you give people little
4 gifts. You put tissue paper on top of it, stuff like that.
5 Two little draw strings on each side, little cotton little
6 draw strings.

7 Q. Yeah. It actually says "First Halloween", doesn't
8 it? It's a little party bag that says "First Halloween" on
9 it, doesn't it?

10 A. Right.

11 Q. Did you check to see where those items were
12 purchased?

13 A. Absolutely not.

14 Q. Well, it had tags on them and things of that nature,
15 right? Was it actually wrapped in a gift wrap like a
16 birthday present or something like that?

17 A. Not that I know of.

18 Q. Can you tell me looking at this item whether or not
19 that's paper wrapping?

20 A. No. That's the tissue paper we talked about
21 earlier.

22 Q. That's the tissue paper?

23 A. Right.

24 Q. Okay.

25 A. You stuff your stuff down in there, you know, make

1 it look neat.

2 Q. Make it look pretty?

3 A. Neat.

4 Q. And it was addressed from one woman to another
5 woman?

6 A. Right.

7 Q. Now, State's exhibit number 9 is a part of a candle
8 where the candle has been cut open, right?

9 A. Yes.

10 Q. And you said who seized the pills?

11 A. I did.

12 Q. How many pills did you seize?

13 A. 300.

14 Q. And how were they packaged?

15 A. They were separated. One is a light bluish color.
16 Another one is a different shade color.

17 Q. Were they inside anything in the candle?

18 A. Yes. The cellophane. That plastic wrap. That's
19 plastic wrap.

20 Q. You said it was in cellophane or plastic wrap. Are
21 you sure they weren't in plastic bags?

22 A. What do you mean by plastic bags? You mean like zip
23 lock bags? No.

24 Q. I'm sorry.

25 A. No. In zip lock bags? No.

1 Q. Well, how many bags were there?

2 A. You had two main ones and then I believe that bigger
3 one there was another little small entity inside.

4 Q. So how many bags were there?

5 A. I count two right there and inside you had another
6 bundle. I don't know if you want to claim it as a third one
7 or just something inside the other one. I don't know how you
8 want me to do it.

9 Q. Would it help to refresh your memory by looking at
10 the supplemental report that you filed with this case
11 (proffering)?

12 A. Yes. That's right.

13 Q. So how many bags were there?

14 A. The two right there. The two bags, three types of
15 pills.

16 Q. Two bags, 300 pills, right?

17 A. Mm-hmm.

18 Q. You are the case worker with the whole file, right?
19 You have access to the entire file, right?

20 A. I do.

21 Q. Did you tell anyone that there were 200 pills?

22 MR. CASKEY: Objection, Your Honor. Calls for
23 hearsay.

24 MR. WILLIAMS: It's a question whether or not he
25 told anyone that.

1 THE COURT: Overruled. He's asking him did he tell
2 somebody.

3 BY THE WITNESS:

4 A. No. If you're asking if I told Teddy Xanthakis, we,
5 that right there is an estimation of how many there might be.
6 It says approximate. In law enforcement we use approximate
7 estimates. We did not count the pills on the scene. There
8 was too many. They could go all over the place. They are
9 like that big (indicating) and I'm not trying to lose any so
10 we knew we had way more than ten, but I knew I didn't have a
11 thousand.

12 BY MR. WILLIAMS:

13 Q. So you thought at the time on the scene that there
14 were 200 pills?

15 A. At least.

16 Q. 200 pills of Oxycodone is what you thought it was?

17 A. Approximately.

18 Q. Not 300 pills?

19 A. It end up being more so I shot low.

20 Q. When is it that you got around to counting these
21 pills?

22 A. After he was booked into the Lexington County
23 Detention Center.

24 Q. Now, all these pills that you have talked about are
25 not the same, are they?

1 A. They're the same pills, they're just different
2 colors. You know, like different manufacturers make the same
3 type of pill.

4 Q. Could it have been maybe that there was 100 pills in
5 each plastic bag and maybe this other hundred pills was in
6 some other location?

7 A. No.

8 Q. All right. Did you find any pills inside the
9 stuffed animal?

10 A. No.

11 Q. Did you open up the stuffed animal?

12 A. I didn't cut it, no.

13 Q. Did you feel on it to see if there were any pills
14 inside?

15 A. I did do that. Definitely.

16 Q. Okay. Did you find any clothing in the box?

17 A. I believe there was something black down at the
18 bottom, either a shirt or something. I can't recall exactly
19 what it was.

20 Q. So now there is a shirt in there also?

21 A. If you look to the side, something black down there
22 at the bottom, cloth.

23 Q. We're not talking about the gift bag, right?

24 A. No. Definitely not.

25 Q. There is also a shirt in there?

1 A. All that's inside the bag.

2 Q. What kind of shirt is there?

3 A. T-shirt. Regular shirt.

4 Q. Is it a little boy's shirt?

5 A. I don't know. I don't know if it was meant for a
6 boy or a female.

7 Q. But there were no pills in there?

8 A. In the shirt? No.

9 Q. The only pills you found was in the bottom half of a
10 candle?

11 A. Yes.

12 Q. And you didn't really open up the candle, did you?

13 A. Yes.

14 Q. You did?

15 A. Together we split it open.

16 Q. Who cut it open?

17 A. Myself and Teddy Xanthakis. I employed his help
18 because he carries a knife.

19 Q. You didn't have a knife?

20 A. Don't need it.

21 Q. Well, you needed one that day, didn't you?

22 A. No. That's what I got Teddy for.

23 Q. So did Teddy count the pills or did you count the
24 pills?

25 A. I counted the pills. He left the scene after he did

1 what we requested of him.

2 Q. So nobody counted the pills until they got back to
3 the Lexington County Sheriff's Department?

4 A. Right. They stayed in the bag, stayed in my
5 possession just as you see in that photo right there. It was
6 taped up and everything obviously. If it wasn't, they would
7 go all over the place inside the candle.

8 Q. So what we are referring to is State's exhibit
9 number 1; is that right? The bag that you're referencing?

10 A. The bag that it's in now is not the bag that was
11 turned in.

12 Q. Where is the bag that you brought it in in?

13 A. It should still be in there, but you have to open it
14 up and take a look inside.

15 Q. So no one sits there and counts these pills out at
16 the scene?

17 A. At the scene?

18 Q. Right.

19 A. No.

20 Q. So when you get to the Sheriff's Department, who is
21 present while you count these pills out?

22 A. Myself. I was inside the evidence room so other
23 people came by. I can't recall exactly which officers came
24 inside. It's an evidence center so everybody uses it. I sat
25 down at a table and counted them.

1 Q. So to your knowledge no one else watched you count
2 these pills out?

3 A. People probably saw me counting pills but nobody
4 hovered over me while I counted.

5 Q. What is a government name?

6 A. That is street term for your biological. Your name
7 that's going to be on your birth certificate or a Social
8 Security card. Then you have your street name.

9 Q. Did you seize -- And I'm not asking you to talk
10 about hearsay or anything -- You saw my client walking down
11 the street with the box so you obviously arrested him and
12 cuffed him. I assume you searched him also, right?

13 A. He was searched multiple times I do believe. Pat
14 down.

15 Q. And he had a cell phone on him, right?

16 A. Yes.

17 Q. And did you check who he called on the cell phone
18 right before you arrested him?

19 A. Didn't have to.

20 Q. We're not -- You had a phone number. You knew he
21 was on the phone right before you arrested him, right?

22 A. Yes.

23 Q. And you knew that there was some lady who was on
24 front porch who had been on the phone?

25 A. Right.

1 Q. You didn't go to the apartment and find out who that
2 lady was?

3 A. Right.

4 Q. And you didn't check his phone to see who he was
5 talking to?

6 A. Right. Didn't have to.

7 Q. Because you had the guy?

8 A. Are you asking me why I didn't do that?

9 Q. Well, that's why, isn't it?

10 A. No. Are you asking me why?

11 Q. Why?

12 A. He told me he was the sole person that was waiting
13 to get the box. Nobody else was involved. He knew it was
14 coming.

15 Q. Well, he lived in the neighborhood, right?

16 A. Said he did, yes.

17 Q. No. My client lived in the neighborhood?

18 A. Yes. He came out of the house.

19 Q. Well, he could have been sent to his address,
20 couldn't he?

21 A. He could have been --

22 Q. Sent to his address?

23 A. Well, like you said earlier, you know, I mean, we're
24 talking about drug dealers here. You got to try to have some
25 type of guise of what you're doing. You don't want to make

1 it too easy for law enforcement to catch you.

2 Q. So you didn't check because you had a statement.
3 You had a written statement and you want to make sure his
4 statement is accurate, right?

5 A. I don't -- You know, I asked him, I said, is this
6 accurate to what you know happened? Because I'm not going to
7 tell him to put anything in there or leave anything out. I
8 just say I want you to detail your side of the events and
9 that's what he's supposed to do.

10 Q. So when he put in this statement, "So as soon the
11 mail ran I get the call from Mark the guy who had the owner
12 use his people Address he was not home", you didn't feel like
13 you needed to check the phone that he had in his possession
14 to see if he got a phone call from some guy named Mark?

15 A. Well, later in our conversation, our verbal
16 conversation he told me -- You're making me get into
17 something here. He told me he knew it was coming. He knew
18 what he was doing.

19 Q. Well, who is Mark?

20 A. I don't know.

21 Q. Are you saying that he's not telling the truth in
22 his statement?

23 A. I'm not saying that. He tells me he just knows him
24 as Mark. You know, a lot of times drug dealers only work on
25 a first name or a pseudo name basis.

1 Q. Did you make any comment to him that he could go
2 ahead and plead to PWID marijuana or he could be charged with
3 every state that that box went through?

4 A. No. I did not.

5 Q. And have you maintained possession of all of those
6 items that were in the box to include the -- Or does evidence
7 maintain possession of the shirt, the bag, the flower pot as
8 well as the --

9 A. The bag, the shirt and all that stuff was
10 destroyed.

11 Q. -- the candle?

12 A. The candle was destroyed. You know, you had to
13 destroy that to get it open.

14 Q. So who threw away all those items?

15 A. I did.

16 Q. You threw them away?

17 A. I threw away all the items you're talking about as
18 far as the shirt, the candle wax. Most of the candle wax was
19 left roadside in little pieces like this that we had to chip
20 away to actually get into the plastic to see what it was.
21 Not salvageable at all. The wax got onto some other things
22 as well that weren't salvageable.

23 Q. So you didn't turn that into evidence?

24 A. The wax and stuff? No, sir. I did not.

25 Q. So any evidence that might have been on that we'll

1 never know because we didn't test it or do anything?

2 A. Evidence on wax would be like what?

3 Q. I don't know. What kind of trade marks that might
4 be on the bottom of the pot. I don't know. Is it normally
5 your situation where you throw away items that pills are
6 inside of?

7 A. I didn't throw away the items that the pills were
8 inside of. I kept the plastic intact. I mean, you've got to
9 look at the situation. It's wax.

10 Q. What about the little animal, the little bear that
11 you took a picture of?

12 A. The stuffed doll thing?

13 Q. Yes.

14 A. It got contaminated with wax as well.

15 Q. Got contaminated with wax?

16 A. The wax was everywhere. We had to get that thing
17 open because if you look at the bottom of it, it wasn't fully
18 solidified yet. If you can tell from the discoloration on
19 that picture right there (indicating.)

20 Q. Do you have a supervisor?

21 A. I do.

22 Q. Did you talk to your supervisor about discarding
23 this evidence?

24 A. No.

25 Q. And what did you do with these pills that you - you

1 put them in a plastic bag and what did you do with them?

2 A. At which point? Which point? On the scene?

3 Q. After you threw away all the other evidence, what
4 did you do?

5 A. I didn't throw away any evidence of value on the
6 scene. Let's get that clear right now real fast. The pills,
7 I saw the pills. I saw the wax. I tried to take pictures as
8 best I could of how it was packaged because I knew it was
9 going to be destroyed. That's why I tried to get the wick
10 attached to the pills because I knew I was not going to be
11 able to bring that whole candle in here because I had to
12 destroy it. Once I did that, packaged it up in the plastic,
13 maintain control of it until I bust it all open, counted the
14 pills, catalogued it, logged it into the BEST Kit, turned it
15 into evidence.

16 Q. You said kept it in your possession. Where did you
17 keep it in your possession?

18 A. My lock box.

19 Q. So you have a lock box in your car?

20 A. Yes, I do. I have two.

21 Q. So you locked it up in your lock box inside your
22 car?

23 A. Right.

24 Q. And then did you drive straight to the Lexington
25 County Sheriff's Department?

1 A. Yes.

2 Q. And at that point in time is when you turned the
3 pills over?

4 A. Well, I had to sit and count them first. Then I
5 counted them. You count them. You've got to do the evidence
6 sheet, so forth like that. You have to do the necessary
7 paperwork, chain of custody paperwork.

8 Q. And who did you turn the pills over to?

9 A. Nobody was there so you put them in a lock box. It
10 would be on the evidence sheet there will tell you which lock
11 box it was put into. That's secure. Once you lock it, you
12 cannot unlock it.

13 Q. What did you do with the telephone?

14 A. Should be in his property. He got to keep that.

15 MR. WILLIAMS: I don't have any other questions,
16 Your Honor.

17 MR. CASKEY: Your Honor, we have a matter of law we
18 need to take up.

19 THE COURT: All right. Let me get you to step up
20 here real quick before I do that.

21 (Side bar off the record)

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

1 (The jury goes into the jury room.)

2 THE COURT: Mr. Caskey, go ahead.

3 MR. CASKEY: Your Honor, during cross examination
4 the defense counsel elicited testimony from the witness
5 as to statements that the Defendant made to the witness,
6 the witness obviously being a law enforcement officer.
7 Those statements were made pre-administration of Miranda
8 as we covered this morning. We had not originally
9 intended to introduce the remainder of those statements
10 that were made indicating how the Defendant knew that,
11 in fact, these pills were there and so the State's
12 position is that the defense has opened the door to that
13 conversation by trying to pick out a part of that that
14 benefits his case which is the I don't know. In fact,
15 he not only said I don't know, but then relayed much
16 more in detail about what he did know and his recurring
17 participation in this trafficking operation and I intend
18 to go into that and I wanted to make the Court aware of
19 that and if there is going to be any objection, I
20 certainly want to take that up now outside the presence
21 of the jury.

22 MR. WILLIAMS: Your Honor, as I understand what the
23 State elicited from my client in the oral statements
24 which he chose, he voluntarily chose not to introduce
25 that evidence that was entered pre-Miranda, that

1 evidence, the statements that were allegedly made by my
2 client was, no, he doesn't know anything about it, but
3 when he was confronted with this, that he owned up to it
4 and said these are my drugs. I got them. I got paid a
5 hundred dollars.

6 THE COURT: He knew they were there.

7 MR. WILLIAMS: That has nothing to do with the last
8 sentence on that written statement which is that he had
9 done it three times and the argument about that
10 redaction dealt with that was bringing up perhaps his
11 prior criminal history which I did not bring up. I have
12 no problems if he wants to talk about what he said
13 earlier and that is that he denied any knowledge about
14 it, but then --

15 THE COURT: But then he admitted he did.

16 MR. WILLIAMS: Because he talked about it. When he
17 introduced the statement, he said isn't this a recaption
18 of what he said orally and that's how the Solicitor has
19 argued this. He said he made these oral statements.

20 THE COURT: All right. Well, hold on because
21 Mr. Caskey has a different version.

22 MR. WILLIAMS: Okay.

23 MR. CASKEY: There are two sets of oral
24 conversations that happened and I'm happy to proffer the
25 testimony for Your Honor, but the first oral

1 conversation in which the Defendant says I don't know
2 anything about it, he then further goes in to talk about
3 his inability to be hired in a proper job. He's
4 engaging in this trafficking operation to make money for
5 his family, that conversation was pre-Miranda.

6 THE COURT: That was testified to during the earlier
7 hearing.

8 MR. CASKEY: Yes, Your Honor. Subsequently post
9 Miranda there was no statement post Miranda of I don't
10 know. Everything post Miranda was this is mine and I
11 know about it.

12 THE COURT: Right.

13 MR. CASKEY: So I want to go into, if we're going to
14 pick part of that --

15 THE COURT: Well, hang on. Because I may be able to
16 short circuit this thing. You're not wanting to go into
17 the redacted portion that says I have done this on three
18 other occasions. You're wanting to go into that, if I
19 hear what you're telling me, you're wanting to go into
20 the reason that I did this is I can't find a job and
21 it's a way for me to make some money.

22 MR. CASKEY: Yes, Your Honor. That's the
23 situation.

24 MR. WILLIAMS: Okay.

25 THE COURT: That's not -- I don't think -- I mean --

1 MR. WILLIAMS: You'r right. I don't care.

2 THE COURT: -- if you understand, that's open.

3 MR. WILLIAMS: I don't mind.

4 MR. CASKEY: I just want to be clear with the
5 Court.

6 THE COURT: Let's do this because I don't think it
7 will take terribly long. I'm not going to -- Go ahead
8 and go through your line of questioning and let's see if
9 we're going to go into the area that you're concerned
10 about.

11 MR. WILLIAMS: Yes, sir.

12 MR. CASKEY: Thank you, Your Honor.

13 VOIR DIRE EXAMINATION

14 BY MR. CASKEY:

15 Q. Agent Edmonson, when the Defendant said to you in
16 response to your question, "What's in the box", when he said
17 "I don't know", what else did he say in that conversation?

18 A. Well, after Miranda?

19 Q. No. The first -- You can let it all out here.

20 A. Okay. First he went into "I don't know. I don't
21 know anything about it." Then I advised him what I thought
22 was possibly inside the box. Then he goes into, yes,
23 probably drugs in the box, but I don't know what it is.
24 That's when I Mirandized him. I said, okay, you know,
25 you want to talk to me about this? What's going on? Because

1 obviously you know what you said. Yes. We find out there's
2 drugs inside. After we find the drugs inside, I'm like, you
3 know, what's going on? Why you doing this? He goes into the
4 fact that he just got out of prison. He can't get a job.
5 This is all he knows. He does this just to support his
6 family.

7 THE COURT: We're not going into the I just got out
8 of prison.

9 THE WITNESS: You just tell me where to stop and
10 I'll stop.

11 THE COURT: You're okay. I'm just letting
12 Mr. Caskey know.

13 MR. CASKEY: So we won't be talking about I just got
14 out of prison.

15 THE COURT: Yeah. But what is allowable is times
16 are hard. I can't find a job, whatever.

17 MR. CASKEY: Do you understand about that part?

18 BY THE WITNESS:

19 A. Right.

20 THE COURT: We're not going to go into prison.

21 BY MR. CASKEY:

22 Q. Did he indicate to you that he engaged in this
23 trafficking activity previously?

24 A. Yes.

25 Q. In that conversation?

1 A. Yes.

2 Q. What did he say to you?

3 A. He's done it several times in the past.

4 THE COURT: That's the problem. That's the problem.
5 And I agree with Mr. Williams on that. I think you can
6 go into where he was explaining the reason he did this
7 is I can't find work. This is a way for me to make some
8 money, but not previous times of doing it.

9 MR. CASKEY: I understand, Your Honor.

10 THE COURT: You go ahead and make your argument.

11 MR. CASKEY: I just want to make the State's
12 position clear that I think they're part and parcel of
13 the same activity, that he was conducting this
14 trafficking operation to make money and was doing it on
15 a recurring basis. This wasn't a one off and I don't
16 think that it's a separate matter that -- This was not a
17 one off. He was engaged in this and that the statement
18 from the Defendant is I'm doing this all the time to
19 make money.

20 MR. WILLIAMS: Your Honor, I don't have any problem
21 if he talks about that what he said he did because he
22 was making some money. I don't have any problems if he
23 says, and as I understood what he said, he said I don't
24 know what's in it and then he said something about, I
25 think the officer said something about drugs or he

1 didn't know what type of drugs was in it or something
2 like that. I don't mind that type of stuff. But when
3 you start talking about prison, he's talking about --

4 THE COURT: Well, here's what I'm trying to ferret
5 out here. Basically what you're trying to tell me is
6 that you're looking at this under an exception with
7 regards to prior bad acts; that this is a common scheme
8 or plan?

9 MR. CASKEY: Yes, Your Honor. It goes to his
10 statement. He talks about being paid for this. He told
11 the agent that he was doing this for money on a
12 recurring basis because he was unable to find employment
13 elsewhere. I would certainly agree with Your Honor that
14 the statement about just getting out of prison, not
15 admissible. But now I think we are in a position where
16 that conversation, absent the prison comment, is, we've
17 opened the door to it and the jury is entitled to hear
18 the rest of that particularly because his story changes
19 in that conversation from I don't know to yeah, there's
20 drugs in there. I don't know what kind of drugs.
21 Actually I do because I have been doing this frequently
22 to make money for my family because I can't find a
23 job.

24 THE COURT: How is that not admissible as a common
25 scheme or plan?

1 MR. WILLIAMS: It's not admissible because there's
2 no evidence to substantially prove that this is Lyles
3 type of evidence. There's been no other witnesses to
4 testify that this behavior was done before which is what
5 Lyles is normally all about and the only way in which my
6 client can refute that testimony would be require him to
7 take the stand and he has the right not to take the
8 stand in that regards and that's why we talked about
9 whether or not you can introduce prior record or not up
10 until the point in time when he takes the stand. Now,
11 if he takes the stand, I think maybe some of these
12 things he might be able to ask if he does something like
13 that. But it is consistent, if you will, Your Honor,
14 because he said originally he didn't know what was in
15 the box. This officer here after he's talking to him a
16 little bit more, he says something about, well, he was
17 doing it to make the money, but he didn't know what was
18 in the box. And he still up until the time that box was
19 opened --

20 THE COURT: Well, no.

21 MR. WILLIAMS: -- didn't know what was in the box.

22 THE COURT: No. I think his statement - I think his
23 statement was he knew they were drugs. He didn't know
24 what kind of drugs.

25 MR. WILLIAMS: Okay. And I'm okay with that. I'm

1 okay with him saying that because he didn't know what
2 kind of drugs were in the box. But my client is not
3 just charged with trafficking in drugs. He's charged
4 with a specific type of trafficking which is really the
5 biggest problem with this case that he has faced and
6 that is that instead of being charged with trafficking
7 in marijuana, he is charged with trafficking in
8 opiates.

9 THE COURT: Okay.

10 MR. WILLIAMS: So it's not a blanket trafficking
11 argument, if you will. I think when you're talking
12 about trafficking in opiates, unless he can prove that
13 he's ever been convicted in trafficking in opiates
14 before, which I think will be an impossibility.

15 MR. CASKEY: Your Honor, I think the Defendant's
16 statement indicates there are other individuals involved
17 in this. The Defendant has indicated to law enforcement
18 in that oral conversation that this is an ongoing
19 operation, a common scheme or plan. He didn't mail the
20 package to himself from California the day before.
21 Defense's argument seems to be, as I understand it, that
22 the Defendant didn't know that these were pills that
23 were coming in. Well, the Defendant's statement to law
24 enforcement is contrary to that in that he did know that
25 there were going to be drugs in there because he's done

1 it a lot and I think that that's both relevant and
2 probative to the case at hand given the elements of the
3 trafficking offense.

4 MR. WILLIAMS: Your Honor, I think the Solicitor is
5 trying this case on a trafficking in opiates based on
6 weight anyway which is possession. He's not trying this
7 on a conspiracy basis because obviously even the officer
8 didn't investigate any of the other people involved here
9 so he obviously didn't think it was a conspiracy.

10 THE COURT: What does that got to do with anything?

11 MR. WILLIAMS: It has to do that the theory of the
12 case is based on the weight and it's possession. The
13 fact that he possessed over four grams of opiates is the
14 basis for the trafficking.

15 MR. CASKEY: Your Honor, I would say he's absolutely
16 right, that the weight is relevant and that's how we got
17 into trafficking. If he had only been moving two grams,
18 we would be looking at a possession charge. But he
19 didn't. He brought nine grams into this state. He's
20 indicated in his statement that he's done it at least
21 three other times. He's told the officer that he's done
22 it. He's doing it to make money so I'm trying it on the
23 basis of all the verbs on the indictment which I think
24 are myriad for which the Defendant has violated this
25 law.

1 MR. WILLIAMS: Even that is not accurate. The last
2 part that we had redacted doesn't say that he had
3 brought in three boxes for payment of opiates. It says
4 that he has been paid to pick up three boxes. And he is
5 specifically tried on trafficking in opiates. I mean,
6 he could have been paid for marijuana. I don't know.

7 THE COURT: What was, in the conversation, this was
8 prior to Miranda when he first denied knowing anything,
9 then, he then changed his story, what was it that he
10 shared with you?

11 THE WITNESS: That he knew drugs were in there, but
12 he didn't know what type.

13 THE COURT: All right. And what else?

14 THE WITNESS: That's when I Mirandized him at the
15 time he said that.

16 THE COURT: And when did the testimony come in about
17 I'm doing this to --

18 THE WITNESS: After - after - after we opened up the
19 package and saw what it was and me and him went back to
20 the truck, sat down and talked right before he wrote his
21 statement we had that conversation.

22 MR. WILLIAMS: And, Your Honor, that was not a part
23 of the hearing. I don't remember that being discussed
24 at the Denno Hearing, this additional information about
25 he was doing it to support his family.

1 THE COURT: That was discussed in the Denno Hearing.

2 MR. WILLIAMS: It was?

3 THE COURT: I just don't remember if it was on the
4 initial end or on the end before he gave the written
5 statement, but I do remember the testimony about I
6 couldn't find work and so I have been doing this. So
7 again that's the only way I knew that that was even an
8 issue because I don't know anything about this case
9 coming in so it was at the Denno Hearing that I would
10 have heard that. Is that what you heard?

11 MR. CASKEY: Yeah.

12 THE COURT: Which at that point seems to me to be
13 under Miranda.

14 MR. WILLIAMS: It is.

15 THE COURT: Why is it objectionable?

16 MR. CASKEY: I just wanted to ensure that we had
17 clarified where we were going with this, Your Honor, and
18 that that testimony would be admissible. If I
19 mischaracterized the timing of that particular part, I
20 was doing this to make money for my family, then I amend
21 that. But otherwise I think --

22 MR. WILLIAMS: Your Honor, I request the court to
23 review the Denno Hearing in regards to that and exactly
24 what he said in reference to his family and doing it to
25 make money because I think the court reporter could

1 probably pull it up.

2 MR. CASKEY: Your Honor, and if we hadn't gone into
3 it, it's solely for the purpose of we had no intention
4 of going into that part, prior acts of this nature.

5 THE COURT: Well, it was testified to because that's
6 the only way I would know that it was even said.

7 MR. CASKEY: I believe it was, Your Honor. I just
8 wanted to offer that arguendo that if we didn't --

9 THE COURT: Yeah. And I get where you're coming
10 from. Let me address this issue right now. Off the
11 record right now.

12 (Discussion off the record.)

13 THE COURT: Back on the record. Let's bring the
14 jury back in.

15 (The jury returns to the courtroom.)

16 THE COURT: I don't want you to get too comfortable
17 because I'm about to excuse you. The matter of law that
18 I'm taking up with the attorneys, it appears it's going
19 to take me a little bit longer to resolve that. There's
20 still some more argument that I need to hear on it and I
21 was watching the clock and it looks like it's going to
22 take us longer than I anticipated and probably longer
23 than we can actually finish with this witness so I'm
24 going to go ahead and excuse you for the balance of the
25 day so that I don't have you here real late. We'll

1 continue. We'll take up the matter and we'll get that
2 resolved so that when we come back in the morning, we'll
3 pick up where we left off, okay?

4 So I'm going to excuse you. The instructions that I
5 gave you when you were excused earlier this morning,
6 that instruction remains in place. When you go home,
7 you can let your family, friends or loved ones know that
8 you are involved in a case and that you are not allowed
9 to discuss it. That's not easy for them to accept. It
10 wouldn't be in my household, I can tell you that. My
11 wife would be very curious as to what all is going on
12 and I would very lovingly explain to her that I cannot
13 discuss it. I'm not trying to avoid you and not tell
14 you about my day. I just can't tell you. Please don't
15 talk about it. Let them know that you are just under an
16 order not to discuss it. Saying something as innocent
17 as listen, it's just a case that involves - it's a drug
18 case. Or it's a case that involves a young man named
19 Mr. Miles, that could possibly elicit a response that
20 might in some way affect your ability to be fair and
21 impartial. So you just need to let them know that I
22 can't discuss it. When the case is over, I can tell you
23 everything you want to know. Probably more than you
24 want to know. But until that time please have them just
25 respect the fact that you cannot talk about the case.

1 I encourage juries to go home, enjoy your evening,
2 be with your family and friends and loved ones and just
3 come back in the morning well rested, if you can get a
4 good night's rest. As you may have experienced today
5 jury service can be taxing from a mental standpoint. So
6 obviously you will operate better if you're well rested.
7 Try to get a good night's rest if you can and I'm going
8 to ask you to be back in the jury room at 9:30 in the
9 morning and as soon as everyone is reconvened, we'll
10 start back, okay? So everybody else remain seated.
11 Ladies and gentlemen, we'll see you back at 9:30.

12 (The jury was released for the evening.)

13 THE COURT: Here is the thing, folks. I don't think
14 it can be treated or handled as Lyles type testimony
15 because unless you need to flesh out some more
16 information, all you have is I have done this before on
17 three occasions that -- Well, I'm just quoting. Three
18 times that I have knowledge of. Now, I'll hear if he's
19 got anything more than that. But we don't know time,
20 place. To do common plan or scheme it's time sensitive,
21 it's whether or not the conduct is similar in nature.
22 You know, there's the argument here that -- Because the
23 question wasn't how many times have you picked up drugs
24 for payment in the past? The question is how many times
25 have you picked up quote "boxes" for payment in the

1 past? And he says three times that I have knowledge of.
2 It just -- Even if we were going under a Lyles analysis,
3 I don't think you have got the information you need to
4 be able to prove that, to be able to show common plan or
5 scheme. Now, you know what you have got. I haven't
6 heard everything outright. I think I have, but maybe I
7 haven't.

8 MR. CASKEY: Well, Your Honor, the next question
9 that I would ask the witness is, well, what did you
10 understand that to mean, the oral comment?

11 THE COURT: It doesn't matter what he thinks. Ask
12 him.

13 MR. CASKEY: Agent Edmonson, when the Defendant made
14 the comment to you I have done this before -- I'm
15 paraphrasing now -- I have done this before. I'm doing
16 this to make money for my family, what did you
17 understand that to mean.

18 THE WITNESS: Getting drugs through the mail.

19 THE COURT: And do you know whether it was done 10
20 years ago or 15 years ago or five years ago?

21 THE WITNESS: Within this year. Within that year.

22 THE COURT: And what would lead you to believe that?

23 THE WITNESS: That's why I asked. I was like, you
24 know, it's within the past -- I always give a time frame
25 so it won't be so vague.

1 THE COURT: You asked him that?

2 THE WITNESS: Yes. Within the - within the - during
3 our conversation. Uhm, because the way I came up with
4 why it says at least three times is because I asked him.
5 I said, how many times have you done it? A couple. I
6 said, 10 times? 20 times? Five time? You know, he was
7 like at least three, but you know, no more than like
8 seven. So I said, well, at least three. So I just put
9 it you have done it at least three times.

10 THE COURT: Right. Within the past --

11 THE WITNESS: Year.

12 THE COURT: Two years? Three years?

13 THE WITNESS: Year.

14 MR. WILLIAMS: Your Honor, that's the first time we
15 have heard this discussion.

16 THE COURT: It is.

17 MR. WILLIAMS: It's getting better.

18 THE COURT: Listen. It may be because -- I mean, I
19 believe everything he's telling me. That doesn't mean
20 -- I mean, we didn't hear it before because they weren't
21 going into it.

22 THE WITNESS: I didn't think I could bring that
23 stuff up.

24 MR. WILLIAMS: Your Honor, I think you're right on
25 the analysis. I was sitting back here telling my client

1 about, you know, how are you going to go through an
2 analysis 404 and how are you going to -- The prejudicial
3 value outweighs the probative value.

4 THE COURT: There it is for me right there. There
5 it is for me. Without anymore I think the prejudicial
6 value outweighs the - the prejudicial effect outweighs
7 any probative value as to that. Now, but I do believe
8 that, and I am going to allow you to go into the fact
9 that the testimony that he knew that this was a payment,
10 that he was being paid to pick up a box of drugs for an
11 individual and that was his intention and he knew it and
12 I'm going to allow you to go into that testimony, but
13 not into all the prior times.

14 MR. CASKEY: Thank you, Your Honor.

15 MR. WILLIAMS: Thank you, Your Honor.

16 THE COURT: Now, having said all of that, I sent the
17 jury away needlessly. We could have finished here. But
18 we will start back in the morning at that point which
19 would be on your redirect, Mr. Caskey. Is there
20 anything else we need to discuss regarding this matter?

21 MR. WILLIAMS: No, Your Honor.

22 THE COURT: Or this trial?

23 MR. WILLIAMS: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. WILLIAMS: Your Honor, my client is on bond. I

1 secured a written statement from his bonding company
2 stating that they would remain on his bond even though
3 he is, I guess, in trial. Your Honor, I think - I don't
4 think the Solicitor would argue about this. Mr. Miles
5 has known about these charges for quite some time. He
6 certainly understands how large they are, but he has not
7 tried to run at any point in time and has made himself
8 available on a moment's notice to show up for the
9 trial.

10 THE COURT: Let me address Mr. Miles. Mr. Miles,
11 the bottom line is and I'm sure you're aware,
12 Mr. Williams is basically asking -- Here's what happens.
13 As a matter of law when a person who is charged with a
14 criminal offense is out on bond, the purpose for that
15 bond, the reason the bond is issued is to make sure of
16 their appearance for trial. Once the person is here and
17 present and the jury is sworn, that under a normal
18 circumstance satisfies the bond requirement and the bond
19 is then expired.

20 Now, what that means for the person is that they are
21 now in custody until the trial is ended. Your bonding
22 company, Brad's Bail Bonds has agreed to remain on your
23 bond throughout this trial and so Mr. Williams' requests
24 is that I allow that to occur during the pendency of the
25 trial. And I'm going to share with you what I share

1 with every defendant that's in your situation. In other
2 words, a defendant who is in trial but who is out on
3 bond because oftentimes we have folks that are on trial
4 and they didn't make bond or bond was refused and
5 they're in custody anyway so it doesn't matter. But in
6 this case you have been out on bond and so every person
7 in that situation I have this conversation so this isn't
8 particular to you because I'm going to ask you, or I'm
9 going to inform you of some things and I just want you
10 to understand I'm not informing you of these things
11 because I suspect you will run. I have this
12 conversation with everybody, okay?

13 I just want you to understand this. I don't have
14 any indication that you will not be back in the morning.
15 What I do want you to understand though is this: That
16 whether you return tomorrow morning or not, that this
17 trial will go forward with or without you. Do you
18 understand that, sir?

19 MR. MILES: Yes, sir.

20 THE COURT: Okay. And so what I am telling you
21 because it's a condition of your bond, I'm going to
22 allow the bond to remain in effect pursuant to the
23 request of the bonding company, but the condition of
24 that bond is that you are present for trial. So if you
25 do not -- So you do need to be back in the morning. But

1 if for whatever reason you choose not to come back, two
2 things are going to happen. The bond -- A bench warrant
3 is going to be issued because you're in violation of the
4 terms and conditions of your bond, and the trial will
5 continue forward with or without you and whatever
6 happens happens, but it will just go forward, okay? Do
7 you understand, sir?

8 MR. MILES: Yes, sir.

9 THE COURT: All right. So I'm going to allow Mr.
10 Miles to remain out on bond with that instruction to be
11 back in the morning. We'll start back at 9:30 and if
12 Mr. Williams needs you before then, you just do whatever
13 he asks you to do.

14 MR. MILES: Yes, sir.

15 THE COURT: Thank you. Anything else before we
16 adjourn for the evening?

17 MR. CASKEY: Nothing from the State, Your Honor.

18 MR. WILLIAMS: Nothing from the Defendant, Your
19 Honor.

20 THE COURT: We'll start back at 9:30 with this case.

21 (Court adjourned for the evening at 5:00 p.m.)
22
23
24
25

1 February 12th, 2015 at 9:30 a.m.

2 THE BAILIFF: All rise. Court is now in session.

3 Judge Tommie Russo presiding.

4 THE COURT: Thank you, ladies and gentlemen. Please
5 have a seat.

6 MR. WILLIAMS: Your Honor, my client is here. He
7 ran to the little boys' room.

8 THE COURT: All right. While we are waiting on him,
9 let me recap that we'll pick up on redirect. You can
10 talk about the doing this before. I mean, the reason
11 for doing this is I can't find work and it's a way to
12 make money and that he knew that there were drugs in the
13 package. But we are not going to go into the prior
14 events, okay? Is the State ready to begin? Anything we
15 need to take up?

16 MR. CASKEY: No, Your Honor. We are ready to begin.

17 THE COURT: How about from the defense?

18 MR. WILLIAMS: The Defendant is ready, Your Honor.

19 THE COURT: Officer, let me get you to get back on
20 the stand and we'll pick up where we left off. You're
21 still under oath. Let's bring the jury in.

22 (The jury returns to the courtroom.)

23 THE COURT: All right. Ladies and gentlemen, good
24 morning. I hope everyone had a good evening last night
25 and is ready to start back this morning. We, if you

1 recall when we adjourned yesterday, we were about to
2 begin with - Mr. Williams had completed his cross
3 examination and I was about to recognize Mr. Caskey for
4 any redirect so we'll go ahead and pick up with redirect
5 examination on this witness. Mr. Caskey.

6 MR. CASKEY: Thank you, Your Honor. May it please
7 the Court.

8 THE COURT: Yes, sir.

9 REDIRECT EXAMINATION CONTINUED

10 BY MR. CASKEY:

11 Q. Good morning, Agent Edmonson.

12 A. Good morning.

13 Q. When we last met we ended talking about the defense
14 counsel asked you about the Defendant's statement. We spent
15 some time talking about his grammar, the things that were
16 seized and then other arrests made in this case so I'm going
17 to pick up there with you. Let's start with the others
18 arrested in this case. Where are you currently employed?

19 A. Lexington County Sheriff's Department.

20 Q. Do you have jurisdiction in Lexington County?

21 A. I do.

22 Q. Do you have jurisdiction in San Bernardino,
23 California?

24 A. I do not.

25 Q. In investigations of this nature, parcel

1 interdiction, narcotics in particular, are you always able
2 to arrest everyone involved?

3 A. No.

4 Q. Is your job made more difficult when drug dealers
5 use different names?

6 MR. WILLIAMS: Objection to leading.

7 THE COURT: Sustained as to the leading.

8 BY MR. CASKEY:

9 Q. What are things in parcel interdiction cases in your
10 experience that make obtaining or arresting drug dealers or
11 folks involved in that difficult?

12 A. Lack of information, false names, location,
13 jurisdictional boundaries and so forth like that.

14 Q. In this case was the Defendant in possession of
15 drugs?

16 A. Yes.

17 Q. And in this particular case was the Defendant in
18 possession of drugs with knowledge that he had drugs?

19 MR. WILLIAMS: Objection. It's calling for
20 speculation or he's asking a question which --

21 THE COURT: I'm going to sustain that objection.

22 MR. WILLIAMS: Thank you, Your Honor.

23 THE COURT. You can ask him what the conversation
24 was he had with the Defendant and how that went.

25 BY MR. CASKEY:

1 Q. Did you have a conversation with the Defendant about
2 his knowledge of the contents of the package that he had?

3 A. I did.

4 Q. What was that conversation?

5 A. That he advised me that he knew that narcotics were
6 inside the parcel that he was in possession of.

7 Q. Let's talk about the things that were seized. In
8 detail Mr. Williams went over the various items that were
9 inside of the box. I'm putting on the overhead here State's
10 number 6. Of the items that were in that box which of those
11 were pertinent to your investigation?

12 A. The candle.

13 Q. Were the other items essential to your
14 investigation?

15 A. No. Just the candle and the actual box itself, but
16 inside the box just the candle.

17 Q. Do you regularly seize items for evidence that are
18 non essential to your case?

19 A. Do not.

20 Q. You testified yesterday that you did not seize the
21 cell phone on the Defendant. In hindsight would you seize
22 that?

23 A. I would not.

24 Q. Why?

25 A. The statement when he told me for one and also

1 knowing that it was coming from outside my jurisdictional
2 boundary in California.

3 Q. As to the pills that were seized in this case did
4 you seize each and every one of them?

5 A. All of them, yes.

6 Q. Did you leave any there?

7 A. No.

8 Q. Did you add any to it?

9 A. No.

10 Q. Were all of the pills that you seized included in
11 this bag which is marked as State's exhibit number 1?

12 A. Yes.

13 Q. And what was your count of the number of pills that
14 you seized?

15 A. Ended up being 300.

16 Q. 300. Now, I want to talk to you about the statement
17 that the Defendant gave you. Well, let me back up first.
18 Let's go back to the moment that you testified that yourself
19 and Officer Bass or Deputy Bass stopped the Defendant. Can
20 you tell the jury a little bit about what that looked like
21 from your perspective?

22 A. I pulled up -- We pulled up simultaneously as he was
23 walking back toward his house. He looked at me first. We
24 made eye contact. I observed him throw the box to the side
25 and looked behind him toward the wood line like he was going

1 to run. At that point Travis was out of his vehicle. He had
2 his weapon drawn. He was telling him not to move. He
3 continued to move. Travis ordered him to the ground. I
4 handcuffed him and then we sat him back up, stood him up and
5 we told him what was going on, why we were here, why he was
6 being detained.

7 Q. You testified that Officer Bass had his gun drawn?

8 A. Yes.

9 Q. In your experience as an officer involved in
10 narcotics cases, why do officers like yourself draw guns in
11 cases like these?

12 A. It's always a litmus standard that with drugs there
13 are weapons, trafficking or simple possession, it doesn't
14 matter, it's just drugs, guns are together. The neighborhood
15 I was in. I have dealt with it before. Everybody has a lot
16 of weapons out there.

17 MR. WILLIAMS: Your Honor, I have a motion to make
18 outside the presence of the jury.

19 THE COURT: All right. Ladies and gentlemen, I'll
20 get you to step back into the jury room. Please have no
21 conversation about the case.

22 (The jury goes into the jury room.)

23 THE COURT: Mr. Williams.

24 MR. WILLIAMS: Your Honor, I move for a mistrial.
25 Yesterday we had a conversation in regards to the

1 testimony from this witness and the question came up
2 yesterday as to whether or not this witness would be
3 allowed to testify about the neighborhood where my
4 client resided and the basis of the objection
5 at that point in time dealt with my client being
6 convicted on things unrelated to the particular trial
7 itself or the charges itself meaning that they indicate
8 that because he lived in the neighborhood, it's possible
9 that the jury could assume that he was guilty because of
10 the neighborhood he lived in.. He might not have the
11 best home, things of that nature. Well, what the
12 Solicitor has attempted to do by this question is he's
13 now gone around the block and brought the neighborhood
14 back up again through usage of the gun and now he's
15 going to indicate that because my guy lived in the
16 neighborhood, that he must be a criminal because he
17 lives in the neighborhood. So he's attempted to do what
18 we tried to prevent yesterday by asking that question
19 again so that he could say, well, this is a dangerous
20 neighborhood. We have dealt with that neighborhood
21 before. Anybody that lives there could be dangerous or
22 a criminal. So we would move for a mistrial because
23 yesterday Your Honor ruled that it was an improper
24 question bringing up the neighborhood insofar as this
25 drug transaction was involved and so far as whether my

1 client lived there or didn't live there. So he's gone
2 back to the neighborhood.

3 MR. CASKEY: Your Honor, I believe that the question
4 I stated was in cases of this nature, why do officers
5 draw their guns. The fact that Deputy Bass drew his
6 weapon is pertinent to this case. The character of the
7 neighborhood is one of many factors that the officer has
8 testified to as to why the gun was drawn. I don't see
9 this being unduly prejudicial to the Defendant given the
10 circumstances and the circumstances here are clearly
11 relevant and under the analysis that the probative value
12 of the character of that neighborhood, which I didn't
13 elicit to be clear, I just asked in cases of this nature
14 why do officers draw their guns, the officer among a
15 litany of other factors identified that as a factor.

16 THE COURT: I'm going to deny the motion for
17 mistrial. I don't think it rises to the level of
18 prejudicial effect. That that would rise to the level
19 of mistrying the case. The question was in response to
20 why that's done in these types of cases. You know, if
21 you want me to strike that response, we can strike that
22 response, and also would preclude there being any
23 argument as to connecting a neighborhood with anyone's
24 actions. But, you know, this was -- Earlier, if I'm not
25 mistaken, there was a question that I wouldn't allow was

1 to the specific question saying did this - what occurred
2 here in this case, did this occur in a high crime area?
3 Was this a high crime area? And I wouldn't allow that.
4 In this case the response here was that I have been in
5 this area and I know that a lot of people carry guns.
6 That's not the exact same as this is a high crime
7 area.

8 MR. WILLIAMS: All right, sir.

9 THE COURT: So I will respectfully deny the motion
10 for a mistrial. Would you like me to --

11 MR. WILLIAMS: No, Your Honor.

12 THE COURT: -- basically do anything --

13 MR. WILLIAMS: No, sir.

14 THE COURT: -- to strike the response?

15 MR. WILLIAMS: No, Your Honor. Any comment -- I
16 mean, it's done now.

17 THE COURT: I understand. But we will move on from
18 that.

19 MR. CASKEY: We'll move on, Your Honor.

20 THE COURT: All right. Let's bring the jury back
21 in.

22 (The jury returns to the courtroom.)

23 THE COURT: All right. You may continue your
24 examination.

25 MR. CASKEY: Thank you, Your Honor.

1 BY MR. CASKEY:

2 Q. Agent Edmonson, after yourself and Deputy Bass had
3 handcuffed the Defendant, did you observe Deputy Bass to
4 reholster his weapon?

5 A. Yes.

6 Q. Did the guns come out again?

7 A. No.

8 Q. How long transpired from the moment that he was
9 arrested and handcuffed -- excuse me -- he was handcuffed and
10 the point which he gave the statement?

11 A. The written statement?

12 Q. The written statement.

13 A. 45 minutes maybe.

14 Q. Would it be accurate to say 45 minutes from the time
15 the guns were drawn on the Defendant had elapsed until the
16 point which the Defendant wrote the statement that was
17 entered into evidence as State's number 10?

18 A. Yes.

19 Q. We spent a lot of time yesterday talking about the
20 Defendant's proficiency in English grammar, subject, verb,
21 agreement number issues. Did you tell the Defendant what to
22 write there?

23 A. I did not.

24 Q. When you wrote the question, "Did you know drugs are
25 in the parcel 'box?'" , did you tell him to write "yes"?

1 A. No.

2 MR. CASKEY: Thank you. Please answer any questions
3 the defense counsel may have for you.

4 RECROSS EXAMINATION

5 BY MR. WILLIAMS:

6 Q. Officer, you were asked about that you had no
7 jurisdiction in San Bernardino, California?

8 A. Correct.

9 Q. If you knew that a crime was being committed or that
10 a crime originated in California, wouldn't it be your
11 obligation as a police officer to notify law enforcement in
12 California?

13 A. If a crime -- What type of --

14 Q. If a crime commenced by the mailing of some sort of
15 package of illegal drugs from California, is it your
16 testimony that you would not be under any kind of obligation
17 to notify law enforcement in California?

18 A. They had been notified. Colorado has been notified.
19 All source states know that this is an issue. We try to get
20 cooperation with them. You have to -- Cooperation is just
21 not there. The manpower for them is not there as well.

22 Q. So you did contact San Bernardino?

23 A. I did not contact them that day. No, I did not.

24 Q. You contacted them later?

25 A. Did not.

1 Q. So are you telling me that you never contacted them
2 because you have dealt with them in the past and based on how
3 you have dealt with them in the past that you didn't think it
4 would be worthwhile to contact them now? Is that what you're
5 telling me?

6 A. No. No. I did not contact them later on because I
7 had nothing to give them to at all except there was a package
8 of marijuana that came from San Bernardino, California. I
9 don't know which location it came from. I don't know who
10 sent it or anything like that.

11 Q. So your statement you just made a while ago that was
12 you have never tried to contact them before?

13 A. San Bernardino, California?

14 Q. Right.

15 A. No.

16 Q. So you really don't know how San Bernardino,
17 California would handle investigations involving drug
18 trafficking since you have never contacted them before?

19 A. Not San Bernardino, no. California State Police I
20 have though, yes.

21 Q. Now, you didn't know what was in the package when
22 the package arrived at this location, did you?

23 A. I did not.

24 Q. There was nothing about this package to indicate to
25 you what was in the package?

1 A. I had a suspicion that there was narcotics inside.

2 Q. Well, you had a suspicion it was marijuana, didn't
3 you?

4 A. Right.

5 Q. Because of how it was wrapped. Did you testify that
6 you had actually taken pictures of it when you were at the
7 UPS or the Fed-Ex place?

8 A. The label, yes.

9 Q. Just the label?

10 A. Yes.

11 Q. But not the package?

12 A. Well, the label is on the package. I have taken a
13 picture of the label which is on the package.

14 Q. So you took a picture of the package while it was
15 there?

16 A. However you want to word it. I took a picture of
17 the label. The label is on the package. That's what I
18 did.

19 Q. All right.

20 A. All right.

21 Q. And I believe you said that the reason you did not
22 seize the cell phone was because you don't have jurisdiction
23 in California?

24 A. No.

25 Q. What is the reason you didn't take the cell phone?

1 A. Didn't have to.

2 Q. And the reason you didn't talk to the lady at the
3 apartment was because you didn't have to talk to her?

4 A. I didn't have to, but we attempted to talk to her.
5 People knocked on the door several times.

6 Q. And you didn't go back the next day to see if
7 anybody was living there?

8 A. Did not.

9 Q. Was it a Fed-Ex driver the person who delivered the
10 package?

11 A. U.S. Postal.

12 Q. U.S. Postal Service?

13 A. Yes.

14 Q. Did you talk to the U.S. Postal Service?

15 A. No.

16 Q. So you didn't talk to that driver?

17 A. After they delivered it?

18 Q. Right.

19 A. They were already gone.

20 Q. Well, I mean, you could figure out who it was,
21 couldn't you?

22 A. I'm not allowed to do that.

23 Q. You're not allowed to figure out who the driver was
24 the delivers a package?

25 A. U.S. Postal Inspection Service does not allow us to

1 talk to their drivers. That's something they would do.

2 Q. Well, did you talk to them about talking to the
3 driver?

4 A. I did not.

5 Q. So we don't know what that driver would have known
6 about the package or where it was going or whether or not
7 they observed the package being delivered? You didn't
8 observe the package being delivered obviously?

9 A. Marc Miramontes did.

10 Q. Okay. Now, you said that when the cars converged,
11 he looked at you and threw the package and then looked at the
12 wood line; is that right?

13 A. Yes.

14 MR. WILLIAMS: Your Honor, may I ask the witness to
15 step down from the witness stand?

16 THE COURT: Yes, sir.

17 (The witness complies.)

18 BY MR. WILLIAMS:

19 Q. Where was my client -- I don't want to block anybody
20 -- when you said -- when you say he looked at you?

21 A. Right here (indicating.)

22 Q. He was right here (indicating)

23 A. Yes.

24 Q. And which wood line is he looking at?

25 A. Right here (indicating.).

1 Q. Well, if he's in front of this building, he can't
2 see the wood line which is back behind these buildings
3 (indicating)?

4 A. Yes, you can. If you're right here, your direct
5 line of sight is right here (indicating.)

6 Q. So he looked at you, then he looked over there?

7 A. Right. He does like this, he looks at me, does like
8 that, backs up as if to think about what he wants to do
9 next.

10 Q. Okay. And then what did he do?

11 A. Then we told him to get on the ground.

12 Q. When did he throw the package?

13 A. When he saw me approaching.

14 Q. So he threw the package first?

15 A. As he saw me, yes.

16 Q. When both cars were swarming in and the other
17 officer came with the gun?

18 A. No. No. I wasn't even out of the vehicle yet.

19 Q. When he threw the package?

20 A. Right.

21 Q. Where did he throw the package?

22 A. Right here (indicating.)

23 Q. And you say it went underneath the car?

24 A. No. By the car. By the car. It wasn't underneath
25 it. By the car.

1 Q. All right. So he dropped the package?

2 A. I say he threw it.

3 Q. There was certainly no way that package could have
4 left being in the parking lot? There was no attempt to hide
5 it? There was nothing that it could have been hidden
6 underneath?

7 A. To hide it?

8 Q. Yes. He dropped it?

9 A. He was discarding it.. Discarding it. I mean, if
10 you're not hiding it, why even try to throw it then?

11 Q. Did he throw it at you?

12 A. No. No. Did not.

13 Q. You said that this statement that was written was
14 done about 45 minutes later?

15 A. My best guess.

16 Q. And was he cuffed sitting in the car for that 45
17 minutes?

18 A. He was standing up outside with us until he wrote
19 the statement which was inside a vehicle, but he was not
20 handcuffed.

21 Q. 45 minutes later?

22 A. My best guess.

23 Q. And you didn't make any statements that if he didn't
24 own up to some sort of marijuana possession, that you were
25 going to charge him with trafficking between various

1 states?

2 A. You asked me that yesterday. I did not say that.
3 That's not marijuana for one thing so I would never say
4 that.

5 Q. Well, the statement that is written doesn't
6 reference pills, does it?

7 A. Correct.

8 Q. You didn't know there were pills in there?

9 A. When the statement was written?

10 Q. Before the package was opened?

11 A. I had no idea.

12 Q. And there would be absolutely no way that anyone
13 just picked up that package unless they packaged it would
14 know that there were pills in there, would they?

15 A. Of course.

16 MR. CASKEY: Objection, Your Honor. That calls for
17 speculation.

18 THE COURT: Overruled.

19 MR. WILLIAMS: I have no other questions, Your
20 Honor.

21 THE COURT: All right. Thank you very much, sir.
22 You may step down.

23 THE WITNESS: Thank you, sir.

24 THE COURT: Call your next witness.

25 MS. RANKIN: The State calls Travis Bass.

1 Thereupon,

2 KENNETH TRAVIS BASS

3 after having been first duly sworn, testified as follows,

4 THE CLERK: Once you're seated, state your full name
5 spelling your last name on the record, please.

6 THE WITNESS: Kenneth Travis Bass, B-a-s-s.

7 DIRECT EXAMINATION

8 BY MS. RANKIN:

9 Q. Good morning, Deputy Bass.

10 A. Good morning.

11 Q. Where do you work?

12 A. For the Lexington County Sheriff's Department.

13 Q. What do you do there?

14 A. I'm currently assigned as an SRO up in the north
15 region.

16 Q. What's your rank?

17 A. SRO as a deputy.

18 Q. Was that your position in September of 2013?

19 A. No, ma'am.

20 Q. What was your position then?

21 A. I was assigned to work as a narcotics investigator
22 for the Lexington County Sheriff's Department under the
23 Lexington County Multi Agency Narcotics Enforcement Team.

24 Q. How did you become involved in this case?

25 A. On this particular day I was sitting at the office

1 and Investigator Edmonson came to the office and said that he
2 had a suspicious package that needed to be delivered and
3 asked if I was able to help and I told him I was.

4 Q. All right. And where were you positioned when they
5 set up outside of the apartment?

6 A. Investigator Edmonson and myself actually were
7 positioned at the intersection of Villas Court and Emanuel
8 Church Road.

9 Q. All right. And you guys responded to [REDACTED] Villas
10 Court at some point?

11 A. Yes, ma'am.

12 MS. RANKIN: Your Honor, I would ask for permission
13 to bring the officer off the stand.

14 THE COURT: All right. Sir, you may step down.
15 If you would, keep your voice up for the court
16 reporter.

17 THE WITNESS: Yes, sir.

18 BY MS. RANKIN:

19 Q. All right. If you would, point for me to where you
20 were when you responded?

21 A. We came down Villas Court from Emanuel Church and I
22 pulled into this driveway here and basically parked my patrol
23 vehicle in this general area right here. That's whenever we
24 encountered the Defendant walking across the driveway coming
25 back by this white car (indicating.)

1 Q. Okay. Now, you said you parked your car right
2 around here in this area (indicating)?

3 A. Yes, ma'am.

4 Q. The Defendant is coming right here (indicating)?

5 A. Yes.

6 Q. Where was Agent Edmonson?

7 A. He had come and basically pulled into this driveway
8 right here (indicating.)

9 Q. Okay. Very good, sir. Thank you. Now, what was
10 the Defendant's demeanor as you were exiting your vehicle?

11 A. As I was exiting the vehicle, I observed the
12 Defendant to look around in several directions. It was my
13 opinion that he was looking for an avenue of escape.

14 Q. When you got out of your vehicle, did you draw your
15 weapon?

16 A. I did.

17 Q. Why did you draw your weapon?

18 A. Due to the nature of what Investigator Edmonson said
19 about this possibly being a drug package, for my safety drugs
20 and weapons go hand in hand so I had my weapon drawn as I
21 exited my vehicle.

22 Q. All right. When you guys approached him, you had
23 your weapons drawn. What did you do next?

24 A. The Defendant was ordered to the ground. He did not
25 go to the ground on his own willingly. He was assisted to

1 the ground. That being said, he was not forced as far as
2 thrown to the ground. We did put our hands on him and put
3 him on the ground after which he was handcuffed.

4 Q. Did you reholster your weapon?

5 A. I did.

6 Q. Did you draw it back out at any point in time?

7 A. No, ma'am.

8 Q. Once he was handcuffed, did you hear Agent Edmonson
9 administer Miranda Rights?

10 A. Yes.

11 Q. Did you hear the statement by the Defendant to Agent
12 Edmonson, that oral statement that he made? Were you able to
13 hear that?

14 A. I don't know what statement you're referring to.

15 Q. So no?

16 A. No, ma'am.

17 Q. All right. Did you assist in administering the
18 Miranda Rights on the written statement?

19 A. I did fill out part of the written statement for the
20 Defendant. But as far as reading the Miranda Rights off of
21 the statement, no, ma'am. Investigator Edmonson did that
22 himself.

23 Q. I'm handing you State's exhibit 10. Do you
24 recognize that?

25 A. Yes, ma'am.

1 Q. And what is it?

2 A. This is the statement that was written by the
3 Defendant Mr. Miles.

4 Q. Did you fill out any portion of this?

5 A. Yes, ma'am.

6 Q. What portion did you fill out?

7 A. The top portion where it has the date, the place
8 which would be Villas Court, and the time. I can't read if
9 that's my handwriting there or not from Mr. Miles' name from
10 this distance. I know I did this portion. Mr. Miles, I
11 think, put his phone number down, but this line here asked
12 for an alternate contact person. I went back and filled in
13 the two phone numbers and Mr. Miles then initialed beside
14 that statement that this was correct, that he allowed me to
15 do that. Also next to that it says phone number and
16 Mr. Miles put his name down there. I went back and put
17 Jennifer which I believe was his wife's name. He then
18 initialed on there that that was correct that I made that
19 correction and here you see Detective Edmonson/Bass as
20 detective with the Lexington County Sheriff's Department, I
21 filled in those two blanks as well along with my signature
22 down here at the bottom (indicating.)

23 Q. Your signature down here at the bottom is to
24 indicate that you witnessed the statement?

25 A. Yes.

KENNETH TRAVIS BASS - DIRECT BY RANKIN

1 Q. All of this part right here, did you have anything
2 to do with that (indicating)?

3 A. No, ma'am. That's in Mr. Miles' handwriting
4 alone.

5 Q. Did you tell him what to write?

6 A. No, ma'am.

7 Q. Did you threaten him?

8 A. No, ma'am.

9 Q. Did you promise him anything?

10 A. No, ma'am.

11 Q. Were you there the entire time that he was giving
12 this written statement?

13 A. Yes. He was sitting in my vehicle.

14 Q. Did you talk to him about the case at all?

15 A. About the case? No, ma'am. Mr. Miles, I think,
16 asked me a question once or twice about getting a cigarette.
17 I told him several times just to hang on. We would try to
18 get him one, but I don't smoke so I didn't have one to give
19 him. He made the comment that his wife had one. I told him
20 just to hang on. We would try to get him one.

21 Q. Where was Agent Edmonson while the Defendant was
22 writing this statement?

23 A. He had left from my vehicle and had gone over to get
24 whatever information he needed to relay that information back
25 to another officer to get the search warrant for the

1 package.

2 Q. Did he come back at some point?

3 A. Once the statement was finished, I called over for
4 Investigator Edmonson to come back over to review the
5 statement to see if there was anything else he needed in it.
6 After that time I believe the page 2 part of it is where he
7 asked him a question.

8 Q. This would be Agent Edmonson?

9 A. Yes, ma'am.

10 Q. Okay. Were you there for that?

11 A. I was there, but I didn't know what questions were
12 being asked. I stepped out of my vehicle while he was on the
13 passenger side talking to him.

14 Q. You said you were with the Defendant at the time of
15 the statement. How was his demeanor? How was he acting?

16 A. He was acting fine. He was calm while he was
17 speaking with Detective Edmonson from what I could tell. He
18 was sitting there nice and calm. Wasn't squirming around in
19 his seat like he was antsy about anything.

20 MS. RANKIN: Thank you. I have no further
21 questions.

22 MR. WILLIAMS: May it please the Court.

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION

25 BY MR. WILLIAMS:

KENNETH TRAVIS BASS - CROSS BY WILLIAMS

1 Q. Deputy Bass, you now work at a school as a school
2 resource officer; is that correct?

3 A. Yes, sir.

4 Q. When did you leave the narcotics area?

5 A. August 2014.

6 Q. How many years were you with the narcotics
7 section?

8 A. Which time, sir?

9 Q. You have been there numerous years, haven't you?

10 A. Out of the last ten years I have done eight years in
11 narcotics.

12 Q. A long time?

13 A. Yes, sir.

14 Q. Was there any reason why you left narcotics?

15 A. I took a somewhat of a promotion transfer to go to
16 work criminal investigations and I was asked to come back to
17 narcotics and I came back for approximately a year.

18 Q. Why did you leave after that year?

19 A. Took a job as an SRO for better hours for my
20 family.

21 Q. And so you have had a good little bit of work in the
22 narcotics area?

23 A. Yes, sir.

24 Q. Now, you and the other officer, Edmonson, arrived
25 approximately the same time in two different vehicles, didn't

1 you?

2 A. We were right behind each other coming down the
3 road, yes, sir.

4 Q. Well, now he came from the left side and you came
5 from the right side in terms of, if I remember how you
6 described it, in terms of pulling up on the area where my
7 client was, right?

8 A. If you show me the map, I can try to clarify it
9 better for you.

10 Q. Okay.

11 A. We came down Emanuel Church, made a right onto
12 Villas Court. Whenever I turned, I don't remember if I was
13 in the lead or if Edmonson was in the lead or not, but I
14 turned into this driveway here and came right across this
15 little dirt grass area and Edmonson came in this driveway and
16 we were (indicating) --

17 Q. So he did come from this area (indicating)?

18 A. No, sir. That is a dead end road.

19 Q. So you were together and you just pulled in first
20 and then he pulled in second?

21 A. However that works, yes, sir.

22 Q. About the same time?

23 A. Yes, sir.

24 Q. And, if you would, he had a package in his hand; is
25 that correct?

1 A. He had a box; yes.

2 Q. And he dropped the box?

3 A. Yes.

4 Q. Did he run from you?

5 A. Not at that time, no, sir.

6 Q. Did he ever run from you?

7 A. No, sir.

8 Q. You made the comment that he was assisted to the
9 ground?

10 A. Yes, sir.

11 Q. The area where he was assisted to the ground is a
12 gravel area, isn't it?

13 A. It is.

14 Q. It's not a paved area? It's rocks, small rocks?

15 A. It is the paved rock area, yes, sir.

16 Q. And did you assist him to the ground or was it the
17 other officer?

18 A. I don't remember exactly who did. I want to say
19 that I did, but I don't know a hundred percent.

20 Q. He didn't tell you he wouldn't go to the ground, did
21 he?

22 A. He did not.

23 Q. He didn't move fast enough for you?

24 A. He was told several times, two to three times to go
25 to the ground and he did not do so.

1 Q. He didn't make any threatening moves towards you?

2 A. No, sir.

3 Q. As a matter of fact, you didn't find any weapons on
4 him or anything like that?

5 A. We did not.

6 Q. Now, from the time in which he was placed to the
7 ground up until the time he wrote this written statement how
8 much time elapsed?

9 A. I would say maybe 30 minutes.

10 Q. Okay. And during that 30 minutes time span, did
11 both you and the other officer remain in contact with my
12 client? Were you both there?

13 A. I believe Detective Edmonson was actually talking
14 with him and since it was my vehicle, yes, sir, I was
15 standing by my vehicle.

16 Q. But it's your testimony that you didn't hear the
17 conversation from my client with Edmonson? You didn't hear
18 that conversation?

19 A. That is correct.

20 Q. Even though you were there?

21 A. They were at the front door on the passenger side of
22 the truck and I was just behind it at the bed of the pickup
23 truck, yes.

24 Q. Then after this 30 minute time span elapses; he
25 leaves and you have him fill out this form and then you call

1 the officer back to see if there is something else he wanted
2 in the form; is that correct?

3 A. No, sir. Detective Edmonson said that your client
4 was going to fill out a voluntary statement, that he was
5 saying that he would do so, so the voluntary statement was
6 brought over by Detective Edmonson and he was given that
7 statement to prepare.

8 Q. You said Edmonson was not there when my client
9 filled this first page out?

10 A. As your client is filling that page out, that's
11 correct. Detective Edmonson walked off to take care of the
12 package and get the information in for a search warrant.

13 Q. Okay. So you called Edmonson to come back to look
14 at the statement?

15 A. I did.

16 Q. And you asked Edmonson does he need anything else in
17 this form?

18 A. That's correct, because I didn't read the
19 statement.

20 Q. And then Edmonson decided at that point in time he
21 needed to put some stuff on the second page?

22 A. Yes.

23 Q. And you didn't witness the second page. You only
24 witnessed the first page, because you left after Edmonson
25 came back over there?

1 A. When you say -- When I say I left, I was not sitting
2 right there in the vehicle again with him, but I was still
3 present right there as he was filling it out.

4 Q. I got you. You got outside the car and he sat on
5 the passenger side?

6 A. I believe Detective Edmonson was standing outside
7 the vehicle with the door open, yes.

8 Q. He was standing on the passenger side?

9 A. Yes, sir.

10 Q. And you had been sitting on the driver's side?

11 A. I was.

12 Q. But you got out of the car?

13 A. I did.

14 Q. Why did you get out of the car?

15 A. I was tired of sitting for one thing.

16 MR. WILLIAMS: That's all the questions I have, Your
17 Honor.

18 MS. RANKIN: No redirect, Your Honor.

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

20 Call your next witness.

21 MR. CASKEY: Your Honor, the State would call Marc
22 Miramontes.

23 Thereupon,

24 MARC MIRAMONTES

25 after having been first duly sworn, testified as follows,

1 THE CLERK: After you have a seat, please state your
2 full name spelling your last.

3 THE WITNESS: Marc Antonio Miramontes,
4 M-i-r-a-m-o-n-t-e-s.

5 DIRECT EXAMINATION

6 BY MR. CASKEY:

7 Q. Officer Miramontes, where are you currently
8 employed?

9 A. Town of Lexington.

10 Q. With the police force?

11 A. Yes, sir. I'm an investigator there.

12 Q. Tell the jury a little bit about your background.

13 A. I have been employed with the Town of Lexington for
14 almost 13 years. I have been an investigator for ten years.
15 I was with the NET Team which is the Narcotics Enforcement
16 Team with Lexington County for two years and I was involved
17 in this case for that reason.

18 Q. Okay. Let's talk specifically then about this case.
19 Do you recall the day of September 13th, 2013?

20 A. Yes, sir.

21 Q. You were assigned with the NET Team that day?

22 A. Yes, sir.

23 Q. What do you recall about that day?

24 A. That morning usually I came in early. I didn't have
25 anything going on that morning. I spoke with Investigator

1 Edmonson and he asked me if I could assist him with the case
2 that he had possibly going on that morning. I was free so I
3 said yeah.

4 Q. What was your role in that case?

5 A. I was to drive one of our undercover vehicles into
6 this neighborhood and watch the delivery of a package that
7 was going to one of the houses there. One of the
8 apartments.

9 Q. Please tell the jury about the vehicle that you
10 drove that day?

11 A. The vehicle was one of our vehicles that we have.
12 Usually we have different types of vehicles we can drive. It
13 depends on the area you're going to be in and this vehicle
14 pretty much would blend in in this area. It was a beat up
15 old Honda vehicle that we had and I drove it in there and
16 parked. It just blended with the rest.

17 Q. Okay. Let me stop you there. I'm showing you
18 what's been marked as State's number 10. Do you recognize
19 that?

20 A. Yes, sir. That looks like a Google map shot from
21 the neighborhood.

22 MR. CASKEY: Your Honor, at this time I ask
23 permission to have the witness come down from the
24 stand.

25 THE COURT: Sure. Sir, just keep your voice up so

1 the court reporter can hear your testimony.

2 THE WITNESS: Yes, sir. (Witness complies.)

3 BY MR. CASKEY:

4 Q. Officer Miramontes, I want to hand you this little
5 blue pin and if you would, please, place that blue pin where
6 you were positioned that day.

7 A. I was right here where this car is across two houses
8 across and up from the target house at [REDACTED] Villas Court
9 (indicating.)

10 Q. Let me have you step to the other side. I want to
11 make sure you're talking to the court reporter. Okay. From
12 that vantage point what could you observe?

13 A. I could actually -- I was facing the house. The
14 vehicle was facing the house so I was able to see all the way
15 down to the entrance of the neighborhood where the mailboxes
16 are for the entire street, and also I could see behind me.
17 The way I was sitting I could see behind me so nobody would
18 be able to come up behind me and surprise me so I could see
19 this way all the way down and I had my mirror set up to where
20 I could see anything that was going on right here also
21 (indicating.)

22 Q. So it's your testimony that your ability to see here
23 on this side of the street was through the mirrors of your
24 vehicle?

25 A. The mirrors and also just turning sideways I could

1 see this whole area all the way down (indicating.)

2 Q. If you would, please, tell the jury what you
3 observed that day.

4 A. When I came in, I drove in all the way to the end,
5 turned around and parked and at first we normally sit for a
6 while because we never know when the mail person is going to
7 be in that area. We knew it was scheduled for about 10:00,
8 so we got there possibly maybe a half hour early and the
9 other two investigators were outside the neighborhood. I got
10 a call that the mailman had just passed, more than likely was
11 coming to the area. I saw an individual come out of an
12 apartment and got on a bike and that's when I told them, hey,
13 there's a black male driving around on a bike. He actually
14 went to the mailboxes, picked up the mail and came back to
15 the apartment where he came from. And at that time we waited
16 for the mail lady because she was at the mailboxes for a
17 while filling up all the, dropping off all the mail. I saw
18 an individual come out of his apartment. He was walking
19 around right here in the parking lot. At that time the mail
20 lady was done and came up to deliver the mail that didn't fit
21 in the mailboxes. So she came up to [REDACTED] Villas Court. She
22 actually came in through here and drove through the grass,
23 through the parking and the grass and came back out and
24 turned around and left. She stopped right here. Dropped the
25 box at the front, right in front of the door on the little

1 porch that's there and rang the doorbell. Nobody came out.
2 She got in her vehicle and left. This individual started
3 walking this way. He got on the phone, but right before that
4 a girl came out and looked at the box, put it back down, got
5 on the phone, and then she put her, like he was done talking
6 and put her phone down. At this time I see this individual
7 get on the phone and start walking towards the box
8 (indicating.)

9 Q. Make sure they can hear you.

10 A. Starts walking towards 146 Villas Court. At that
11 time I advise the other investigators I had somebody walking
12 to it. He went up there. Picked up the box and started
13 walking back. At that time Investigator Edmonson and Travis
14 started coming up and they come up here and meet the subject.
15 They meet right in front of this car. This car right here,
16 actually that car was there at that time. I think it's like
17 a 380Z. It's an old vehicle. It's actually still there
18 (indicating.)

19 Q. Let me pause you right there for just one second.
20 I'm going to hand you this little pin and if you would,
21 please, place that pin where the individual you're talking
22 about was at the point that he came into contact with Agents
23 Edmonson and Bass?

24 A. It was right there right next to that car. And when
25 he came out, he came out from this apartment right here and

1 walked all the way down and on the way back, that's where he
2 ended up meeting the officers. I was over here and it looked
3 like he was going to get ready to run so I ended up getting
4 my car started and starting coming this way just in case he
5 started running backwards. At that time when the officers
6 came up to him, he realized who they were because they had
7 their badges hanging on their neck so he grabbed the box and
8 threw it like trying to throw it under the car, but it didn't
9 slide because of the gravel so it just stopped and that's
10 where the other officer took him down (indicating.)

11 Q. Let me back up a little bit. You just testified
12 that you saw a woman come out of her apartment there?

13 A. Yes, sir.

14 Q. Tell us about that. Did you see her touch
15 anything?

16 A. It was a young lady. She was on the phone and she
17 bent down and looked at it and she just stopped talking on
18 the phone, put the phone down and then walked back inside.

19 Q. Did she ever appear to touch it?

20 A. No. She bent down to look at it and read it and
21 just put it back.

22 Q. Did she ever take it inside?

23 A. No.

24 Q. Did you watch the Defendant take the box and walk?

25 A. Yes, sir.

1 Q. Did you ever see the Defendant take it inside?

2 A. No, sir. He just walked. He didn't get a chance to
3 take it inside the building.

4 Q. Just so we are clear, the black male that you were
5 talking about, the individual, the words you used, is that
6 individual in the court today?

7 A. Yes, sir. He's sitting right over here.

8 MR. CASKEY: Let the record reflect, Your Honor,
9 that the officer has pointed out the Defendant.

10 THE COURT: Yes, sir.

11 BY MR. CASKEY:

12 Q. What was the rest of your role in this case?

13 A. That was it. I just stopped just in case they
14 needed assistance just because it looked like he was going to
15 get ready to run.

16 Q. Hold on. Okay. So I'm just going to hand you a
17 quick red pin so you can point out where you were after --
18 You have testified that you observed the Defendant come out,
19 Agents Edmonson and Bass converged on him, and then where did
20 you end up?

21 A. My car ended up right here right on the side of the
22 road. I was coming up slowly because he looked like he was
23 going to turn around and take off running either this way or
24 this way. The two officers came up this way so I stopped
25 right here and at that time they already had him down.

1 Q. Were you able to hear any of the conversations
2 between the agents and the Defendant?

3 A. No, sir.

4 Q. Did you have any further involvement in this case?

5 A. No, sir.

6 MR. CASKEY: Thank you. You can take your seat. No
7 further questions, Your Honor.

8 MR. WILLIAMS: May it please the Court.

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION

11 BY MR. WILLIAMS:

12 Q. Investigator?

13 A. Yes, sir.

14 Q. Okay. I was guessing. Marc, you work with the Town
15 of Lexington, right?

16 A. Yes, sir.

17 Q. And you actually belong to an elite group known as
18 the NET Team, right?

19 A. I did.

20 Q. At this time you belonged with the NET Team,
21 right?

22 A. Yes, I did.

23 Q. Tell the jury what the NET Team is.

24 A. It's a group of investigators. We answer
25 complaints. We also go out and work on drug cases.

1 Basically any kind of complaint of drugs we go out and work
2 on those, any that come in.

3 Q. It's kind of an exclusive group of guys that you get
4 from various municipalities, from Cayce or Lexington or
5 Batesburg?

6 A. Yes, sir.

7 Q. And they have an agreement with the Sheriff's
8 Department where they will participate in drug investigations
9 and drug arrests throughout the county?

10 A. Yes, sir.

11 Q. And the reason it's called a NET Team is because
12 obviously since you work with the Town of Lexington, you
13 would normally not have the authority to make any arrest
14 outside the Town of Lexington unless you had some special
15 deal like working for a NET Team which has county wide
16 jurisdiction?

17 A. Yes, sir.

18 Q. Simply because you belong to the Town of Lexington,
19 if you were aware of any type of drug violation or crime
20 being committed in, say, Florence, you would contact the
21 Florence Police Department, wouldn't you?

22 A. Yes, sir.

23 Q. If you were aware of any type of crime that was
24 being committed in another state, you would contact that
25 state agency, wouldn't you?

1 A. Yes, sir.

2 Q. Now, on this particular date that you were there you
3 got there about 9:30 and you obviously since you were in a
4 beat up old car you wouldn't have been wearing your Town of
5 Lexington uniform?

6 A. No, sir. I had longer hair and facial hair.

7 Q. Scruffy?

8 A. Yes, sir.

9 Q. Not as bad as I look now. So you were there and you
10 had your car parked and you could see out the mirrors,
11 right?

12 A. I could see out the mirror and the side window.

13 Q. Kind of like you see on TV when they sit out there
14 and they look out the mirrors?

15 A. Yes, sir.

16 Q. You obviously weren't using binoculars or anything
17 like that?

18 A. No, sir.

19 Q. So you were capable of seeing these items because
20 you were kind of close up on them?

21 A. Yes.

22 Q. When you saw -- I think you had a heads up that the
23 particular vehicle was coming into the subdivision so you
24 took notice of the guy on the bicycle and stuff like that.
25 You see the, you call her a mail, it's a mail lady right?

1 It's not a mailman?

2 A. It's a female.

3 Q. It's a female?

4 A. Yeah, it's a female.

5 Q. She pulls in. Did you at any point in time after
6 this event occurred ever have a conversation with her to find
7 out what she knew or didn't know about this situation?

8 A. No, sir. She pulled in, dropped the box and left.

9 Q. But you never went to her facility to talk to the
10 Postal Service or talk to them about what she knew or didn't
11 know?

12 A. No, sir.

13 Q. You said that she went there and she cut across the
14 lawn?

15 A. It's like parking areas and it's got grass and
16 there's no concrete.

17 Q. There's no grass there?

18 A. There's grass but there's no concrete that would
19 keep you from driving over so she just drove from parking to
20 parking.

21 Q. So there's not a lot of grass there?

22 A. Yeah.

23 Q. So when she pulled across the grass and dropped the
24 package off, she dropped it on a slab, isn't it? Or is it a
25 step?

1 A. It's a little slab with a little canopy, like a
2 little porch.

3 Q. She stood there for a minute?

4 A. Just a minute. She reached over and rang the bell
5 and left.

6 Q. Did she stand there for any period of time?

7 A. No, sir.

8 Q. Just one ring on the bell?

9 A. Yes, sir.

10 Q. Then she pulls off?

11 A. Yes, sir.

12 Q. And you do nothing at this point in time, right?
13 You're just watching?

14 A. I'm just watching.

15 Q. The next thing you see, is it your testimony that
16 you actually see my client -- Look at my client here. Do you
17 recognize him?

18 A. Yes, sir.

19 Q. You see him on the phone at his house?

20 A. He wasn't on the phone yet. He was walking
21 around.

22 Q. Walking around?

23 A. Yes, sir. He was wearing a white T-shirt and black
24 pants. Black shorts, long. And then that's when the lady
25 was at the front door.

1 Q. All right. So the lady is actually at the front
2 door before my client ever moves before he ever goes over to
3 the apartment?

4 A. Yes, sir.

5 Q. Okay. So who do you see get on the phone first?

6 A. It was the young black female that came out of the
7 apartment when the mail lady rang the doorbell.

8 Q. So she comes out and you said you don't see her
9 pick up the package?

10 A. No, sir. She bent down to look at it.

11 Q. When you say bent down to look at it --

12 A. She bent down, all the way down and read the name.

13 Q. When you say bent down --

14 A. It was sitting sideways.

15 Q. Sideways?

16 A. Like that, yes, sir.

17 Q. So she bent down?

18 A. Yeah.

19 Q. Like this (indicating)?

20 A. No, sir. She didn't even put her knee all the way
21 down. She just bent down and looked at it.

22 MR. WILLIAMS: Your Honor, could I ask the witness
23 to leave the stand for a minute?

24 THE COURT: Yes.

25 (The witness complies.)

1 BY MR. WILLIAMS:

2 Q. Position this box the way the box was and show me
3 what she did.

4 A. The mail lady just came up and put it down and rang
5 the doorbell and the young lady came out. This is facing in
6 towards the door and she came up and just looked at it and
7 she's still on the phone (indicating.)

8 Q. I don't want to cut you off. Don't let me cut you
9 off. I'm trying to think as we do this. She's on the phone
10 before she actually looks at the package?

11 A. Well, she's bending down and she gets on the phone.
12 She's on the -- You know, she puts the phone up to her ear,
13 looks at it and then she puts it down and walks in
14 (indicating.)

15 Q. Do you see her dial the phone?

16 A. No.

17 Q. Does she dial the phone while she's looking at the
18 package?

19 A. I would assume so because she has the phone and
20 she's going down and she has it up to her ear.

21 Q. When she comes out of the apartment, does she have
22 the phone to her ear and she's already dialed the phone?

23 A. No. She's walking up and she puts it up so I don't
24 know if she had dialed it already or it was ringing or not.

25 Q. But you don't see her dial the phone?

1 A. No.

2 Q. So she bends down. And do it again so we see how
3 she did that.

4 A. She looks at it like this (indicating.)

5 Q. Can you read that package from looking at it like
6 that?

7 A. Yeah.

8 Q. Tell me what it says.

9 A. It says -- Right here? BAJ number 2, item number 1.

10 Q. How about, let's assume that this paper bag which is
11 up here was not on the package that was delivered because
12 clearly this was not on the package when it was delivered,
13 was it?

14 A. Mmm-mmm.

15 Q. Let's read the part that's on the package. If you
16 will lean down like she did and read it.

17 A. Oh, I can't read it.

18 Q. Thank you. You can have a seat.

19 A. (Witness returns to the witness stand.)

20 Q. Okay. So she doesn't pick it up?

21 A. No, sir.

22 Q. And does she get off the phone and then you see my
23 client grab the phone?

24 A. Yes, sir.

25 Q. So she gets off the phone?

1 A. She gets off the phone and then I see him on the
2 phone. I thought maybe like that's kind of weird. So I
3 didn't think that he was connected until he starts walking to
4 it because he's still on the phone.

5 Q. Well, if I placed a cell phone call to your cell
6 phone, will it record my phone number to your cell phone?

7 A. Mm-hmm.

8 Q. And if you receive it, I mean, if you call me, it
9 will record your cell phone to my cell phone, right?

10 A. I don't think my number would come up on yours.
11 It's blocked.

12 Q. Because you have a block because you're a police
13 officer?

14 A. Yes, sir.

15 Q. Did you attempt to secure the lady's phone or the
16 Defendant's phone to see which phone numbers were involved?

17 A. No, sir. I went up to the door. I knocked on the
18 door and nobody answered.

19 Q. Well, now, you knew somebody was in there?

20 A. Yes, sir.

21 Q. You didn't see anybody leave, did you?

22 A. No, sir.

23 Q. Well, how long did you stand there knocking on the
24 door?

25 A. A few minutes.

1 Q. And then did you ever go back to check on it?

2 A. No, sir.

3 Q. You didn't do any follow up at all to find out who
4 lived there?

5 A. No, sir. She ended up walking out. Her and her
6 mother walked out.

7 Q. So you saw her again?

8 A. Yes, sir.

9 Q. Describe, if you will, the lady that you saw again.

10 A. It was a young lady, a college student.

11 Q. About how tall was she?

12 A. I would say she was about five seven. Maybe five
13 six, five seven.

14 Q. And that was the lady that came out and looked at
15 the package?

16 A. Yes, sir.

17 Q. And you saw her come out you said with her mother?

18 A. Yes. It appeared to be her mother. It was an older
19 lady.

20 Q. And that was that same day; is that right?

21 A. Yes, sir.

22 Q. Did you have a conversation with them?

23 A. No, sir. I didn't get a chance to talk with her.

24 Q. Did the Defendant leave before you left?

25 A. I'm sorry.

1 Q. Did the Defendant leave the area meaning in the
2 custody of the officer before you left or did you leave while
3 the officers and the Defendant was still there in custody?

4 A. I left. I had to leave and go drop off the car so I
5 believe they were still there.

6 Q. So they were still -- So you weren't involved in any
7 type of -- You didn't hear my client make any oral statements
8 or didn't see him make any written statements or anything
9 like that?

10 A. No, sir. I just remember him being in the vehicle
11 talking to the investigators. At that time I was trying to
12 get the vehicle out of the area.

13 Q. Which vehicle were you trying to get out of the
14 area?

15 A. My vehicle. The one that I was driving.

16 Q. Okay.

17 A. Usually we just drive off. We don't get involved,
18 but it looked like he was going to run so that's why I
19 stopped.

20 Q. You say it looked like he was going to run. Did he
21 ever run?

22 A. No, sir.

23 Q. He didn't even make a step in the wrong direction,
24 did he?

25 A. He had the look.

1 Q. He had the look? You can tell?

2 A. Yes, sir.

3 Q. Because they get the look?

4 A. Yes, sir.

5 MR. WILLIAMS: That's all the question I have, Your
6 Honor.

7 THE COURT: Redirect.

8 REDIRECT EXAMINATION

9 BY MR. CASKEY:

10 Q. Officer Miramontes, did you have a view of this area
11 the entire time you were there?

12 A. Yes, sir.

13 Q. Did you see anyone touch that box?

14 A. No, sir, except the Defendant.

15 Q. Your testimony is the only person who touched that
16 box was the Defendant?

17 A. Yes, sir.

18 MR. CASKEY: Thank you. No further questions.

19 MR. WILLIAMS: Nothing further on recross.

20 THE COURT: Thank you, sir. You may step down.
21 Call you next witness.

22 MR. CASKEY: Your Honor, at this time the State
23 calls Ted Xanthakis.

24 Thereupon,

25 TED XANTHAKIS

1 after having been first duly sworn, testified as follows,

2 THE CLERK: After you have a seat, state your full
3 name spelling your last on the record.

4 THE WITNESS: Theodore Diamond Xanthakis,
5 X-a-n-t-h-a-k-i-s.

6 DIRECT EXAMINATION

7 BY MR. CASKEY:

8 Q. Deputy Xanthakis, where are you currently assigned
9 and in what role?

10 A. I'm currently assigned to the K-9 unit for the
11 Lexington County Sheriff's Department.

12 Q. How long have you been in that position?

13 A. Started back in - came back to Lexington in 2007 and
14 have been in that position ever since.

15 Q. Could you tell the jury a little bit about your
16 background in law enforcement?

17 A. Yes, sir. Let's see. 1983 I become a reserve
18 deputy with the Lexington County Sheriff's Department.
19 Worked for my father full-time. I was interested in K-9's.
20 In 1984 got my first dog. Started training to be in K-9.
21 There was a gentleman that was the head trainer for the
22 Sheriff's Department named Louis Marshall. I started
23 studying under Louis and started training my dogs with Louis
24 through the years and he was my mentor. As a reserve deputy
25 I was actually allowed to work a K-9 on the streets. His

1 first K-9 was named Trooper, and then I went full time in
2 1996, and in 1997 Louis asked me to follow him over to
3 Richland County where we first started our four K-9 - well,
4 we started our four K-9's for Sheriff Lott, and then in 2006
5 I was asked to come back to Lexington because they were
6 revamping the K-9 program, so I elected to come back to
7 Lexington and during that time we revamped the program and I
8 started back working a dog in 2007.

9 Q. What training and certifications do you have in K-9
10 handling?

11 A. There's various organizations that offer K-9
12 certifications. Since the state does not have a standard,
13 there's the United States Police K-9 Association which I'm a
14 member of and I take my dogs through it. Well, I currently
15 work two dogs. I take my dogs through their certification,
16 one for explosives and the other one for tracking and
17 narcotics detection. Then the other organization I belong to
18 is the South Carolina Police K-9 Organization and I take both
19 the dogs through their certifications. Explosives for
20 explosive dog, then for the patrol dog he goes through
21 actually patrol certification, tracking and narcotics
22 detection.

23 Q. Okay. I want to just go ahead and jump into the
24 matter at hand. Do you recall the day September 13th,
25 2013?

1 A. Yes, I do.

2 Q. What do you recall about that day?

3 MR. WILLIAMS: Your Honor, may we approach a second?

4 THE COURT: Yes.

5 (Side bar off the record.)

6 THE COURT: You may continue.

7 BY MR. CASKEY:

8 Q. Please continue. What do you recall about September
9 13th?

10 A. I was dispatched to contact Doug Edmonson who is a
11 narcotic agent with the Lexington County Sheriff's
12 Department. I was told to meet with him on Villas Court. I
13 believe the address was [REDACTED] Villas Court and I responded and
14 another officer was with me who was actually in training Matt
15 Paulda, K-9 officer.

16 Q. Did you have a K-9 with you that day?

17 A. Yes, I did.

18 Q. What K-9 was that?

19 A. Arcos. Arcos is the patrol certified dog with the
20 narcotics detection.

21 Q. I want to take a minute and talk about Arcos. If
22 you would, please, tell the jury about Arcos' training and
23 his certifications.

24 A. Arcos was actually initially got his training from a
25 kennel called Cross Creek Kennels out of Edgefield, South

1 Carolina. At the time he was around three years old. He was
2 a Belgium -- Well, half Malinois, half Belgium Tervuren and
3 if anybody doesn't know what a Malinois is, they basically
4 look like a German Shepherd on crack. He's very lean, quick.
5 Used for agility. Excuse my expression. They're very fast
6 and they don't think. They just go. Where a German Shepherd
7 is more methodical in their thinking, okay?

8 So I went down to Cross Creek. Arcos and I were
9 assigned to each other. We attend a four week course so
10 there was a bonding and to make sure that I was able to read
11 the dog, the dog was responding to me and we continued his
12 training. Once we finished that course through Cross Creek
13 Kennels, we continued our training at the Sheriff's Office.

14 Of course, Cross Creek gives a certification for a
15 year so that gave us a good year to really bond together. As
16 a dog and handler it takes a good year for the bonding. The
17 dog knows what to do. It's just the handler has to learn the
18 dog. Many of you have dogs in here? Okay. Basically you
19 know when the dog needs to go to the restroom, he will go to
20 the door. Well, over the time of period you learn that
21 behavior. It's same thing with us. We learn the behavior of
22 the dog.

23 So basically the dog is trained in four odors in
24 narcotics, marijuana, cocaine, heroin and hash. I'm sorry.
25 Meth. Hash is the same as marijuana. And I'm sorry. I'm

1 losing my train of thought here.

2 Q. Take your time.

3 A. Let me slow down.

4 Q. Sure.

5 A. When Arcos and I completed our training at Cross
6 Creek Kennels, like I said, we're basically working the
7 streets of Lexington County and ever since then his training
8 has continued and through yearly certifications.

9 Q. Your training at Cross Creek, was that a controlled
10 setting?

11 A. Yes, it was.

12 Q. What does that mean?

13 A. Basically a controlled setting is the trainer has
14 control of the environment. So if he's putting out training
15 aids, he places the training aids where the dog has to sniff
16 for them and look for them. No other factors are played into
17 the training as in a regular environment where we walk
18 outside, you have wind currents, you have trash, you have
19 other variables, different odors. Where in a controlled
20 setting it's really just a sterile environment.

21 Q. Is that so you know if the dog misses?

22 A. Yes, sir.

23 Q. Tell the jury a little bit about the facility, the
24 folks at Cross Creek.

25 A. Cross Creek was actually an establishment in

1 Edgefield, South Carolina. It was owned and operated by a
2 gentleman named Dondi Hydrick. I'm trying to remember.
3 Dondi had the kennels in operation for many years. I can't
4 remember when it first started. It had actually closed in
5 I want to say maybe 2008, 2009. And the reason for that was
6 the Special Forces, the Rangers learned about the training
7 from Cross Creek Kennels so they sent some K-9 handlers with
8 their dogs to Cross Creek to participate in their training.
9 They were so impressed they went back to, I guess, to their
10 superiors and recommended that Dondi Hydrick become their
11 head trainer. And at the time the Rangers were using dogs, I
12 don't know if anybody watched Animal Planet, they used to
13 have a show called Alpha Dogs and it was a kennel called
14 Vohne Liche Kennels and that was the kennels that the Rangers
15 used to use, but when they got Dondi, he basically became
16 their trainer and he shut down his operation.

17 Q. And Arcos graduated from the training there?

18 A. Yes.

19 Q. Tell the jury again the odors that Arcos was
20 certified to detect?

21 A. The narcotic odors are marijuana, cocaine, heroine
22 and meth.

23 Q. Would he detect opiates?

24 A. Yes.

25 Q. Let's go back to September 13th. Tell us about what

1 happened once you responded to the location?

2 A. When arriving on the scene, I made contact with
3 Investigator Edmonson and he explained that they did a
4 controlled delivery of a parcel and they wanted the dog to go
5 around to see if the dog would alert to the box, if it had an
6 odor of narcotics.

7 Q. What did you do then?

8 A. Basically the box was, I believe it was already
9 placed by a vehicle near the driver's side rear tire and I
10 thought that was a good location for the box because I didn't
11 want the box to be out in the open where it was by itself so
12 to kind of have a little controlled environment I wanted the
13 dog to do basically a search - not a search, but a sniff
14 around a vehicle. And what I mean by sniff is the dog is
15 smelling free air and whatever odor is emitting, hopefully he
16 would show a change of behavior and take me to the source.

17 Q. What is a change of behavior?

18 A. Change of behavior is basically I'm looking for
19 signs of the dog. It could be a head turn. First he might
20 have his mouth open, then he will shut it and start using his
21 nostrils to get more of an effect. And actually when dogs,
22 when they have their mouth open, they are actually inhaling
23 and smelling at the same time. There is a vein that goes
24 across the gums and I cannot remember the name of it, but
25 that vein helps him recognize odor. If you notice from the

1 Animal Planet or videos of wolves, when they are looking for
2 their prey, actually their mouth is opened and they're
3 actually inhaling scent.

4 Q. What does a change of behavior mean to you?

5 A. Change of behavior would be a head change and then
6 closing his mouth and starting to smell a particular item.

7 Q. Okay. Then what happens?

8 A. Then the dog will give a final response and the
9 final response is either a scratch which the dog is trained
10 to do, scratch, bark or bite at the item. He's aggressive
11 alert.

12 Q. What did Arcos do in this case?

13 A. As we were going around the vehicle, he gave me
14 a head turn, he gave me a change of behavior, worked the
15 source which was a parcel box near the tire on the driver's
16 side, rear driver's side and started alerting on the box,
17 final response on the box.

18 Q. As a result of that alert what did you do?

19 A. I went ahead and told Investigator Edmonson that
20 that was a final response to the package and so that's when
21 they took control of the package.

22 Q. What happened after that?

23 A. They wanted to open up the box. Everybody was
24 asking who had a knife. I volunteered my knife because I had
25 one on me and we opened up the box and inside was some gift

1 items and a candle. And then Doug was looking at the candle
2 and then all of a sudden he turned it upside down and the
3 candle was like two different colors and he turned it upside
4 down and then he just started prying into the candle and it
5 revealed a plastic baggie containing pills inside of it.

6 Q. Looking on the overhead at what's been marked as
7 State's exhibit number 4, do you recognize that photo?

8 A. Yes, sir.

9 Q. What is that?

10 A. That's the box that Arcos gave a final response on
11 and this was, as they were opening it, those were the gift
12 items that we saw.

13 Q. Do you recognize State's exhibit number 6?

14 A. Yes, sir.

15 Q. What is that?

16 A. That looks like the candle and then like a little
17 stuffed animal and I think some shirts, I believe.

18 Q. All right. After the box was opened, what did you
19 do?

20 A. Basically once the box was opened and they
21 discovered what was found, I just sat in the background
22 really.

23 Q. Did you have any further involvement in the
24 investigation?

25 A. No, sir.

1 Q. Did you talk to any witnesses?

2 A. No, sir.

3 Q. Did you call anyone in California?

4 A. No, sir.

5 Q. Did you count the pills in this case?

6 A. No, sir. Initially I was asking about how much
7 pills was inside. We were just doing a field estimate,
8 approximately maybe 200.

9 Q. Did you do a report as a result of this?

10 A. Yes, I did. I did a K-9 report.

11 Q. Did you write that report -- Well, let me ask you
12 this: When did you write that report?

13 A. That afternoon.

14 MR. CASKEY: Okay. Thank you. No further
15 questions.

16 THE COURT: Cross.

17 MR. WILLIAMS: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. WILLIAMS:

20 Q. Deputy?

21 A. Ted is fine, sir.

22 Q. Ted?

23 A. Yes, sir.

24 Q. Theodore?

25 A. Yes, sir.

1 Q. I don't know about that name. My son is Ted. He's
2 a junior.

3 A. Okay.

4 Q. Arcos. You gave the name Arcos to your dog?

5 A. Actually that was his name when I received the
6 dog.

7 Q. What does that mean in Greek?

8 A. Like a warrior.

9 Q. You were talking about your dog and I assume that
10 you took the dog to this training facility to be certified;
11 is that right?

12 A. Well, actually the dog came from the facility.

13 Q. So you weren't with the dog at the facility?

14 A. No, sir. The trainer first trained, did the initial
15 imprinting and the training of the dog, then I went there to
16 start bonding with the dog and seeing how the dog works.

17 Q. Were you and the dog graded on how well the two of
18 you all worked together in terms of determining various items
19 that were supposed to be sniffed out?

20 A. Basically it was a pass and fail. No type of
21 grading.

22 Q. So it wasn't like you had to pass 75 percent or 90
23 percent or something like that?

24 A. No. I mean, I guess you would have to say if I
25 couldn't, if the dog couldn't locate the odors of the

TED XANTHAKIS - CROSS BY WILLIAMS

1 narcotics and then I couldn't read my dog, then yes, we would
2 fail.

3 Q. Were you ever tested on pills?

4 A. Yes, sir. Ecstasy.

5 Q. Ecstasy?

6 A. Yes, sir.

7 Q. Were you ever tested on Oxycontin pills?

8 A. No, sir.

9 Q. Does your dog get certified like a Data Master
10 operator would get certified?

11 A. Every year, yes, sir. Yearly.

12 Q. Do you remember when this occurred, when this event
13 occurred that we are on trial for today?

14 A. Are you talking about when I sniffed the package?

15 Q. When this particular trial we are involved in with
16 some item that was found in a box, do you remember the year
17 that that occurred?

18 A. 2013.

19 Q. All right. Was your dog certified that year?

20 A. Yes, sir. He was certified with the South Carolina
21 Police K-9 Association and the United States Police K-9
22 Association.

23 Q. Do you get certified?

24 A. The dog and I are certified as a team.

25 Q. So you have one separate certification?

1 A. Yes, sir. The dog and I have one together.

2 Q. So when you took the dog to examine the package, you
3 said the package was in a good location because it was by the
4 left rear tire?

5 A. Yes. The driver side tire.

6 Q. Driver side tire?

7 A. Yes, sir. Rear tire.

8 Q. And you took the dog around the car and it didn't
9 hit on anything until it came back to the package that was by
10 the left rear tire?

11 A. Correct, sir.

12 Q. That was indeed the process that you did?

13 A. Yes, sir.

14 Q. You did nothing else?

15 A. Nothing else, sir.

16 Q. Why wouldn't you take the package and put it, after
17 you did that, why wouldn't you take the package and put it to
18 the left front tire?

19 A. There was no need for it.

20 Q. Were there any other packages sitting next to the
21 tires?

22 A. No, sir.

23 Q. So it was in a unique location, if you will? It was
24 by the left rear tire and no there was no other packages from
25 which it could choose?

1 A. Well, I mean, you know, we also do vehicle sniffs
2 too.

3 Q. There weren't any other packages on the road for him
4 to sniff?

5 A. No, sir.

6 Q. The report which you issued, you said you did it
7 that day?

8 A. Yes, sir.

9 Q. Did you type it up three days later or something?

10 A. No, sir. Basically I went back in there just to
11 check through the K-9 software program to check the weight of
12 the pills.

13 Q. Can I ask you to look at -- This is your drug
14 report, isn't it?

15 A. Yes, sir.

16 Q. You prepared that?

17 A. Yes, sir. I typed this.

18 Q. Did you type that on what date?

19 A. It had to be on the 13th and the date says 9/16.

20 That was the day that I printed it --

21 Q. So --

22 A. -- to make sure that Doug Edmonson had a copy of the
23 report.

24 Q. So your computer automatically assigns a date to --
25 Did you type this on the 13th?

1 A. Yes, sir.

2 Q. And when you printed it, it gave it the time of the
3 16th?

4 A. I believe so.

5 Q. So three days later you said that there were 200
6 pills, right?

7 A. Well, that day was 200 pills on the scene. I just
8 went back to check to make sure and it's before I printed the
9 report.

10 Q. So three days later when you print the report, you
11 said it had 200 pills?

12 A. I mean, it had 200 pills already inside my notes. I
13 just wanted to make sure that was in there.

14 Q. When you printed this out three days later, you
15 indicated that there were 200 pills?

16 A. 200 pills, right.

17 MR. WILLIAMS: That's all the questions I have, Your
18 Honor.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. CASKEY:

22 Q. Did you write 200 pills or approximately 200
23 pills?

24 A. I put approximately 200 pills.

25 Q. Did you ever count them?

1 A. No, sir.

2 Q. Was Arcos a hundred percent on finding drugs on that
3 day?

4 A. I would have to say yes. Yes.

5 MR. CASKEY: Thank you. No further questions, Your
6 Honor.

7 THE COURT: Thank you very much, sir. You may step
8 down. Thank you for being here.

9 MR. CASKEY: Your Honor, if we could request a short
10 recess?

11 THE COURT: Ladies and gentlemen, we'll take a brief
12 recess. If you need anything while you're back there,
13 let the bailiffs know and we'll get started shortly
14 after the break.

15 (The jury goes into the jury room for a short
16 recess.)

17 (Short recess.)

18 THE COURT: Okay. Let's bring the jury back in.

19 (The jury returns to the courtroom.)

20 THE COURT: Before we get started back, ladies and
21 gentlemen, Ms. Joslin, if you don't mind, I'm going to
22 get you to move over one chair. You have been sitting
23 over here, but I'm going to get you to slide over.
24 There's no assigned seating so you all feel free to sit
25 wherever you want to. There's two assigned seats.

1 There's one for the alternate and you will always occupy
2 that chair. I'm going to get you to serve as the
3 foreperson for the jury and so you will always occupy
4 that chair, okay?

5 Let me just explain a little bit what that entails,
6 folks. Any time you have a group of folks, it's just
7 easier for the Court to deal with one person on behalf
8 of the group. So the foreperson's main role is
9 basically the liaison between the jury panel and the
10 Court so that if any time while you are not in the
11 courtroom you have a question about anything or
12 whatever, then the foreperson would take a piece of
13 paper and just write that out and send me a note.

14 Depending on what the question is or what the issue
15 is, I may just write back my response and send it back
16 to you or I may just bring you back out as a panel as a
17 whole. But that's the main role for the foreperson, is
18 to basically be the communicator between the panel and
19 the Court.

20 The other role that the foreperson, and this is a
21 role that in my conversations with juries in the past,
22 this is a role that doesn't necessarily - it's not
23 necessarily very active. The foreperson is also charged
24 with starting and stopping the deliberations. But my
25 conversation with juries that I have had in the past is

1 usually there is no need to start a conversation because
2 once I tell you that it's proper to begin your
3 deliberations, almost every jury I have ever spoke with
4 shares that once they get back there, the conversation
5 just starts and it just starts to role. But I did have
6 one case where the foreman said, Judge, we all sat down,
7 we received the exhibits, and everybody stood there and
8 stared at each other and nobody was speaking. If that
9 happens, start the deliberations. Start the ball
10 rolling I guess is what I'm trying to say.

11 Everyone must be present for the deliberations so
12 that if at any time during your deliberations someone
13 needs to excuse themselves to go to the restroom or
14 whatever, then you would stop the deliberations until
15 that person returns. And the reason for that is so that
16 everyone has the benefit of the conversation. What's
17 important though to understand is this: In this case as
18 in all cases in this court your verdict must be
19 unanimous. So having said that what that should tell
20 you is this. You are all equal members of the jury.
21 Everyone's vote is weighted and carries the same weight
22 or authority so that the foreperson has no more
23 authority than anyone else on the jury. You're all
24 equal members of the jury.

25 But it's just - it's always important to have just

1 someone to serve in that capacity. As I said earlier
2 the main role being the communicator between the panel
3 and the Court, okay?

4 So if you recall, when we took the break, we had
5 just finished on one of the State's earlier witnesses
6 and now we are ready to begin with a new witness so
7 we'll recognize the State for your next witness.

8 MS. RANKIN: Thank you, Your Honor. The State calls
9 Beth Holliman.

10 Thereupon,

11 MARGARET ELIZABETH HOLLIMAN
12 after having been first duly sworn, testified as follows,

13 THE CLERK: Have a seat, please. Once you're seated
14 state your full name spelling your last name for the
15 record, please.

16 THE WITNESS: Margaret Elizabeth Holliman,
17 H-o-l-l-i-m-a-n.

18 DIRECT EXAMINATION

19 BY MS. RANKIN:

20 Q. Ms. Holliman, where do you work?

21 A. I work at the Lexington County Sheriff's
22 Department.

23 Q. What do you do there?

24 A. I'm currently assigned as an evidence custodian.

25 Q. How long have you been there?

1 A. I have been in the evidence room since January of
2 2005.

3 Q. What's your job title?

4 A. Evidence custodian.

5 Q. What are your duties as an evidence custodian?

6 A. We are responsible for receiving property from
7 officers or investigators and also assigning labs to crime
8 scene individuals or to the lab. We are also responsible for
9 transferring the evidence from the evidence room to those
10 particular individuals for testing.

11 Q. All right. Is part of that job also for the
12 maintenance and the custody of records?

13 A. That's correct.

14 Q. I'm handing you what's been marked for
15 identification purposes as State's exhibit 8. Do you
16 recognize that?

17 A. Yes, I do.

18 Q. What is that?

19 A. These are records that are kept during the normal
20 day to day business of the evidence room. It's a chain of
21 custody report as well as a property report and a property
22 voucher.

23 Q. Are all chain of custody reports, are they kept
24 electronically like that?

25 A. They are at this time.

1 Q. And you're responsible for the custody and
2 maintenance of those records in your every day business?

3 A. Yes, I am.

4 MS. RANKIN: Your Honor, at this time we move
5 State's exhibit 8 into evidence as a business record.

6 MR. WILLIAMS: If I could see it one more time.
7 Your Honor, could we approach?

8 THE COURT: Yes, sir.

9 (Side bar off the record.)

10 BY MS. RANKIN:

11 Q. Ms. Holliman, if you will look up at the top in the
12 right hand corner, is there a date in that corner?

13 A. Yes, ma'am.

14 Q. That would be the date that it's printed?

15 A. That's correct.

16 Q. Not the date that this was generated?

17 A. No, ma'am.

18 Q. Is this a copy of what would be in your computer
19 system?

20 A. Yes, it is.

21 Q. And it's electronic, isn't it?

22 A. That's correct.

23 Q. So you don't have an original per se? They are all
24 copies from printouts?

25 A. That's correct.

1 MS. RANKIN: Thank you. At this time, Your Honor,
2 we move State's 8 into evidence.

3 THE COURT: Any objection?

4 MR. WILLIAMS: No, Your Honor.

5 THE COURT: All right. State's 8 is in evidence
6 without objection.

7 BY MS. RANKIN:

8 Q. Can you tell me what items were placed into
9 evidence?

10 A. In this particular case there were drugs that were
11 placed into evidence as well as a box.

12 Q. I'm handing you what's been marked as State's
13 exhibit 1. Do you know what that is?

14 A. Yes, ma'am.

15 Q. What is that?

16 A. This is a BEST Kit. It's a drug identification kit
17 that's sent to the lab for testing.

18 Q. And is that the BEST Kit that coincides with this
19 case?

20 A. Yes, it is.

21 Q. How do you know that?

22 A. Because the officer who turns in this BEST Kit fills
23 out the front of the BEST Kit which identifies the agency,
24 the date the item was sealed, the case number, their printed
25 name and signature.

1 Q. Okay. Is the case number the same on the BEST Kit
2 that it is on the property receipts that you have?

3 A. That is correct.

4 Q. Now, once items are dropped off as evidence, what
5 happens to those items?

6 A. The evidence custodian that receives the items, in
7 this case the drugs, would have ensured that the seal on the
8 BEST Kit is intact. If that seal is not intact, we do not
9 accept that evidence and call the officer back in to correct
10 whatever the issue may be. In this case the seal was intact
11 so the evidence custodian accepted it. It was then placed
12 into our drug room which is built similar to a bank vault.
13 In that drug room it's only accessible by three people,
14 myself, another evidence custodian Candy Kyzer and our
15 sergeant, Sergeant Doug Novak. The items are kept there
16 until they are sent to the lab for testing. Once they are
17 sent to the lab, we go in and physically pull those items and
18 actually hand them to the chemist or crime scene person
19 that's going to test those items.

20 Q. Who did the intake on this?

21 A. The intake on this was evidence custodian Candy
22 Kyzer.

23 Q. What does she do at the Lexington County Sheriff's
24 Department? Are her duties the same as yours?

25 A. They are.

1 Q. Do you also do intake at the Sheriff's Department?

2 A. Yes.

3 Q. I'm handing you State's exhibit 2. Do recognize
4 that?

5 A. Yes, ma'am, I do.

6 Q. Is that the same box that coincides with this
7 case?

8 A. Yes, ma'am, it is.

9 Q. And how do you know that?

10 A. We affix bar code labels to all of our evidence
11 packaging. The bar code label is on here. It does have our
12 case number as well as the property room number.

13 Q. Okay. Back to the drugs. Did that BEST Kit, did
14 that leave the evidence room at some point?

15 A. It did. It went to our lab for testing.

16 Q. Okay. When you say it went to the lab, did it go to
17 a person?

18 A. It did. It went to Emily Homer-Conrad.

19 Q. When did that happen?

20 A. I signed it out of the drug room on February 7th,
21 2014 at approximately 14:41 hours. That's 2:41 in the
22 afternoon. I handed it to Emily Homer-Conrad in our evidence
23 intake and she then took it to the lab.

24 Q. Did that BEST Kit make its way back to the evidence
25 room?

1 A. It did. Emily Homer-Conrad returned it to the
2 evidence room on March 5, 2014 at 15:06 hours. That would be
3 3:06 in the afternoon.

4 MS. RANKIN: Thank you, ma'am. I don't have any
5 further questions.

6 CROSS EXAMINATION

7 BY MR. WILLIAMS:

8 Q. Ms. Holliman, the exhibit that you are looking at
9 which was introduced into evidence, referring to it, it's a
10 chain of custody report which essentially what you do is you
11 print something out before you come to court that tells you
12 what's in the computer or what's gone on in terms of the
13 evidence room. Is that essentially what we are talking
14 about?

15 A. That's correct.

16 Q. It's not the actual hard copy of anything that was
17 involved or being analyzed or anything like that?

18 A. Everything we do chain of custody wise is electronic
19 movement in the computer system.

20 Q. So the only thing that's actually hard copy that you
21 actually have when you have a drug case would be these items
22 like the BEST evidence bag and the numbers that are assigned
23 to the bag to keep up with the stuff when you have it in your
24 evidence room?

25 A. There are also forms that go with the BEST Kit bag

1 as well.

2 Q. But these are tangible things which you can hold in
3 your hands and you don't have to rely on a computer program
4 to tell you what you have here and what you have there?

5 A. Yes. And the forms that go with that are tangible
6 as well.

7 Q. So the day that these items were actually handed
8 into the evidence room, you didn't see them, did you?

9 A. No, I did not.

10 Q. And you have about as much knowledge of that as I do
11 other than the fact that you can look at the computer and
12 look at that documentation that's dated and say, well, it's
13 dated so it must have occurred on that date?

14 A. That's correct.

15 Q. So as an evidence custodial person are you ever
16 present when the evidence is actually loaded or placed into
17 the evidence bag?

18 A. On occasion, yes.

19 Q. Do you have to be present when it's placed in the
20 evidence bag?

21 A. No. We do not.

22 Q. So you have no knowledge as to whether or not the
23 evidence custodial person was present when these items were
24 placed in the evidence bag?

25 A. In this particular case, no, I don't. I was on

1 maternity leave.

2 Q. And the person who actually, I guess, placed them
3 into the evidence docketing system was some other
4 individual?

5 A. Candy Kyzer accepted them into the evidence control
6 room.

7 Q. But there is no indication that she was present when
8 it was loaded in the BEST bag either, is there?

9 A. You would have to ask her. I'm not her.

10 Q. And these items, whatever they were, remained in the
11 evidence, what, locker until February of 2014?

12 A. No, sir. They were in the evidence control room in
13 our drug locked room.

14 Q. Until when?

15 A. Until February the 7th, 2014 when I removed them to
16 give them to Emily.

17 Q. And you gave them to Emily for her to test and she
18 kept them for about a month and then she gave them back to
19 you?

20 A. That's correct.

21 Q. All right. And that's the extent of your
22 involvement in this particular case?

23 A. That's correct.

24 MR. WILLIAMS: That's all the questions I have, Your
25 Honor.

1 MS. RANKIN: Brief redirect.

2 REDIRECT EXAMINATION

3 BY MR. RANKIN:

4 Q. Ms. Holliman, your job as an evidence custodian is
5 not to make sure that the things that are put in the BEST Kit
6 are correct, right?

7 A. We do verify their paperwork to ensure that what
8 they have entered in the computer is accurate to what we
9 actually have in our hands prior to accepting it.

10 Q. If the paperwork matches what's in the bag, your job
11 is to track it at that point?

12 A. That's correct.

13 Q. But you don't have anything to do with when the
14 officers are there doing their thing and putting it in the
15 BEST Kit?

16 A. No, ma'am. We have officers that work 24 hours a
17 day.

18 MS. RANKIN: Thank you. No further questions.

19 THE COURT: Anything further?

20 MR. WILLIAMS: No, sir.

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

23 MS. RANKIN: The State calls Emily Homer-Conrad.
24 Thereupon,

25 EMILY HOMER-CONRAD

1 after having been first duly sworn, testified as follows,

2 THE CLERK: Have a seat, please. Once you're seated
3 state your full name spelling your last name for the
4 record, please.

5 THE WITNESS: Emily Homer-Conrad,
6 H-o-m-e-r-C-o-n-r-a-d.

7 DIRECT EXAMINATION

8 BY MS. RANKIN:

9 Q. You're the chemist at Lexington County Sheriff's
10 Department; is that correct?

11 A. Yes, I am.

12 Q. And how long have you worked there in the capacity
13 of a chemist?

14 A. Now, nine years. This November will be ten.

15 Q. And how long have you been a chemist?

16 A. I graduated undergrad in 2000, graduate school in
17 2004 so I've been a chemist about 15 years.

18 Q. You just said a little bit about your educational
19 background, but can you tell us a little bit about your
20 qualifications as a chemist and your background in that?

21 A. My undergraduate degree is in chemistry, Bachelor's,
22 and my Master's is in organic chemistry and I received both
23 at the University of South Carolina. I also attended -- I'm
24 also a certified law enforcement officer, and I also interned
25 at SLED and I have worked at the, or I have trained at the

1 Special Testing Lab in the DEA and I have had several
2 sessions of training at the FBI Academy.

3 Q. What are your duties as a chemist at the Sheriff's
4 Department?

5 A. My main duty is I analyze drugs for criminal cases.
6 I also help with the maintenance and running of the lab,
7 write grants and wear many hats during the day.

8 Q. Have you ever been qualified as an expert witness in
9 the field of chemistry in narcotics analysis?

10 A. Yes.

11 Q. How many times?

12 A. 28.

13 MS. RANKIN: Thank you. At this time, Your Honor,
14 we would move to have Ms. Homer-Conrad qualified as an
15 expert witness in the field of chemistry and narcotics
16 analysis.

17 MR. WILLIAMS: No objection, Your Honor.

18 THE COURT: Without objection.

19 BY MS. RANKIN:

20 Q. Did you test the items in this case?

21 A. For BEST Kit C020282, yes.

22 Q. Now, tell me a little bit about your procedures for
23 handling evidence and maintaining a chain of custody for
24 those evidence items.

25 A. What I initially do is I'll pick up a number of

1 cases from the evidence room. Depending on what I'm doing
2 that day I will either begin working that case that day or I
3 also have a separate safe in the lab that I store the
4 evidence that only I have the combination to, if I have to
5 work it on another day.

6 Q. I'm handing you what's been marked for
7 identification as State's number 1. Do you recognize that?

8 A. Yes.

9 Q. And what is that?

10 A. This is what we call the BEST Kit bag. It stands
11 for Best Evidence Sampling Technique. It's a tamper proof
12 evidence bag. It has the same control number as the
13 documents that I have kept relating to this case. Same lab
14 number written on the back that I wrote and that the seal was
15 intact and the date that I analyzed the evidence is written
16 on the back, too.

17 Q. So it's safe to say that BEST Kit coincides with
18 this case?

19 A. Yes.

20 Q. What date did you receive that BEST Kit?

21 A. On February 7th, 2014.

22 Q. Was that BEST Kit while you had it under your sole
23 care, custody and control from the point that you got it to
24 the point that you returned it?

25 A. Yes.

1 Q. Other than the test that you ran, did you alter or
2 manipulate the contents in any way?

3 A. No.

4 Q. Did you add anything to that BEST Kit that wasn't
5 already there?

6 A. No. And the seal -- I did have to -- It was
7 originally sealed the first day I analyzed it on 2/10. Then
8 I had to reopen it to take a second sample for GC for item 3
9 on 2/18. That's notated here. You can see the original seal
10 on the front of the BEST Kit that it was still intact that I
11 completely cut off and the second seal that was made.

12 MS. RANKIN: Your Honor, at this time the State
13 would move State's 1 into evidence.

14 MR. WILLIAMS: No objection, Your Honor.

15 THE COURT: State's 1 is in evidence without
16 objection.

17 BY MS. RANKIN:

18 Q. Did you submit a drug analysis report in this
19 case?

20 A. I did.

21 Q. Do you always do a drug report when you test
22 drugs?

23 A. I do if it's, yes, if it's going to be a criminal
24 case handled in court.

25 Q. Okay. What was the date of the report?

1 A. The report is usually compiled -- It is not always
2 the same date that I analyze it. Sometimes I save all my
3 worksheets and my printouts and I'll write the report on a
4 separate date. But this report was written on 2/20.

5 Q. What was the date that you analyzed it?

6 A. The first time analyzing it was 2/10. The second
7 time I opened it and took another sample was on 2/18.

8 Q. Okay. What were the items that were tested in this
9 case?

10 A. You want me to list, read off each item?

11 Q. Just testify as to what the items that were tested
12 in this case.

13 A. Item 1 was a zip lock bag that was labeled bag 1
14 containing 120 blue round tablets marked K9. Item 2 was
15 another zip lock bag labeled bag 2 containing 120 blue round
16 tablets marked 224. Item 3 was another zip lock bag labeled
17 bag 3 containing 60 light blue tablets marked N30.

18 Q. What were the results of the test that you ran on
19 those three items?

20 A. Item 1 was 120 tablets of Oxycodone. Item 2 was
21 another 120 tablets of Oxycodone. And item 3 was 60 tablets
22 of Oxycodone found.

23 Q. Thank you. Now, as a chemist are you familiar with
24 drug schedules?

25 A. Yes.

1 Q. And what exactly are drug schedules just briefly?

2 A. It's a scheduling listing, numerical listing given
3 by the state and federally. The listing goes from numbers as
4 a class of Schedule I to Schedule V. The lower the number,
5 the higher the probability of abuse, the higher usually - the
6 charge is the higher. So something a Schedule I would be
7 like heroin. Something that has little to no medical
8 benefit. Other things are Scheduled II, III, IV and V.
9 Schedule II has limited medical benefit, but there is some,
10 but there is still a high probability of abuse.

11 Q. Okay. Now, the drugs in this, the Oxycodone, what
12 schedule do they fall under?

13 A. Schedule II.

14 Q. All right. How do we know that it's a Schedule II
15 drug?

16 A. Mainly by the statute that's written. State or the
17 Federal Statutes, they dictate what should be scheduled
18 mainly by their descriptions or by specifically listing a
19 drug item. It doesn't always have to be specifically listed
20 in the statute. It can be covered by the description of what
21 should fall under that scheduling I, II, III, IV, V
22 scheduling.

23 Q. In your capacity and your knowledge of chemistry
24 Oxycodone would fall under what category?

25 A. It would fall under Schedule II because Oxycodone is

1 chemically synthesized from a plant derived substance such as
2 morphine and so it falls under the --

3 Q. Is Oxycodone, is it an opiate?

4 A. It's a type of opiate, yes. It's a derivative of
5 morphine.

6 Q. And morphine is an opiate?

7 A. Yes.

8 Q. Looking at your report how many tablets of Oxycodone
9 were found?

10 A. About 300 tablets total. 120 in the two bags and
11 then another 60 in bag 3.

12 Q. What were dosage units of each of those tablets?

13 A. So in item 1 the dosage was 30 milligrams per
14 tablet, .03 grams for each individual tablet. Item 2 was
15 again 30 milligrams per tablet. And this was based off of
16 the references that I found based off the markings and then
17 the separate tests that I ran confirming that each tablet did
18 have Oxycodone in it. And then item 3 was 30 milligrams per
19 tablet so that's .03 grams.

20 Q. Okay. Now, that is .03 milligrams. You're the math
21 and science person so I'm gonna let you do this part. .03
22 grams times 300, how many grams does this even out to be?

23 A. Well, so the total was 3.6, on 1, 3.69, on 2, 1.8
24 and item 3 -- It's about 7 grams if I did the math in my head
25 correctly.

1 Q. If I give you a calculator?

2 A. Can I just get a pencil?

3 THE COURT: Here you go.

4 THE WITNESS: Thank you.

5 BY THE WITNESS:

6 A. Nine grams. Sorry.

7 BY MR. CASKEY:

8 Q. Nine grams?

9 A. Yes.

10 Q. Okay. That's all 300 pills of Oxycodone converted
11 from their milligram form into grams?

12 A. Into grams and then adding up the grams for each.

13 MS. RANKIN: Thank you. I have no further
14 questions.

15 CROSS EXAMINATION

16 BY MR. WILLIAMS:

17 Q. Grams of what?

18 A. Oxycodone.

19 Q. Your involvement, you weren't involved in receiving
20 these items. Your only involvement was the testing of these
21 items?

22 A. Yes.

23 Q. And how many -- You said you tested two samples on
24 two different dates? Or you tell me how many samples you
25 tested.

1 A. On each evidence or --

2 Q. You indicated you went into the bag twice to test
3 it. You tested it one time. You tested something one time
4 and then you went back and tested something else. If you
5 would just tell me what you did on those dates.

6 A. I just took another sample of item 3 to run on
7 2CMS.

8 Q. So which items did you test in the first sample,
9 item 1, or item 2, or item 3 or all three?

10 A. All three. There may have been -- All I notated is
11 that I just took another sample of item 3.

12 Q. Okay. Are you saying that you tested all three bags
13 the first time you went in and tested it?

14 A. Yes. As far as my notes, yes. I tested all three.
15 For some reason I just reopened it to take another sample of
16 item 3.

17 Q. Your notes don't reveal why you felt like you needed
18 to take another sample?

19 A. Not always. Sometimes there is something wrong with
20 the instrument. Sometimes there is something carried over
21 and I didn't save the sample from the first date so I just
22 have to reopen it and take another sample.

23 Q. When you said you took a sample from each one of the
24 three, these are three different types of pills, aren't
25 they?

1 A. There are three different markings on them, but they
2 each contain Oxycodone.

3 Q. Looking at the first bag, who is the manufacturer of
4 the first bag of pills?

5 A. Item 1 the manufacturer is KVK Tech.

6 Q. KVK Tech. And who is the manufacturer of the second
7 set of pills?

8 A. Caraco Pharmaceutical.

9 Q. And who is the manufacturer of the third set of
10 pills?

11 A. Mallinckrodt Pharma.

12 Q. And when you took your testing on that first date
13 and you tested each one of the different pills, right, each
14 one of the different sets of pills?

15 A. I took one for analysis.

16 Q. Of which bag?

17 A. Of -- I mean, of each -- What do you mean of which
18 bag?

19 Q. I'm sorry. You had three groups. I'm sorry. I
20 don't want to confuse you. You had 120, 120, and 60?

21 A. Yes.

22 Q. Are you saying that you took one -- You have three
23 different groups, three different types of pills. Did you
24 test each different type of pill?

25 A. No. It's possible -- I did take one not of -- I did

1 take one of item 1. They are all labeled the same so I took
2 one for GC. One from item 2. for GC. It's possible, I just
3 didn't write in my notes why, but I probably - but I did take
4 another one for, or one from item 3.

5 Q. All right. Are you saying you did that on that
6 first date?

7 A. I may have been mistaken. Maybe I just took - maybe
8 I did not take one that first date and that's why I had to
9 reopen it and take one on the 18th.

10 Q. Do you make contemporaneous notes when you do your
11 testing?

12 A. Yes, I take notes.

13 Q. Do you have those lab notes with you today?

14 A. Yes.

15 Q. Could I see them?

16 A. Yeah (proffering.) My handwriting is hard to read.

17 Q. It's okay. It's better than mine. Well, you look
18 at your notes and correct me if I'm wrong. Doesn't it
19 indicate that you actually on that first occasion that you
20 only tested - skipped the first group of pills and the second
21 group of pills?

22 A. No. In parentheses it says took one for analysis
23 item 1. Item 2 took one for analysis. Item 3, I have
24 additional notes written down on the bottom that says I had
25 to open it on the 18th for a sample for item 3. So it's

1 possible the first time around I didn't take a sample, but
2 then I went back and reopened it on the 18th.

3 Q. Is that the only lab notes that you possess for the
4 analysis?

5 A. Yes, sir.

6 Q. So these are your notes. You would say that you
7 didn't test it the first time because you didn't put on your
8 lab notes the same thing that you did for the first two
9 bags?

10 A. It's possible, yes. But I did notate on the 18th
11 that I reopened it for a sample for item 3 and that matches
12 with the date on the lab. Any time I reopen it, I always
13 include the original seal and then the next date that I open
14 it and it's sealed on that date.

15 Q. Would there be some reason why you wouldn't have
16 tested that third group of pills the first day?

17 A. No. Just oversight that day. I just went back and
18 realized and opened it.

19 Q. And when you tested them, you only test one item,
20 right? You didn't test all the pills?

21 A. If they are all marked the same, there is no
22 difference between them, then no.

23 Q. All right. So when you reopened and you tested the
24 third group the second day, you didn't test the first two
25 groups of pills because you already tested those, right?

1 A. Yes.

2 Q. And when you say you test them, what type of testing
3 do you use to test the pills?

4 A. I'll take the whole tablet itself and grind it up
5 and extract it and depending on how well it turns out, the
6 GC, I'll use usually a base methylene chloride extraction so
7 the whole tablet itself is consumed.

8 Q. Okay. And when you tested the first sample, what
9 did your analysis reveal?

10 A. Each samples were Oxycodone found was item 1,
11 Oxycodone found -- 120 tablets item 1. 120 tablets Oxycodone
12 item 2, and 60 tablets of Oxycodone item 3.

13 Q. What did you analysis reveal when you tested the one
14 pill that you did test? What did it reveal?

15 A. What do you mean?

16 Q. You did a breakdown, I assume, of what particles
17 were found in the tablet when you tested it, right? It
18 obviously had buffering items and things of that nature, too,
19 in the pill, right?

20 A. I don't identify buffering items or anything else in
21 the tablet. Mainly I just identify controlled substance.

22 Q. So you don't know what all was in the pill itself.
23 All you know is that when you tested the pill, it indicated
24 that it might have had Oxycodone in it, but it didn't give
25 the amount or anything like that?

1 A. I don't do quantitative work with the analysis
2 directly. What I refer to is the references from the actual
3 pharmaceutical companies that tell what the percentage should
4 be and then I confirmed that I did find that controlled
5 substance in the tablet.

6 Q. Okay. So what you did was you went to the PDR and
7 you checked in the PDR to see what the pharmacist or what the
8 manufacturer indicated was in it?

9 A. I actually have something more up to date than the
10 Pharmacists Desk Reference. We have a company hired that
11 sends me an up to date listing every couple months of the
12 pharmacies and their drugs and the percentages of drugs in
13 each tablet and the correct markings.

14 Q. So you didn't determine the percentage of the drug
15 in each tablet. You used the reference book to determine
16 that it just had some in the tablet; is that right?

17 A. No. I found the drug in the tablet.

18 Q. Then what did you use the reference book for?

19 A. To - according to the markings to tell me what the
20 pharmaceutical companies dictated was supposed to be the
21 concentration of each drug in each tablet.

22 Q. So when you referenced the grams, when you were
23 reading off your sheet, you said .03 grams for one group, .03
24 grams for the second group. Then was the third group .03
25 grams per tablet?

1 A. Yes.

2 Q. What you're actually referencing is the weight of
3 the pill?

4 A. No. Not the weight of the whole pill itself. I'm
5 not weighing the pill itself. It's referencing the
6 concentration of Oxycodone. According to FDA guidelines you
7 can't sell tablets that don't match that specific weight and
8 what the pharmaceutical companies tell you is that weight.
9 It has to match very closely, otherwise they won't be able to
10 sell the drug.

11 Q. So essentially you're saying there was .03 grams in
12 each tablet of Oxycodone?

13 A. Yes.

14 Q. Weight of Oxycodone?

15 A. Yes. No. Not weight. I mean, yes. That's
16 percentage of Oxycodone that should be in each tablet.

17 Q. Well, gram is a measurement of weight, isn't it?

18 A. Right.

19 Q. So you're talking about weight?

20 A. I'm not talking about weight of the whole tablet,
21 but that's how much Oxycodone is in it, yes.

22 Q. I understand what you're saying. In that tablet
23 there's three one thousandths of a gram of Oxycodone in that
24 tablet?

25 A. Not three one thousandths. That would be 30. So 30

1 milligrams, that's not three thousandths.

2 Q. It's point --

3 A. .03 grams.

4 Q. .03 grams, not .003 grams?

5 A. Right.

6 Q. So it's three one hundredths of a gram of Oxycodone
7 in each tablet --

8 A. Yes.

9 Q. -- based on what your registration from the
10 manufacturer says?

11 A. Yes.

12 Q. And again, you were not available when the pills were
13 placed into evidence. You have no idea how many pills were
14 originally seized or anything of that nature?

15 A. All I know is what I'm handed what's inside the BEST
16 Kit.

17 Q. And you still don't know why you had to go back and
18 check it again?

19 A. It may have just been an oversight and I just didn't
20 take a sample for GC that I should have that day.

21 MR. WILLIAMS: That's all the questions I have, Your
22 Honor.

23 THE COURT: Okay.

24 REDIRECT EXAMINATION

25 BY MS. RANKIN:

1 Q. Is it your expert opinion based on the analysis of
2 the tests that you ran that there are nine grams of Oxycodone
3 in that BEST Kit?

4 A. Yes.

5 MS. RANKIN: Thank you. No further questions.

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

8 MR. CASKEY: Your Honor, may we approach?

9 THE COURT: Yes.

10 (Side bar off the record.)

11 MR. CASKEY: Your Honor, at this time the State will
12 rest its case in chief.

13 THE COURT: Ladies and gentlemen, the State has
14 rested their case and it requires me to take up matters
15 of law at the close of the State's case and that will
16 take a little bit of time so I'm going to excuse you for
17 lunch at this time and we'll stay and I'll take up the
18 matters of law and then I'm going to ask you
19 if you would be back here at, let's just say 2:00. So
20 if you will be back at 2:00, we'll start back when you
21 return. Please have no conversation about the case. Do
22 not allow anyone to talk with you, okay? Everyone else
23 remain seated while the jury is excused.

24 (The jury was excused for lunch.)

25 THE COURT: All right. I'll take up any motions at

1 the close of the State's case at this time.

2 MR. WILLIAMS: Your Honor, the Defendant would move
3 for a directed verdict of not guilty on the basis of the
4 evidence in the light most favorable to the State at
5 this point in time is insufficient as a matter of law to
6 prove that my client was trafficking in a weight of in
7 excess of four grams of Oxycodone, and further that
8 there's been insufficient testimony based on the reading
9 of the statute that Oxycodone is indeed a Schedule II
10 drug. That what we have here today is a Schedule II
11 drug. It's not a listed member and I don't believe that
12 the expert has qualified that sufficiently for the jury
13 to make a determination.

14 THE COURT: She testified that, I think she
15 testified it was a Schedule II drug pursuant to the
16 schedule. She also testified that it is a derivative of
17 heroine and it's classified as an opiate which is in the
18 statute. So I'm going to respectfully deny the motion.
19 I think it's a jury question to be quite honest and it's
20 a factual issue, and whether there is enough there to
21 convince the jury of that I think is a decision that the
22 jury will have to make.

23 MR. WILLIAMS: All right, sir.

24 THE COURT: Anything else?

25 MR. WILLIAMS: Other than just the general motion

1 for directed verdict which I think I have incorporated
2 when I broke it down to specifics, but I meant to
3 incorporate the general motion.

4 THE COURT: Yes, sir. And I took it that way.

5 MR. WILLIAMS: Thank you, Your Honor.

6 THE COURT: Now, have you talked with Mr. Miles as
7 far as the defense's case?

8 MR. WILLIAMS: Not enough to make a determination,
9 Your Honor, in regards to whether or not he will or will
10 not testify. We have talked, but not enough to make a
11 decision.

12 THE COURT: All right. Well, let us reconvene at
13 1:45 and then we can discuss it at that point and you
14 can let me know what your decision is and then we'll
15 proceed at that point. Now, we have been working on and
16 we have prepared a draft of a charge. Is there any
17 specific requested charge that either side would like
18 the Court to consider? If there is, I need you to
19 e-mail it to us, okay? Because we have put together a
20 draft of a charge based on what we have heard thus far.
21 Of course, we don't know what, if anything, we're going
22 to hear from the defense so I'm not going to give you a
23 copy of this at this point, but if you have any specific
24 requested charge that you want us to consider, please
25 e-mail that to Lauren, if you would.

1 MR. WILLIAMS: I do have a question because I'm used
2 to how you have your pre-printed charges, whether or not
3 you have incorporated the mere presence in that
4 grouping?

5 THE COURT: We haven't done that, I don't think. I
6 would have to look at the mere presence charge and see
7 if it's applicable under these circumstances and I'll do
8 that.

9 MR. CASKEY: Your Honor, of course, we will oppose a
10 mere presence charge in this case on the grounds that
11 the State's case is centered around actual and/or
12 constructive possession and there's been no evidence
13 presented that he was merely present. All the officers
14 testified he had it in his hands.

15 THE COURT: It's kind of hard to ferret out just
16 mere presence here with the testimony, but I'll look at
17 it and I'll let you know.

18 MR. WILLIAMS: I did have one additional motion for
19 directed verdict, Your Honor, if I can ask Your Honor to
20 consider.

21 THE COURT: Sure. I'll hear you.

22 MR. WILLIAMS: There's insufficient evidence to show
23 that my client knew that the drugs that he had in this
24 box were Oxycodone.

25 THE COURT: I anticipated this.

1 MR. WILLIAMS: I thought you might.

2 THE COURT: Mr. Caskey?

3 MR. CASKEY: I would just say I anticipated that as
4 well, Your Honor, and I think the Defendant's statement
5 clearly acknowledges that he knew that the drugs were in
6 there.

7 THE COURT: I'm going to deny the motion.

8 MR. WILLIAMS: All right, sir.

9 THE COURT: And I'll consider the mere presence
10 charge and I'll let you know when we reconvene and you
11 can let me know what Mr. Miles chooses to do when we
12 reconvene, okay? So we'll start back at 1:45.

13 MR. WILLIAMS: Thank you, Your Honor.

14 MR. CASKEY: Thank you, Judge.

15 (Whereupon, there was a luncheon recess.)

16 BAILIFF: All rise. Court is now in session.

17 THE COURT: Thank you, folks. Please have a seat.

18 Mr. Williams, have you had an opportunity to talk
19 with Mr. Miles about the defense of his case?

20 MR. WILLIAMS: I have, Your Honor.

21 THE COURT: All right. And what's that decision,
22 sir?

23 MR. WILLIAMS: His decision is that he will not
24 testify.

25 THE COURT: All right. And would you have any other

1 - there's no other witnesses or anything?

2 MR. WILLIAMS: No, Your Honor.

3 THE COURT: All right. Mr. Miles, let me address
4 you with regards to that. I know that you have talked
5 with Mr. Williams about your right to testify as well
6 your right to remain silent and he's indicated that you
7 have indicated to him that you wish to exercise your
8 right to remain silent and not testify; is that correct,
9 sir?

10 MR. MILES: Yes, sir.

11 THE COURT: Now, anytime anyone exercises a
12 Constitutional Right or gives up a Constitutional Right,
13 it's important that they talk to their lawyer and get
14 good counsel. But as good a lawyer as you have, and you
15 have got one of the best, he can't make that decision
16 for you. That's always got to be your decision. He can
17 give you his thoughts on what he thinks, but the bottom
18 line is it has to be your call. This decision to remain
19 silent, has that been your decision, sir?

20 MR. MILES: Yes, sir.

21 THE COURT: Has anyone coerced you or forced you or
22 done anything to make you make that decision outside of
23 it being your free will?

24 MR. MILES: No, sir.

25 THE COURT: Okay. Now, I understand that you have

1 indicated to the Court that you are going to remain
2 silent. I will instruct the jury that that is your
3 Constitutional Right and that the State has the burden
4 of proof and that you don't have to prove anything. But
5 I do also want you to understand that if you chose to,
6 you do understand you could testify if you wanted to?
7 You understand that?

8 MR. MILES: Yes, sir.

9 THE COURT: All right. And, of course, if you did
10 decide to testify, you would be subject to being
11 questioned both by your attorney as well the State's
12 attorneys. And you understand that?

13 MR. MILES: Yes, sir.

14 THE COURT: All right, sir. Well, I certainly am
15 going to honor and respect your decision to exercise
16 your right to remain silent so we'll proceed in that
17 fashion.

18 MR. WILLIAMS: Your Honor, I would ask the Court to
19 note that the Solicitor and I had a discussion with my
20 client in regards to what crimes could or could not be
21 used against him because that was one of the weighing
22 factors. It is the Solicitor's view that there is only
23 one which would be a forgery from 2006. Even though he
24 has prior drug offenses that would be used to impeach
25 his credibility. So we used that factor, that is that

1 one charge in regards to whether or not we would or
2 would not testify so it's not based on the other drug
3 convictions that he has on his record.

4 THE COURT: Well, that's fine. You made your
5 decision and what I'm going to share with you would
6 probably do nothing but solidify that decision. I would
7 not let the State, for example, if someone is on trial
8 for burglary, I would not allow, and they have a prior
9 burglary, I would not allow the State to cross examine
10 and to impeach by saying isn't it true that you have a
11 conviction for burglary back in 2011? But if they have
12 a prior conviction, I would allow them to at least ask
13 isn't it true that you have been convicted of a felony?
14 And I don't know if the prior drug offenses were
15 felonies or not.

16 MR. WILLIAMS: They were.

17 THE COURT: But if they were, they could at least
18 ask it in that fashion. I would not allow it to be
19 couched as a drug conviction because I think that that
20 prejudicial effect would outweigh the probative value.
21 In any case, thank you, Mr. Williams. So we'll proceed
22 under that fashion. And since that's the case, I would,
23 if you don't mind, I would like to go ahead then and
24 let's take up the motions at the close of all the
25 evidence so that when the jury comes out, we won't have

1 to send them back out. We can just proceed at that
2 point. So at this point I'll take up any motions at the
3 close of all the evidence.

4 MR. WILLIAMS: Your Honor, in essence what I would
5 do is renew the prior motions that were made at the end
6 of the State's case underneath the new basis that all
7 the evidence is in and as I understand it the Court
8 would review the evidence as a whole. Your Honor, we
9 would still take the position that there is insufficient
10 evidence as matter of law for this jury to return a
11 verdict of guilty. We would also support that by the
12 other two items and that had to do with the Oxycontin, I
13 think Your Honor has already ruled it's a Schedule II
14 item. And the third being that there is no evidence
15 that my client knew that the package which he was
16 obtaining contained Oxycontin, but indeed from the
17 testimony that's been elicited it was marijuana.

18 THE COURT: Okay. I'll respectfully deny your
19 motions. Just to clarify, I haven't ruled that they
20 have proven it is a Schedule II drug. I just ruled that
21 that is in evidence and the jury can do with it whatever
22 they feel is appropriate. I think that evidence is
23 there depending on how they would like to receive it
24 so...

25 Based on the facts and circumstances involved in

1 this case I don't think mere presence is an appropriate
2 charge and so I would not charge that. But is there any
3 other specific requested charge? I'll give you a copy
4 of what we have drafted here in just a moment, but
5 before I do that I just wanted to know is there any
6 specific request from anyone?

7 MR. CASKEY: Nothing specific, Your Honor, other
8 than to note that our position will be that there are
9 two theories under which the Defendant is guilty. The
10 first is under the possession, solely the weight, and
11 then under as a part of the conspiracy to bring these in
12 because he did not act alone. So when I reviewed the
13 learned Judge Anderson's trial charge book, the
14 trafficking in illegal drugs seemed to speak to just the
15 possession and I would just ask that we also talk about
16 the other elements of the statute.

17 THE COURT: And I would do that, but on that note,
18 let me suggest to you all what I think would be a more
19 effective charge. When they wrote the statute,
20 obviously they had to cover all the bases that you would
21 have. I would propose that in this charge I only charge
22 the portions of the statute that are supported by the
23 evidence in this case and get rid of all the deliver,
24 dispense, distribute and all of those because that's not
25 what we have here. You've made no allegations that he's

1 done anything other than possess enough weight to where
2 it's considered under the law trafficking.

3 MR. CASKEY: Your Honor, he has indicated in his
4 statement that he was going to receive a hundred dollars

5 --

6 THE COURT: Correct.

7 MR. CASKEY: -- for passing that on, the act of
8 selling that --

9 THE COURT: No. No. That's not true. He was going
10 to get a hundred dollars for picking up the package, not
11 selling anything.

12 MR. CASKEY: He wasn't going to keep the package,
13 Your Honor.

14 THE COURT: No, sir. But they're not -- and we're
15 outside the jury's presence, -- they're not his drugs.
16 He's a mule. He picks up the package and he's paid a
17 hundred dollars to deliver it. So I know what you're
18 saying. That's distributing. But you're saying he's
19 selling those drugs.

20 MR. CASKEY: Your Honor, I think it's a factual
21 question whether or not they are his drugs. Drugs,
22 illegal drugs by definition can't be owned by someone
23 and he had the possession. He had dominion and control
24 over these and could have --

25 THE COURT: Think about what you're saying,

1 Mr. Caskey. Do you think he sold 300 Oxycontin pills
2 for a hundred bucks?

3 MR. CASKEY: I don't know what he was really going
4 to get.

5 THE COURT: Yes, you do. Yes, you do.

6 MR. CASKEY: Your Honor, he says a hundred dollars.
7 Sure. Maybe it was a hundred dollars. Maybe it was a
8 thousand dollars. I don't know that, Your Honor, and
9 that's why I say --

10 THE COURT: Submit to me a charge then that you
11 would like for me to charge because I'm not going to
12 charge everything in that statute because you haven't
13 proven, you haven't given evidence of everything in that
14 statute. So tell me what you want.

15 MR. CASKEY: Your Honor, I would just ask for the
16 language that speaks to otherwise aids, abets,
17 conspires.

18 THE COURT: Got that. That's all appropriate.

19 MR. CASKEY: And then the elements there are
20 purchase or bring into the state.

21 THE COURT: I agree with that. I don't disagree
22 with that. But --

23 MR. CASKEY: Deliver, purchase and bring into the
24 state are the three that --

25 THE COURT: Here we go. Did willfully, unlawfully

1 sell, cultivate, manufacture. I'm not going through all
2 of those.

3 MR. CASKEY: I understand, Your Honor.

4 THE COURT: That's all I'm saying.

5 MR. CASKEY: Yes, sir.

6 THE COURT: I'm getting rid of the items in the
7 statute that don't apply to the facts that were
8 presented in this trial. I will do deliver, purchase,
9 aid, abet, attempt or conspire to sell, manufacture,
10 deliver. I'm not going to put cultivate. That doesn't
11 apply in this case. You see what I'm saying?

12 MR. CASKEY: Yes, sir.

13 THE COURT: I know what you want and that's what I'm
14 saying. I want to tailor it to the facts of this case
15 and not just do the whole litany of stuff that it
16 lists.

17 MR. CASKEY: I understand, Your Honor. I think I'm
18 on the same page as you. I'm just inarticulate.

19 THE COURT: No. And here's the thing. I'll show
20 you this draft and you can again communicate back with
21 me if we need to make any changes or any thoughts on
22 that.

23 MR. WILLIAMS: Your Honor, do you have the basic
24 criminal intent in your statute? Before you commit a
25 crime, you must have criminal intent to commit the

1 crime, meaning you must have knowledge? Criminal
2 intent? Because this case speaks of that because like
3 we were arguing on directed verdict --

4 THE COURT: Well, let's talk about that then before
5 we get into some objectionable closing argument because
6 even that does not, that intent statute does not say
7 that he had to intend to possess Oxycodone. As a matter
8 of fact, the statute itself, it says -- the worst
9 statute ever written -- four grams or more of any
10 morphine, opium, salt isomer or salt of an isomer
11 thereof including heroine as described in Section
12 44-53-190 or 44-53-210, or four grams or more of any
13 mixture containing any of these substances is guilty of
14 a felony which is known as trafficking in illegal
15 drugs.

16 MR. WILLIAMS: Before a person can be charged with
17 -- Again, we are talking about possession and I think he
18 was arguing this conspiracy versus possession which is
19 the two prongs of the trafficking statute. Before you
20 can have possession, you can have actual possession or
21 you can have constructive possession, he's got to know
22 that those Oxycontin are in that bag.

23 THE COURT: Nope. He's got to know there's illegal
24 drugs in that package.

25 MR. WILLIAMS: Well, I think that's - that's

1 probably a question of fact. That's right, if they make
2 that determination.

3 THE COURT: Again, and that's a determination the
4 jury has to make. But what I would foresee occurring
5 and then we're going to get an objection and then we're
6 gonna have to send the jury out in the middle of
7 someone's closing argument, is if you try to argue that
8 the law says he had to know it was Oxycodone.

9 MR. WILLIAMS: I'm not going to argue the law in
10 that way.

11 THE COURT: Okay. Because, I mean, I'm not asking
12 you to reveal your closing. I'm just trying to avoid
13 having to send the jury out in the middle of closing
14 because, I mean, when you ask specifically for the
15 criminal intent statute, I just can foresee that as an
16 issue because it was an issue that you made in your
17 motion for directed verdict and the law doesn't require
18 --

19 MR. WILLIAMS: But he has to know there are drugs in
20 there.

21 THE COURT: Illegal drugs.

22 MR. WILLIAMS: So that's the criminal intent we're
23 talking about.

24 THE COURT: Correct. Correct. Which is there's
25 evidence in the record of that whether the jury believes

1 it or not.

2 MR. WILLIAMS: Which is why I want a charge on
3 criminal intent because there's evidence in the record
4 from which the jury could determine that he had criminal
5 intent so I would like a charge on criminal intent.

6 MR. CASKEY: Your Honor, as to the knowledge point
7 that you raised, I agree with what I understand you to
8 say, that is the law does not require that he knew
9 they were Oxycodone. He just had to know they were
10 drugs, illegal drugs.

11 THE COURT: Right.

12 MR. CASKEY: Okay. That much I'm on the same page
13 with and I am grateful to Your Honor for bringing that
14 up and preventing a situation which I would have to
15 object because the law is clear, as long as he knows
16 they are illegal drugs, we have satisfied that
17 element.

18 THE COURT: And let me look at the intent statute.
19 In order to establish criminal liability, criminal
20 intent is required. Criminal intent must be proven by
21 the State beyond a reasonable doubt. Criminal intent is
22 always a matter that must be determined by the jury from
23 the circumstances surrounding the situation. There is
24 no way to prove intent to a mathematical certainty.
25 There is no way medical science can dissect a person's

1 brain and determine what the person had in mind. So the
2 law says that criminal intent may be inferred from the
3 circumstances shown to have existed. This is how you
4 make a determination of whether or not the element
5 requiring intent is present. It is not necessary to
6 establish intent by direct and positive evidence but
7 intent may be established by inference in the same way
8 as any other fact by taking into consideration the acts
9 of the parties and all the facts and circumstances of
10 the case. Criminal intent is a mental state. A
11 conscience wrongdoing. It is up to you to determine
12 what the defendant intended to do based on the
13 circumstances shown to have existed.

14 MR. WILLIAMS: And the rest of the sentence, Judge
15 Anderson, when he put criminal intent, he talks,
16 criminal intent must be proven by the State beyond a
17 reasonable doubt.

18 THE COURT: I said that.

19 MR. WILLIAMS: I'm sorry. I didn't hear that, Your
20 Honor.

21 THE COURT: I said that at the beginning. It says
22 in order to establish criminal liability, criminal
23 intent is required. Criminal intent must be proven by
24 the State beyond a reasonable doubt. Criminal intent is
25 always a matter for the jury.

1 MR. WILLIAMS: Thank you, Your Honor. That's that
2 short attention span I have.

3 THE COURT: It's in there. All right. So anyway
4 he's requesting that charge. Micah, have you got an
5 issue with that charge?

6 MR. CASKEY: No, Your Honor.

7 THE COURT: Okay. So give us a little bit. We're
8 gonna have to put that in. So what we'll do is we'll
9 just be at ease for a moment and let us finish this
10 draft and then I'll give it to you and would ask that
11 you review it as quickly as you can and then we can talk
12 further.

13 (Brief recess.)

14 THE COURT: All right. Ready for the jury,
15 Solicitor?

16 MR. CASKEY: Yes, Your Honor.

17 MR. WILLIAMS: The Defendant is ready, Your Honor.

18 THE COURT: Okay. Let's bring the jury back in,
19 please.

20 (Whereupon, the jury returns to the courtroom.)

21 THE COURT: All right. Ladies and gentlemen,
22 welcome back. I hope everyone had a good lunch break
23 and are ready to get started back. You recall that the
24 State had rested when we broke for lunch and so I would
25 now turn and recognize Mr. Williams on behalf of the

1 defense.

2 MR. WILLIAMS: Your Honor, the Defendant rests and
3 we are prepared to argue to the jury.

4 THE COURT: All right, sir. Folks, normally what
5 occurs is I have to take up matters of law at the close
6 of the State's case and then I have to take up matters
7 of law at the close of all the evidence. Mr. Williams
8 was kind enough to let the Court know that the defense
9 would be resting so while you were out rather than bring
10 you back in I took up the matters of law at the close of
11 the State's case. Rather than bring you back in and
12 have him stand and rest on the record and then send you
13 back out and take up the motions at the close of all the
14 evidence, he was kind enough during the break to let me
15 know that the defense would be resting so we went ahead
16 and did that. So we don't have to send you back out.
17 We are now ready to proceed with the portion of this
18 case that is typically referred to as closing arguments
19 or final summation.

20 Folks, this is the attorneys' opportunity to share
21 with you what they believe the evidence in this case has
22 shown. What I have shared with you earlier yesterday
23 when I spoke to you about their opening statements, you
24 remember I told you that what they had to share with you
25 in their opening statements was not evidence. Well,

1 that's the same thing I'm going to share with you with
2 regards to their closing arguments. They are not under
3 oath. They are not witnesses, so what they share
4 with you in their closing argument is also not evidence.

5 The evidence in this case is closed. It is the
6 testimony that you heard from the witness stand and any
7 of the exhibits that came in during the course of the
8 trial. That's the evidence in this case. But this is
9 their opportunity to argue to you what they believe that
10 evidence shows. Once they have concluded their closing
11 remarks, I will then give you the charge on the law and
12 then once you have that, you will then be in a position
13 to go back into the jury room and finally you will be
14 able to deliberate and discuss the case, all right?

15 So if you would, please, give the attorneys your
16 close and undivided attention as they address you with
17 their closing remarks. Mr. Caskey.

18 MR. CASKEY: Thank you, Your Honor. May it please
19 the Court.

20 THE COURT: Yes, sir.

21 MR. CASKEY: Ladies and gentlemen, the other day as
22 I was coming into work here at the courthouse I stopped
23 by my brother-in-law and sister's house. Their youngest
24 15 month old was having his, near the tonsils, his
25 adenoids removed and they were looking for a little bit

1 of help getting things together that morning because
2 they also have a three and half year old Ainsley, and
3 before you worry anymore Emmett is fine, the little one.
4 But as I come in the house Ainsley starts screaming
5 Uncle Stinky Feet. Uncle Stinky Feet. I don't actually
6 have stinky feet, but that's what she calls me. And we
7 start to talk and we're standing in the kitchen and I
8 step into the bathroom for 15 seconds or so and when I
9 come back Ainsley is standing right there in the middle
10 of the kitchen with a package of Oreos, the new kind
11 that have the birthday cake flavor. I rarely turn down
12 cookies and I said I'll have one, too. About that time
13 my sister and her mother serendipitously walks in, What
14 are you doing? Ainsley goes I don't know and drops the
15 box.

16 Now, Mr. Miles is not on trial for trafficking in
17 cookies. Sometimes the evidence is right there at your
18 feet. Ladies and gentlemen, as you heard the Judge say
19 just a couple of minutes ago, this is the part in the
20 trial that's often called final arguments, but it's also
21 called final summations and contrary to what you may
22 have seen on TV or in the movies, my job as a
23 prosecutor, the one who represents the State, represents
24 the law, is to summarize. The summation. I'm going to
25 summarize the case with you because ultimately it is.

1 your job to apply the facts as you see them to the law
2 as it will be given to you by the Judge.

3 I'm going to talk to you first a little bit about
4 the facts, go through everything with you and I want to
5 talk to you a little bit about the law. I don't want
6 anyone to get out of here and feel like they had their
7 jury service and didn't hear enough about the law. And
8 lastly I'll talk to you about the burden of proof.

9 Now, as to the facts in the case. If you will bear
10 with me one moment. You, of course, all remember the
11 map here of Villas Court Road. The afternoon of
12 September 13th a postal truck came down the road,
13 dropped off the package. Officer Miramontes was sitting
14 right on that blue pin observing everything and what he
15 testified that he saw is that the Defendant came out or
16 was out, walks over, gets the package and walks back.

17 It's at this point at the yellow pin that officers
18 converge on him. They arrest him. They seized him
19 there. They seize that box right there and in that box
20 were these drugs. Doesn't look like much. Doesn't
21 weigh very much, but as the chemist told you this is 300
22 pills, 30 milligram dosages each totaling 9 grams of
23 Oxycodone. That box was in his hands and this box was
24 full of these drugs and, ladies and gentlemen, in the
25 State of South Carolina that is trafficking in illegal

1 drugs.

2 Now, ordinarily in many of the cases that we try
3 here that would probably be the extent of the evidence
4 that I would have to put forward because as I mentioned
5 I'm summarizing all the evidence and that includes this
6 statement written by the Defendant freely, voluntarily
7 and knowingly about his involvement. All of this
8 evidence will go back to you in the jury room. You will
9 have an opportunity to review it.

10 Now, during the case in chief a big deal was made
11 about the grammar and I certainly invite you to draw
12 whatever conclusions about the grammar that you like.
13 But a pertinent part I would ask you to pay attention to
14 the facts that he describes. That in the Defendant's
15 handwriting he talks about taking this box, shifting it
16 from one party to another in exchange for a hundred
17 dollars. Did you know there were drugs in the parcel?
18 The box? Yes. He knew it. He knew what he was doing
19 because he wanted money.

20 The second point I told you I would talk to you
21 about is the law. Now, trafficking in the state isn't
22 necessarily what the common perception of trafficking
23 is. Trafficking sounds like you're necessarily moving
24 something. That's not exactly what the law requires.
25 First the substance has to be four grams or more of

1 Oxycodone or any other scheduled narcotic. In this case
2 you heard from the stand from the expert witness, from
3 the expert chemist that the drug in that bag is
4 Oxycodone and that there's, in fact, nine grams of it.
5 More than four grams.

6 The second part that you will have to find in order
7 to convict is that the State has proven through the
8 evidence in this case, and I want to make one quick
9 point about evidence. This is not CSI Lexington. The
10 testimony you heard from that witness stand under oath
11 is absolutely evidence. You are welcome to give that as
12 much weight as you deem appropriate, but that is
13 evidence. And the evidence in this case said that we
14 had nine grams of Oxycodone.

15 Now, we have a couple of options here. The
16 Defendant can be guilty if that substance is, in fact,
17 Oxycodone, if that's what you find, and the Defendant
18 had possession of the substance right here in this box
19 that the Defendant was holding on September 13th. He
20 was walking down the sidewalk with the drugs and that is
21 possession.

22 In the alternative, meaning that in addition to that
23 you can also find, or even if you don't want to convict
24 on that basis, you can find the Defendant aided,
25 abetted, attempted or conspired to do one of these

1 things: Deliver, purchase or bring into this state. If
2 you find he had possession of Oxycodone, nine grams of
3 it, that's guilty. If you find that he aided, abetted,
4 maybe encouraged someone else to do it, attempted to or
5 conspired to, meaning he was working with other people
6 to make this all happen, guilty.

7 One of the things you will hear in a bit is that
8 there are two parts to possession. The first is that he
9 actually possessed them and that means exactly what you
10 think. He had the box and that he knew he had illegal
11 drugs. He knew he had illegal drugs. And again
12 ordinarily in a case like this I would be telling you
13 that the law allows you to make an inference based on
14 the circumstances that you find to have occurred. In
15 this case though I don't need to spend our time doing
16 that because I have, in fact, a statement from the
17 Defendant in his own handwriting where he has
18 acknowledged all of his rights and he wrote, when asked,
19 did you know if there were drugs in the box? He wrote
20 yes. He knew he had possession of drugs. He knew he
21 had possession because he wanted that hundred dollars.

22 In order to convict an individual in this state
23 with trafficking in illegal drugs the State has to meet
24 those burdens that I just went over, beyond a reasonable
25 doubt meaning that you're firmly convinced that those

1 things did, in fact, happen. We are not required to
2 prove the purpose for which he had the drugs. It's
3 irrelevant. That's not what the law says. We don't
4 have to prove that. We don't have to say any specific
5 amount of time. He didn't have to have them for an
6 hour. He didn't have to have them for a minute. He
7 didn't have to have them for a month. He just had to
8 have them in his possession.

9 We talked a little bit and you heard testimony about
10 other folks. Who didn't get arrested and who is not in
11 front of you today. Ladies and gentlemen, this case is
12 about Lance Miles. Lance Miles bringing those drugs
13 into our community. It's not about people in San
14 Bernardino or anyone else. This is a case about
15 Mr. Miles.

16 The Judge will talk to you much more artfully and in
17 much greater detail about the law. In fact, you will be
18 able to take that back with you. But I felt it
19 important to say that that's what the standard is going
20 to be. That's going to be the question that's proposed
21 to you, is did the Defendant have nine grams of
22 Oxycodone? Did he have possession? Or did he aid,
23 abet, attempt or conspire to deliver, purchase or
24 otherwise bring drugs into this state?

25 Ladies and gentlemen, I submit to you that the State

1 has offered evidence that satisfies that beyond a
2 reasonable doubt. Beyond a reasonable doubt means to be
3 firmly convinced of something.

4 ... Sitting in judgment is not an easy proposition.

5 It's not easy to sit where you are, but we, our society
6 that values the rule of law and in order for that to
7 work you like juries have in this country for over two
8 hundred years have to make a decision and that's a very
9 difficult one indeed. But in this case I submit to you
10 the evidence is overwhelming. It's overwhelming that
11 the Defendant had these drugs. He possessed them and
12 that drugs were, in fact, four grams or more of a
13 Schedule II narcotic.

14 I appreciate your time. I appreciate your
15 attention. I thank you for your service. I ask you
16 when the time comes to do justice and vote guilty.
17 Thank you.

18 THE COURT: Thank you, Mr. Caskey. Mr. Williams.

19 MR. WILLIAMS: May it please the Court.

20 THE COURT: Yes, sir.

21 MR. WILLIAMS: Mr. Solicitor.

22 I also would like to thank you for your attention.
23 You know, I sit here and I listen and a lot of times I
24 think that maybe what a lot of people want you to do is
25 to give water downed justice. This is not a simple

1 case. It's not a simple case at all. And there's a lot
2 of things that you have to consider. And one thing, and
3 I will go back to the basics because that's what we have
4 to do is go back to the basics. You're the jury. You
5 are the fact finders. What we say up here in closing
6 argument doesn't mean a thing between you and me. It's
7 just how we look at things. It's like if we were going
8 to a show and we would write some kind of program for
9 you and we would hit upon these high spots for you or we
10 would try to entertain you or do something so that you
11 maybe keep your interest or focus you over here or focus
12 you over there. But you are the fact finders. What the
13 Judge tells you is the law. It doesn't matter what the
14 Solicitor thinks the law is. It doesn't matter what I
15 think the law is. It matters what the Judge tells you
16 the law is.

17 And you have an advantage for which a lot of juries
18 have not had in Lexington County. We've probably had it
19 for a little while since Judge Russo has been here, but
20 there was a time when most Circuit Court judges did not
21 give their charge to the jury. And it's not new new,
22 but it's kind of new. Probably for me because I have
23 been around a long time. But the advantage of that is
24 that a lot of times jurors will try to listen to
25 everything and it's hard to focus on things sometimes.

1 I mean, you get tired. I don't think anybody feels
2 tired today, but sometimes you get tired. This is a new
3 concept. You're not used to dealing with it. You're
4 not used to being in the courtroom all the time
5 listening to what judges say.

6 He will give you a charge, a written charge so that
7 when you get back in your jury room, if you want to
8 think about what does this mean or what does that mean,
9 you don't have to kind of guess what it means. You're
10 intelligent people. You can read it. You can look at
11 it and you can see what it means. So I'm not going to
12 tell you a lot about what the law is in this case
13 because you got it. Judge Russo is one of the first
14 judges I have seen do that. He's been here a while now
15 but he does that so you're lucky to have that because
16 that's going to simplify the process a little bit for
17 you.

18 But I'll tell you that even though it simplifies the
19 process for you, you still need to remember how
20 important this is. You don't just conclude because you
21 have got a few items that someone introduced that you're
22 supposed to find that somebody is guilty or anything
23 like that. Because the Judge will tell you that in a
24 criminal case the burden of proof is on the Def -- Oh, I
25 almost said the Defendant, didn't I? No. It's not on

1 the Defendant. It's on the State to prove to you beyond
2 a reasonable doubt the guilt of the Defendant.

3 And one of the most important things that I didn't
4 hear in closing argument, it's the most important thing
5 any time, any time you have a criminal case something
6 called criminal intent. You have to intend to commit a
7 crime. You have to intend to commit a crime. That's a
8 saving grace I promise you because one of the reasons
9 why we have this situation where a defendant doesn't
10 have to prove anything, because there may be situations
11 where you cannot prove your innocence, the Defendant has
12 the right to have that criminal intent statute that
13 tells you that he has to intend on committing a crime
14 before you can find him guilty.

15 Now, I don't know anything about - I don't have
16 stinky feet or anything like that like the Solicitor
17 does. And this Oreo idea, it's an amusing idea.
18 Probably picked up on Cookie Monster. If you remember,
19 Cookie Monster was in the box so maybe that's where the
20 Oreo story comes from. I don't know. However, you
21 know, when you're sitting there with chocolate crumbs
22 and the white crumbs coming out of your mouth, you can
23 see that somebody has been eating the Oreos. I can't
24 see in this box. So it's not really the same.

25 You know, it's important and I hesitate bringing it

1 up but I'm going to anyway. Today is Abraham Lincoln's
2 birthday. I like to keep up with things. The older you
3 get you have to keep up with stuff to make sure you're
4 still alive. But Abraham Lincoln's birthday is today.
5 There was a time when it used to be people would
6 celebrate that. Now we simplify things. We have
7 President's Day. You know, we do everything we can to
8 simplify things. Justice is never simplified. Justice
9 is never simplified.

10 I want you to think about what was testified to.
11 You had Officer Edmonson. I'm going to remark on his
12 size not to embarrass him because he's probably proud of
13 how big he is because he's a weight lifter. He does
14 that on purpose. He lifts weights and he's become very
15 strong. When my client sees that officer coming out of
16 a car along with another officer who is coming with a
17 gun, you can imagine the fear that went into him. So
18 that is something I want you to imagine. I mean, if he
19 looked like he was going to run, if he looked around and
20 looked kind of shaky or something like that, I don't
21 know who wouldn't be a little afraid if you saw
22 something like that. But he didn't take off. He didn't
23 go anywhere. I guess he thought maybe you take the
24 package and drop the package down, if you're going to
25 get down. It's a scary time, but he didn't go anywhere.

1 And when he was first stopped and he was asked
2 about the package, he said I don't know what's in there.
3 And he asked about opening the package. You know what
4 he told the officer? Open it up. I have wondered for
5 days why we went through this search warrant. Why we
6 went through this dog deal. My client said open it up.
7 I have no idea why we went through all this other stuff.
8 And I'll bet you're kind of wondering it, too. But I
9 hope you're thinking, well, why would he say open it up
10 if he knew what was in there?

11 Let's go through the testimony that the officer
12 said. Remember this day begins because there's some
13 package that comes through Fed-Ex? It doesn't matter.
14 UPS. It doesn't matter. It's all taped up so the plan
15 is in place that we will follow this box and we will
16 find out where it's going to and when we find out where
17 it's going to, we're gonna snatch up the person who is
18 picking up the box. Well, we do that. We do that. We
19 snatch up the person who picks it up, but there are so
20 many questions that are left out. And I hit upon it
21 yesterday. When you look at who the box is sent to,
22 it's sent to a Renita Davis at [REDACTED] Villas Court,
23 Apartment [REDACTED], sent from Theresa Davee (phonetic) and
24 gives her address in San Bernardino.

25 It's not your manly items that are inside this box.

1 It's Cookie Monster. It's a party bag that had some
2 little blue things in it to make the bag pretty. Had
3 like a shirt and a flower pot. Well, I guess my client
4 could be some sort of a florist or something like that.
5 But it's from, the indications are that it was to be
6 picked up from Ms. Davis who is a female at that
7 address.

8 Then I listen a little bit more to the testimony
9 from Officer Edmonson and he talks about that
10 Miramontes, remember Miramontes was the Hispanic
11 gentleman, who is sitting there in the beat up old Honda
12 and he's watching what's going on. He has the rear view
13 mirrors and he's seeing what's going on. He sees my
14 client walking at his house and he sees the driver of
15 the mail truck pull up, cut across the grass, put the
16 box down and ring on the doorbell.

17 Now, I'm going to ask you something. You know, when
18 you listen to testimony, and I've got bad hearing in one
19 ear. It's bad. I don't know what to tell you about it.
20 It's bad. I thought -- It doesn't matter what I think.
21 It really doesn't matter what I think. It matters what
22 you think because you all are the decision makers. I
23 thought when Miramontes was first on the stand when he
24 gave his first statement, and I didn't go back into it,
25 I thought he said the lady picked up the package. But

1 then it turned into she looked at the package. And then
2 I spent some time having Miramontes look at the package.
3 and see if he could read the package and all this other
4 stuff.

5 The curious thing about it, and if you're curious
6 about it, you can always ask the court reporter to read
7 that little section, if you heard it differently, that's
8 fine. It's not the first time my hearing has been bad,
9 but I thought to myself isn't that interesting because
10 it just kind of flows. It quickly changes when you're
11 giving testimony. The point of the whole thing being
12 this lady comes out. She either picks up the package or
13 looks at the package, and then she's on the phone and
14 she calls somebody. Miramontes clearly sees that she
15 calls somebody. You see my client on the phone. He's
16 talking to somebody. Does not mean they were even
17 talking to each other because I couldn't really figure
18 this out, it seemed like they were talking at different
19 times. That they weren't talking on the phone at the
20 same time, so they probably weren't talking to the same
21 person maybe. But why wouldn't you get the stupid cell
22 phones? I mean, why wouldn't you get them? Why
23 wouldn't you get them? Why wouldn't you just look on
24 the cell phone. I've got a cell phone. You've got a
25 cell phone. If you want to check to see who's called

1 you, you can just look there. Got a call from my
2 daughter. See who's called you. Why wouldn't you do
3 that? Well, it could mean that you don't really care.
4 That's what it really means. You don't care.

5 And the officer says he beat on the door a little
6 bit. Nobody came out. Nobody, nobody - don't know what
7 happened to her. She must have gone out the back door.
8 Don't know a thing about her and lo and behold we get to
9 kind of like the end of the officers that are testifying
10 and Miramontes says, well, yeah, she came out. She came
11 out with her mother. I hope you picked up on that.
12 Because I thought to myself, she came out? Miramontes
13 knew that was the lady that came to the door. He knew
14 that that was the mother. Wonder what her name was? I
15 wonder if her name was Renita Davis? Why do you not go
16 talk to that woman? I don't know. She's certainly not
17 outside the jurisdiction and living in California.
18 She's right there. But that wasn't --

19 Well, essentially what happens is my client is
20 arrested. He tells them to open up the package. They
21 don't want to do that. They want to get the dog. They
22 want to get the search warrant. I like dogs. It's a
23 good story. It's like the Oreo story. You know, you
24 have a dog comes out there and hits on the box sitting
25 on the back of the left driver's wheel. What was

1 interesting is the dog had never been trained on
2 Oxycontin which I thought, well, that's just unusual to
3 put the dog up to say that. And we already know the box
4 is coming in. We already know what's in the box.

5 MR. CASKEY: Your Honor, I'm sorry. I have to
6 object. The testimony from the witness indicated the
7 dog was trained to detect Oxycodone.

8 THE COURT: All right. I'll let the jury make the
9 determination on what the testimony was.

10 MR. WILLIAMS: I don't know. I thought when they
11 were talking about whether or not they used Oxycontin or
12 whether or not they tested the dog when he was at the
13 animal clinic, whether or not they tested him on that
14 pill, I thought, I thought that he said no, he wasn't
15 tested on that pill. But you know what? If you think
16 I'm wrong, you can listen to that.

17 The point of it is is that that's not really
18 important really, is it? I mean, you put the package
19 out by the left tire and he hits upon that. Well, okay,
20 so the dog scratched the only box out there on the road.
21 But it makes a good story and that's what this is all
22 about, making a good story because that's like Oreos.
23 It makes a good story. Don't get caught up in the
24 stories when you're talking about something that is as
25 important as my client's future because it is important.

1 Mr. Edmonson talks about how my client is sitting
2 somewhere for 45 minutes before his written statement is
3 given. 45 minutes. Well, what the heck is he doing for
4 45 minutes? I tried to see what was going on. We had
5 one other officer say it was 30 minutes. That was
6 Officer Bass who was the guy with the gun. And I tried
7 to ask Bass, well, did you hear the conversation, the
8 oral statements that my client supposedly told this
9 officer? He said no. I didn't hear anything. Well,
10 how do you not hear that? I mean, you're there. I
11 mean, aren't you providing support? How do you not hear
12 supposedly my client making all these statements that
13 are incriminating? You don't hear them. It's not
14 heard.

15 But Bass said, well, I'll do the statement. So 45
16 minutes later he supposedly gets my client to fill out
17 this written statement and when he gets through with
18 this written statement, he calls Edmonson back over. Is
19 there anything else you need in here? Well, yes. I
20 have read this statement. This statement is not good
21 enough. "Question: Did you know drugs were in the
22 parcel 'box'? Answer: Yes." I'm glad we got that in
23 there.

24 Yeah, it's really not about grammar. I hate that
25 that was the impression that I left with you all because

1 it really wasn't about whether or not he used plural or
2 he used singular or it. What I was pointing out,
3 remember how we talked about stories and how you tend to
4 tell stories and how you talk about events in life? You
5 begin at the beginning and you end at an end. This
6 doesn't do this. He jumps around. He goes from as soon
7 as I picked up the box cops were on the scene. Soon as
8 the mail ran I get the call from Mark the guy. He's
9 jumping around. Has nothing to do with grammar, I
10 guess. It's sequencing. It's like someone says, well,
11 you've got to do it this way or you've got to add this
12 there. Beyond a reasonable doubt.

13 Well, the more I listened to stuff, the more I was
14 confused. Well, we get the drug guy in here and
15 supposedly there are 200 pills. We asked Edmonson how
16 many pills were there? He says, well, there are 200
17 pills. You think to yourself, well, why is that
18 important? Why is it important if there's 200 pills or
19 300 pills? Well, it's very important. Because my
20 client is charged with trafficking four grams or more of
21 something known as Oxycontin. And if you listen to the
22 testimony from the chemist, she said that when you test
23 it, when you test out these pills, it is .03, three
24 hundredths of a gram of Oxycontin. .03 per pill. And
25 if you multiply that -- it's a math deal -- if you

1 multiply that times 300 pills, you get nine grams. So
2 it's got to be important if you have got 200 pills or
3 300 pills. I mean, it is. Because to be guilty of a
4 violation of this particular crime, these are all
5 elements. These are like building stacks. Like
6 building something up. If you don't have that there,
7 then you can't continue building. That's why it's
8 important.

9 Now, I'll get back to you about what proof is and
10 whether or not -- You see, all these things you are the
11 fact finders. You can determine that you don't believe
12 that there's .03 grams of Oxycontin in each one of those
13 pills. You can do that based on a number of reasons:
14 You can do it based on the fact that, well, I don't
15 know. She went back and checked it twice. For some
16 reason she didn't want to check both bags. People make
17 mistakes. Do you know how many pills were actually
18 tested? (Indicating.) Three. Three.

19 I have already talked about Miramontes who verified
20 the girl and all of that. We have already talked about
21 Ted. We talked about Beth Holliman. See, it's kind of
22 a short case in terms of witnesses. Beth Holliman. And
23 the point of this is is that Beth Holliman is what they
24 call an evidence clerk. She's the person who receives
25 or moves items around in this secure environment. She's

1 not the person who received these pills into the
2 Lexington County Sheriff's Department and she told you
3 that that person is on maternity leave. But she wasn't
4 even there when it was actually delivered. The point of
5 this is is that ain't nobody counted those 300 pills
6 except this gentlemen over here. Or 200 pills.

7 Well, I guess I'm going to count on you to use your
8 good sense. Make your own minds up as to whether or not
9 you find beyond a reasonable doubt that my client is
10 guilty of trafficking Oxycontin. He had criminal
11 intent, that there were nine grams, and if you are
12 willing to do that based on this lack of evidence, you
13 have the right to do that. The one thing I would ask
14 you to think about, I would ask that you think about
15 this lady who for whatever reason wasn't talked to. I
16 would ask that you think about these items that were
17 destroyed, that were not even brought to the Sheriff's
18 Department. I would like that you think about the 200
19 versus the 300 pills. I would like that you think about
20 the difference of when the items were tested. I would
21 like for you to think about whether or not there were
22 ever three officers or even two officers together when
23 my client said anything. I would like for you to think
24 about the fact that my client said you can open it at
25 any time when he first said he didn't know anything

1 about it. And if you feel that he's guilty, then find
2 him guilty if they prove it beyond a reasonable doubt.

3 But it's not like in Casablanca where you round up
4 the usual suspects. You don't just say he must be
5 guilty. He looked like he was going to run. That kind
6 of got me. You know, he looked like he was going to
7 run. Did he move? Did he take a step? We pulled our
8 guns and told him to get down because, you know, he
9 looks like he's gonna run. You don't assume things in
10 the courtroom of law. It must be proven. Thank you.

11 THE COURT: Thank you, Mr. Williams.

12 MR. WILLIAMS: Thank you, Your Honor.

13 THE COURT: Ladies and gentlemen, during the time
14 that the attorneys were presenting the evidence to you
15 it's been appropriate for me to be on the bench over
16 here and out of the way because as I told you when we
17 started this case, you're the judges of the facts and
18 I'm the judge of the law so while the evidence and the
19 facts are being presented to you, it was appropriate for
20 me to be out of the way and let that occur. But we have
21 now reached the portion of this case where we are in
22 this together, you as the judges of the facts and me as
23 the judge of the law so I come down here to be with you
24 to give you the charge. I'm going to read this verbatim
25 so that I don't leave anything out or misquote

1 anything.

2 Madam forelady and members of the jury, you have
3 heard the evidence and the arguments of both parties and
4 I'm now going to explain to you the law which applies to
5 this action.

6 The indictment charges the Defendant, Lance Leon
7 Miles with the offense of trafficking in illegal drugs,
8 in this case Oxycodone. I remind you of the fact that
9 because the Defendant was arrested, charged and indicted
10 in this case is not evidence in this case and it cannot
11 be considered by you as evidence of guilt, nor does it
12 create any presumption or inference of guilt. The
13 indictment as I told you earlier is simply the formal
14 written instrument which contains the charges made
15 against the Defendant. It is the formal document by
16 which this case is brought into court.

17 Now, I'm going to give you a copy of these
18 instructions in written form to have with you in the
19 jury room. During your deliberations you may refer to
20 these instructions to guide you in your decision making.
21 You must consider these instructions as a whole and not
22 follow some parts and ignore others.

23 Now, the Defendant has pled not guilty to the
24 indictment and that plea puts the burden on the State to
25 prove the Defendant guilty. A person charged with

1 committing a criminal offense in South Carolina is never
2 required to prove him or herself innocent. I charge you
3 that it is an important rule of law that the Defendant
4 in a criminal trial no matter what the seriousness of
5 the charge may be will always be presumed to be innocent
6 of the crime for which the indictment was issued unless
7 guilt has been proven by evidence satisfying you of that
8 guilt beyond a reasonable doubt. This presumption of
9 innocence does not end when you begin your
10 deliberations, but it accompanies the Defendant
11 throughout the entire trial until you reach a verdict of
12 guilt based on evidence satisfying you of that guilt
13 beyond a reasonable doubt.

14 The presumption of innocence is not a mere legal
15 theory. It's not just a legal phrase, but it is a
16 substantial right to which every defendant is entitled
17 unless you the jury are satisfied from the evidence of
18 the Defendant's guilt beyond a reasonable doubt.

19 So, what is a reasonable doubt in the law? Some of
20 you may have served as jurors in civil cases where you
21 were told that it's only necessary to prove that a fact
22 is more likely true than not true such as by the greater
23 weight or the preponderance of the evidence. In
24 criminal cases the State's proof must be more powerful
25 than that. It must be beyond a reasonable doubt. Proof

1 beyond a reasonable doubt is proof that leaves you
2 firmly convinced of a defendant's guilt.

3 Now, there are very few things in this world that we
4 know with absolute certainty and in criminal cases the
5 law does not require proof that overcomes every possible
6 doubt. If based on your consideration of the evidence
7 you are firmly convinced that the Defendant is guilty of
8 the crime charged, you would find the Defendant guilty.

9 If other if other hand, you think there's a real
10 possibility that the Defendant is not guilty, then you
11 must give the Defendant the benefit of that doubt and
12 find him not guilty.

13 I remind you that during this trial, you and I have
14 certain duties to perform. As the trial Judge it is my
15 responsibility to preside over the trial of this case
16 and I also have the duty to rule on the admissibility of
17 evidence that is offered during the trial. I have the
18 additional duty to charge you the law applicable in this
19 case. It is your duty as jurors to accept and to apply
20 the law as I now state it to you. If you already have
21 any ideas as to what the law is or what the law ought to
22 be and it does not agree with what I now tell you the
23 law is, you must abandon your idea because you are sworn
24 to accept the law and apply the law exactly as I state
25 it to you.

1 As I told you at the start of this case, the jury is
2 the sole and the exclusive judge of the facts in the
3 case. The law does not allow me to have an opinion
4 about the facts in this case. This is a matter solely
5 for you the jury to determine. As jurors it is your
6 duty to determine the effect, value, weight and truth of
7 the evidence presented during this trial.

8 To determine the facts in this case you will have to
9 evaluate the credibility or believability of witnesses.
10 And credibility simply means that. It means
11 believability. It becomes your duty as jurors to
12 analyze and to evaluate the evidence and determine which
13 evidence convinces you of its truth. You the jury can
14 believe as much or as little of each witness' testimony
15 as you think is proper. You should assess the
16 credibility of each of the witnesses. You may consider
17 whether any witness has exhibited to you any interest,
18 bias, prejudice, or other motive in this case. You may
19 also consider the appearance and the manner of a witness
20 while on the witness stand. You do not determine the
21 truth merely by counting the number of witnesses
22 presented by each side. Throughout this process you
23 only have but one objective and that is to seek the
24 truth regardless of its source.

25 Now, there are two types of evidence which are

1 generally presented during a trial. There is direct
2 evidence and there is circumstantial evidence.

3 Direct evidence is the testimony of a person who
4 claims to have actual knowledge of a fact such as an
5 eyewitness.

6 Circumstantial evidence is evidence of a proof of a
7 chain of facts and circumstances indicating the
8 existence of a fact.

9 The law makes absolutely no distinction between the
10 weight or the value to be given to either direct or
11 circumstantial evidence. Nor is there a greater degree
12 of certainty required of circumstantial evidence than of
13 direct evidence. You should weigh all of the evidence
14 in this case. If after weighing all of the evidence you
15 are not convinced of the Defendant's guilt beyond a
16 reasonable doubt, you would find the Defendant not
17 guilty. However, if after weighing all of the evidence
18 you are convinced of the Defendant's guilt beyond a
19 reasonable doubt, you would then find the Defendant
20 guilty.

21 Now, the rules of evidence ordinarily do not allow
22 or permit witnesses to testify to opinions or
23 conclusions. There's an exception to this rule that
24 exists for witnesses that we call expert witnesses. A
25 witness who by education and experience has become an

1 expert in some art, science, profession or calling may
2 state an opinion as to the relevant and material matter
3 in which that witness claims to be an expert and may
4 also state the reasons for that opinion. You should
5 consider any expert opinion received into the evidence
6 in this case and like any other evidence give it the
7 weight that you think it deserves. An expert witness'
8 testimony is to be given no greater weight than that of
9 other witnesses simply because that witness is an
10 expert. Furthermore, you're not required to accept an
11 expert's opinion even though it's not contradicted.

12 Now, I instruct you and I emphasize that the fact
13 that the Defendant Lance Leon Miles did not testify in
14 this case is not a factor to be considered by you in any
15 way in your deliberations and in your consideration on
16 the question of guilt or innocence. It must not be
17 considered by you in any manner whatsoever. A defendant
18 has the Constitutional Right to remain silent and the
19 assertion of this right must not be considered by you in
20 your deliberations. I repeat, under your oath you are
21 to draw no conclusion whatsoever from the fact that
22 Mr. Miles did not testify in this case. The fact that
23 Mr. Miles did not testify should not even be discussed
24 in the jury room. The burden of proof, as I have stated
25 to you, is on the State. A defendant is not required to

1 prove his or her innocence. The burden of proof remains
2 on the State to prove guilt beyond a reasonable doubt.

3 Now, Mr. Miles is charged with trafficking in
4 illegal drugs and in this case we are referring to
5 Oxycodone. The State must prove beyond a reasonable
6 doubt that the Defendant knowingly delivered, purchased,
7 brought into this state, provided financial assistance
8 or otherwise aided, abetted, attempted or conspired to
9 sell, deliver, purchase or bring into this state and was
10 knowingly in actual or constructive possession or
11 knowingly attempted to become in actual or constructive
12 position of the Oxycodone. Possession may either be
13 actual or constructive.

14 Actual possession means that the Oxycodone was in
15 the actual physical custody of the Defendant.

16 Constructive possession means that the Defendant
17 that had dominion and control or the right to exercise
18 dominion or control over either the Oxycodone itself or
19 the property upon which the Oxycodone was found.

20 The State must also prove beyond a reasonable doubt
21 that the amount of the Oxycodone or any mixture
22 containing Oxycodone was four grams or more but less
23 than 14 grams.

24 Now, in order to establish criminal liability
25 criminal intent is required. Criminal intent must be

1 proved by the State beyond a reasonable doubt. Criminal
2 intent is always a matter that must be determined by the
3 jury from the circumstances surrounding the situation.
4 There is no way to prove intent to a mathematical
5 certainty. There is no way in medical science that we
6 can dissect a person's brain and determine what the
7 person had in their mind. So the law says that criminal
8 intent may be inferred from the circumstances shown to
9 have existed. This is how you make a determination of
10 whether or not the element requiring intent was present.
11 It's not necessary to establish intent by direct and
12 positive evidence, but intent may be established by
13 inference in the same way as any other fact, by taking
14 into consideration the acts of the parties and all of
15 the facts and circumstances of the case.

16 Criminal intent is a mental state. A conscience
17 wrongdoing. It is up to you to determine what the
18 Defendant intended to do based on the circumstances
19 shown to have existed.

20 Now, madam forelady and members of the jury, as you
21 retire to begin your deliberations I wish to express to
22 you the hope that each of you will reach the height of
23 freeing your minds of all improper influences. As the
24 presiding officer of this Court I am vitally concerned
25 that whatever verdict you find will be the result of you

1 going into the jury room, confining your consideration
2 to the evidence and to the law that you have heard in
3 the courtroom, weighing it fairly and impartially as I
4 have every confidence you will do. Your verdict in this
5 case cannot be based on sympathy, compassion, prejudice
6 or emotion or some other consideration that's not found
7 in the evidence. And remember, I told you earlier, your
8 verdict must be other unanimous.

9 Now, Ms. Joslin, this notebook will be in the jury
10 room with you. In the front cover there's a little
11 pocket and in that pocket I have placed the verdict
12 form. It's a simple form, ladies and gentlemen. It
13 just has the caption of the case at the top and this is
14 involving the one indictment so the jury, whatever the
15 jury's verdict is, ma'am, you will just mark the
16 appropriate spot. It's either that the Defendant is
17 either guilty or not guilty. You will just mark the
18 appropriate spot and sign as the forelady, okay?

19 Now, folks I'm going to get you to step back into
20 the jury room but do not begin your deliberations yet.
21 I'm going to confer with the attorneys to make sure that
22 I haven't misrepresented anything or left anything out.
23 If I need to make any change to the charge or to charge
24 you on anything else, I'll bring you out and do that.
25 But if the charge is good as is, I will then get the

1 bailiffs to collect these items and take them back into
2 the jury room. When you get the exhibits and this
3 notebook, that's your cue then to begin your
4 deliberations, okay?

5 So, please, if you would, step back into the jury
6 room and await these items.

7 (Whereupon, the jury entered the jury room.)

8 THE COURT: Okay. Are there any exceptions or
9 objections to the charge from the State?

10 MS. RANKIN: Your Honor, recently Mr. Bell and I
11 tried a trafficking case and there was some discussion
12 with Judge Newman on that case about PWID and possession
13 being a mandatory lesser included of trafficking.

14 THE COURT: The case law we looked up says that if
15 weight is the only difference and it's been established
16 through the testimony, then it would be improper to
17 charge a lesser included offense. Is that not correct?

18 MS. RANKIN: I can't remember exactly what the case
19 said. It was about a month ago when we did it. I think
20 Mr. Bell is going to bring up the case, but I just don't
21 want us to not --

22 THE COURT: Why didn't we talk about this while we
23 were doing the charge earlier?

24 MS. RANKIN: Because I just thought about it to be
25 honest with Your Honor. I really -- And I was thinking

1 back on that trial that we did and it's something that
2 just kind of popped in and then you were already going
3 through your charge with the jury and I apologize for
4 that. I really did just think about it. I just don't
5 want that to not go back to the jury and then be an
6 automatic return on appeal if it was a conviction.

7 THE COURT: Well, at this stage I'm not aware that
8 that's the law in South Carolina, that a lesser included
9 is mandatory on a trafficking case. Is that what you're
10 saying? Any time you have --

11 MS. RANKIN: Your Honor, I'm saying that I remember
12 there being discussion about that and I think that was
13 charged in that case. I cannot remember exactly what
14 the case said --

15 THE COURT: Well --

16 MS. RANKIN: -- about it.

17 THE COURT: Mr. Williams, do you have any objection
18 or exception to the charge?

19 MR. WILLIAMS: Well --

20 THE COURT: Were you seeking a lesser included
21 offense?

22 MR. WILLIAMS: Well, I'm crossing between. You
23 know, now that the Court comes back with that
24 instruction, it sounds like the Court might be telling
25 the jury it's okay to go ahead and find him guilty of a

1 lesser one now.

2 THE COURT: I don't anticipate coming back and
3 charging them on that. My question is do you have any
4 exceptions to the charge as I charged it?

5 MR. WILLIAMS: No, sir. No, sir.

6 THE COURT: All right. I understand, Casey, what
7 you're saying. I think I understand what you're saying.
8 I think we looked at that. I think Lauren looked at a
9 case. Let me see real quick.

10 MS. RANKIN: I know it was a fairly new case within
11 the past like year or so perhaps.

12 THE COURT: All right. In this case and this is
13 Sellers versus State. It's a 2005 case. I don't know
14 what the year is of the case you have. The court says
15 as to the trafficking charge the respondent did not
16 present evidence that he possessed less than the minimum
17 required for trafficking. In fact, the only evidence
18 before the jury was that the amount of meth amphetamines
19 in question would constitute trafficking. In addition,
20 the State presented the only evidence as to the amount
21 of the drugs at issue which included testimony that the
22 respondent possessed enough meth amphetamine to warrant
23 a trafficking charge. As a result the respondent was
24 not entitled to a lesser included offense charge such as
25 possession with intent to distribute for the trafficking

1 charge.

2 MR. CASKEY: Your Honor, if I could, I'm not
3 familiar with what Casey is talking about, but I did
4 review that case in preparation for this and I believe
5 that that case is citing to the Fields case in which it
6 says that a trial judge does not error by refusing to
7 charge a lesser included offense where there is no
8 evidence tending to show the Defendant was guilty of
9 only lesser included offenses. Essentially, Your Honor,
10 the evidence, I think, if I understood you earlier, is
11 controverted whether or not the weight alone is
12 sufficient. That the jury could find, as Mr. Williams
13 argued, that there were less pills and there weren't 300
14 to get us above that threshold. I would just ask the
15 Court for a ruling that there is controversy over that
16 evidence and that the State has not proven definitively
17 that the weight alone is there and that a fact finder
18 could find the weight insufficient.

19 THE COURT: I don't think I'm understanding what
20 you're saying.

21 MR. CASKEY: I'm sorry.

22 THE COURT: It sounds to me like you're arguing for
23 the lesser included offense.

24 MR. CASKEY: I'm arguing that if Your Honor were to
25 find that there is some controversy over the amount of

1 weight --

2 THE COURT: I find that there is none.

3 MR. CASKEY: Over the amount of weight?

4 THE COURT: None.

5 MR. WILLIAMS: Your Honor, we have no objection to
6 possession if Your Honor wants to instruct a simple
7 possession.

8 THE COURT: No. I'm not going to recharge
9 anything.

10 MR. WILLIAMS: Okay.

11 THE COURT: Here is the thing, Mr. Caskey. I don't
12 find that there was any controversy as to the amount of
13 the drugs in this case. As a matter of fact, now I'm
14 going to run into some dangerous territory because I'm
15 going to try to do math again, the chemist, she gave her
16 mathematical formula. Now, the only question in this
17 case is was it 200 pills or was it 300 pills. If it's
18 200 pills, the weight is six grams. If it's 300 pills,
19 the weight is nine grams, both well within the range for
20 trafficking. There is no evidence in this case at all
21 that would bring the amount of drugs into controversy
22 that would cause a lesser included offense to be
23 charged.

24 MR. CASKEY: Yes, sir.

25 THE COURT: So I don't really know because I have to

1 make a ruling so that it can be reviewed at a later date
2 if need be. I'm assuming you're asking for a lesser
3 included offense.

4 MR. CASKEY: No. We are not, Your Honor. We are
5 bringing it to the Court's attention.

6 THE COURT: All right. Then are you satisfied with
7 the charge as the Court has given it?

8 MR. CASKEY: Yes, Your Honor.

9 THE COURT: All right. Mr. Williams, you're
10 satisfied with the charge?

11 MR. WILLIAMS: I am, Your Honor.

12 THE COURT: I think it's appropriate, folks. I
13 understand your concern, but again, it goes on a case by
14 case basis as to what the evidence shows and in this
15 case I just don't think there was anything contrary to
16 the weight being anything other than trafficking as far
17 as weight goes. So therefore, I don't think it would be
18 appropriate. So having said that, how about get with
19 Steve to make sure that the evidence that needs to go
20 back is present here.

21 (Whereupon, the exhibits and charge sent to the jury
22 for their deliberations starting at 4:35 p.m.)

23 THE COURT: We will be at ease until we hear from
24 the jury.

25 (Court at ease waiting on jury verdict.)

1 THE COURT: Back on the record. All right. The
2 jury has sent out, it appears to be a two part question
3 as follow: "Does the state have to prove that the
4 defendant knowingly brought into the state four grams or
5 more of Oxycodone or just any amount of illegal drugs in
6 order to consider this trafficking?"

7 And I think the appropriate response would be that
8 the State does not have to prove that the Defendant
9 knowingly brought into the state this particular drug,
10 just that the statute requires knowing that it was
11 illegal drugs. What constitutes trafficking - or excuse
12 me. Does not have to know the particular drug that is
13 in question. Simply that he knew they were illegal
14 drugs. I'm trying to think of how this needs to be said
15 and not in just dealing with the law. All right. Let
16 me just draft up something real quick here.

17 All right. I'm going to tell you what I have got in
18 response to these two questions and then I'll hear from
19 you on how it should be tweaked or whatever.

20 As to the first question, "Does the state have to
21 prove that the defendant knowingly brought into the
22 state four grams or more of Oxycodone or just any amount
23 of illegal drugs in order to consider this trafficking?"

24 My proposed response would be that the State does
25 not have to prove that the Defendant knew the drugs were

1 Oxycodone, just that the package contained illegal
2 drugs. However, the State does have to prove beyond a
3 reasonable doubt that the illegal drugs in question was
4 Oxycodone.

5 MR. WILLIAMS: Your Honor, I think that flies in the
6 face of the earlier charge which said --

7 THE COURT: Tell me what page you're on.

8 MR. WILLIAMS: Page 7.

9 THE COURT: Okay.

10 MR. WILLIAMS: -- where you say was knowingly in
11 actual or constructive possession or knowingly attempted
12 to become in actual or constructive possession of
13 Oxycodone. If you look at Judge Anderson's book where
14 he talks about knowledge, if you will, and all the
15 information about you still have to know that you're in
16 possession of illegal drugs.

17 THE COURT: There it is, right there.

18 MR. WILLIAMS: You do.

19 THE COURT: Exactly what you just said.

20 MR. WILLIAMS: The State --

21 MR. CASKEY: Your Honor, if I could, I think if we
22 could, the last sentence you had, I think if we broke it
23 into two sentences and said the State must prove that
24 the Defendant knew there were illegal drugs and the
25 State must prove beyond a reasonable doubt that the

1 drugs were Oxycodone.

2 MR. WILLIAMS: And were in the weight.

3 THE COURT: I'm going to deal with the weight on the
4 second question because that's where the second thing
5 comes in. So what's an appropriate response then?
6 Because I want to be able to convey the law and not
7 comment on the facts, but the law clearly does not
8 require a person to know the specific drug that is
9 contained in a package, but must know that it is an
10 illegal substance. It's not until the package -- Now,
11 I'm just talking to you all. It's not until the package
12 is opened that the State can make a determination under
13 what statute to charge. For example, if it was
14 marijuana, it would be a different statute.

15 MR. WILLIAMS: But then how do you get around the
16 intent question?

17 THE COURT: Because the intent is to possess,
18 control, deliver, move illegal drugs.

19 MR. CASKEY: The knowledge is to the underlying act
20 and the act here as to this question is the possession.
21 Or to the second question it would be aid, abetting,
22 conspiring. Your Honor, it may be, my suggestion might
23 be that the response start with the State must prove
24 that the Defendant knew there were illegal drugs. The
25 State must prove that the drugs were, in fact,

1 Oxycodone. The State does not have to prove, and then
2 your first sentence and I don't mean to be needlessly
3 obstinate, but maybe ordering it with the affirmative as
4 opposed to the not maybe --

5 MR. WILLIAMS: Your Honor, in the old days when you
6 talked about statutes, you talked about strict
7 construction dealing with statutes and the criminal
8 statute which is 44-53-37(e)(3) does not say that any
9 person who brings in illegal drugs. It references the
10 drug, the four grams or more of morphine, opium, salt
11 isomer, et cetera.

12 THE COURT: Right. Which it goes further.

13 MR. WILLIAMS: Okay.

14 THE COURT: Are you reading the statute?

15 MR. WILLIAMS: I am.

16 THE COURT: It goes further.

17 MR. WILLIAMS: Or four grams or more of any mixture
18 containing any of these substances is guilty of a felony
19 which is known as trafficking in illegal drugs.

20 THE COURT: That right there.

21 MR. WILLIAMS: So --

22 THE COURT: It doesn't say in that statute that the
23 Defendant must know ahead of time which particular drug
24 it is.

25 MR. WILLIAMS: But, you know, it doesn't say he

1 doesn't either.

2 THE COURT: I understand that.

3 MR. WILLIAMS: If you read --

4 THE COURT: Let me ask you this: How would you ever
5 prosecute any case involving, whether they are small or
6 large, containers of illegal drugs coming in? How would
7 you ever prosecute any case if the State's burden was to
8 prove that a defendant knew it was that drug.

9 MR. WILLIAMS: Well, I think that is planned by the
10 legislature when they changed the amount of time that
11 you can catch because if you're taking something which
12 you think is marijuana and you don't know it to be
13 something else, then why would it be fair to punish that
14 individual who doesn't know that it's a different drug?

15 THE COURT: How could you punish them for
16 marijuana?

17 MR. WILLIAMS: Well, that's the key. You have to
18 prove in accordance with the indictment that that person
19 knows that the illegal drug is that drug.

20 THE COURT: Tell me how you do that?

21 MR. WILLIAMS: You get him to write a statement.

22 THE COURT: Tell me how you do that in any case
23 other than a defendant admitting that they knew it was
24 marijuana or it was meth or it was crack or it was
25 whatever? Shy of that, how do you ever prosecute

1 anybody then?

2 MR. WILLIAMS: Well, you do that based on direct and
3 circumstantial evidence meaning that the jury could
4 determine based on the weight that was found and that he
5 knew it was there or based on --

6 THE COURT: Now, he doesn't know it was Oxycodone.

7 MR. WILLIAMS: -- the fact that he knew it was --

8 THE COURT: How do they know he knew it was
9 Oxycodone?

10 MR. WILLIAMS: Well, I mean, you know --

11 THE COURT: That's where -- In all due respect,
12 that's where you're wrong. The law doesn't require a
13 defendant to know the exact drug. Listen, it's hard to
14 discuss this without discussing, if not this case, at
15 least cases that involve containers. Because we all
16 know that if it's a baggie, we know if that's a bag of
17 weed or if that's a bag of pills or if that's a bag of
18 rocks. But when you're talking about a closed container
19 or a package in this case, all the law requires is that
20 the State must prove beyond a reasonable doubt that a
21 defendant knew that the package contained illegal drugs.
22 It's not until the package is opened and the drugs are
23 discovered that you can then charge it under a
24 particular statute.

25 MR. WILLIAMS: I understand what you're saying, Your

1 Honor, but it doesn't reference that in the statute
2 itself.

3 THE COURT: But does it also say that the State must
4 prove the Defendant knew it was a particular drug?

5 MR. WILLIAMS: No. It says knowingly sells, et
6 cetera, then it says four grams or more of morphine.
7 So, I mean, it doesn't -- You're going beyond the
8 statute when you say that is what I'm saying. And all
9 I'm saying is that when you go strict statutory
10 construction, then anymore than what the statute says is
11 a comment on, I guess, whether or not the Defendant knew
12 or didn't know, is a comment on the facts in this
13 particular case because the statute doesn't reference
14 illegal drugs. It could have easily just have said that
15 in the statute.

16 THE COURT: The statute does reference illegal
17 drugs.

18 MR. WILLIAMS: No.

19 THE COURT: It says --

20 MR. WILLIAMS: It says at the end of it --

21 THE COURT: -- the possession of those items
22 constitutes trafficking in illegal drugs.

23 MR. WILLIAMS: But it doesn't -- But it references
24 once they determine that, then that's what they are
25 known as being guilty of. It says is guilty of a felony

1 which is known as trafficking in illegal drugs. It
2 doesn't start off with that.

3 THE COURT: Well, I disagree with your reading of
4 the statute.

5 MR. WILLIAMS: Okay. Well, Your Honor, you can't
6 disagree with what it actually says. You may disagree
7 with what --

8 THE COURT: I disagree with your interpretation.

9 MR. WILLIAMS: Okay. But, I mean, it says what it
10 says.

11 THE COURT: You also have to assume that the
12 legislature didn't draft statutes that are meaningless
13 and unenforceable.

14 MR. WILLIAMS: No.

15 THE COURT: And according to your interpretation of
16 that statute then any case involving a closed container
17 of illegal drugs you would never be able to prosecute
18 that case short of having the person admit that they
19 knew it was that drug.

20 MR. WILLIAMS: What if you had something that looked
21 like Jell-O and indeed it turned out to be some other
22 drug? So you're saying that if the guy is carrying the
23 Jell-O around, that he would be guilty of carrying this
24 drug around that he thinks is Jell-O.

25 THE COURT: No. Because then that's not knowing.

1 He thinks he's carrying around Jell-O. That's not an
2 illegal substance or illegal drug.

3 MR. WILLIAMS: That's true.

4 THE COURT: But I will say this: If he's picking up
5 a package that he believes is full of crack and when
6 they pop it open, it's not full of crack, it's full of
7 Oxycodone, you're saying he can't be prosecuted? At
8 that point he's not guilty because he thought he was
9 bringing crack in? That's what you're saying under your
10 interpretation.

11 MR. WILLIAMS: No. I'm saying when it comes to
12 charging the jury in reference to the statute, that the
13 charge should be in accordance with what the statute
14 actually says because he's indicted that way. He's not
15 indicted for simply bringing in illegal drugs. I assume
16 his indictment talks about Oxycodone.

17 THE COURT: It says that, but he's charged with
18 illegal drugs.

19 MR. WILLIAMS: Well, it actually references, it
20 reads like the statute which says that actual
21 constructive possession of morphine, salt isomer, salt
22 or isomer thereunder to wit Oxycodone. So it reads just
23 like the statute.

24 THE COURT: To wit.

25 MR. WILLIAMS: Right. Meaning this.

1 THE COURT: Mm-hmm. The second question. "Does the
2 state have to prove that he intended to traffic?"

3 Now, that's clearly -- Well, nothing is clear because
4 we all are disagreeing with everything. My proposed
5 response would be that the term traffic or trafficking
6 under South Carolina law deals with the weight of the
7 illegal substance. To prove trafficking the State must
8 prove beyond a reasonable doubt that the amount of the
9 illegal drugs was four grams or more. If it was less
10 than four grams, it is not trafficking.

11 MR. WILLIAMS: And I don't have a problem with that
12 one.

13 THE COURT: Okay.

14 MR. CASKEY: I don't either, Your Honor.

15 MR. WILLIAMS: It's just the first one.

16 THE COURT: All right. Well, the first one we are
17 not going to come to an agreement on because we have a
18 different interpretation of the statute and I'm sorry to
19 say this because I don't like to say I wear the robe,
20 nah, nah, nah, nah, but somebody has got to make the
21 call. My interpretation is that the burden of proof on
22 the State, it does not have to prove that a person knew
23 that those particular drugs was Oxycodone. That the
24 drugs were Oxycodone. Simply that they were illegal
25 drugs. However, that doesn't relieve the State of their

1 burden to prove that the drugs that were found were, in
2 fact, Oxycodone.

3 MR. WILLIAMS: Well, Your Honor, in this particular
4 case the drugs were not illegal drugs.

5 THE COURT: Okay. We're gonna down that thing?

6 MR. WILLIAMS: I'm just saying. I'm just saying.

7 THE COURT: They were illegal under the -- Well, I
8 don't know because I don't know if Mr. Miles had
9 prescriptions for all those drugs. This jury needs an
10 answer so if I can get your help on it, I'll welcome it.
11 If I can't, I'm going to give them my very flawed
12 response.

13 MR. CASKEY: I apologize for diverging, but if you
14 can remind us of where we are at?

15 THE COURT: We're on the first question which says
16 "Does the state have to prove that the defendant
17 knowingly brought into the state four grams or more of
18 Oxycodone or just any amount of illegal drugs in order
19 to consider it trafficking?"

20 MR. CASKEY: Yes, sir. And what was the drafted --

21 THE COURT: I was going to say that the State does
22 not have to prove that the Defendant knew that the drugs
23 in question were Oxycodone. Just that the package
24 contained illegal drugs. However, that doesn't relieve
25 the State of their burden of proving that the drugs

1 were, in fact, Oxycodone under this statute.

2 MR. WILLIAMS: And the amount, Your Honor, I think
3 you said earlier, four grams or more.

4 THE COURT: Four grams or more of Oxycodone.

5 MR. CASKEY: If we could, I think the second clause
6 you said just that - that the -- I guess what I'm trying
7 to say is --

8 THE COURT: I said just that the package contained
9 illegal drugs.

10 MR. CASKEY: I think we should add just that he knew
11 the package contained illegal drugs so they don't have
12 to go back to the first clause to bring over the
13 knowledge. Not that I think people can't stick around
14 for long sentences.

15 THE COURT: All right.

16 MR. WILLIAMS: There are really two different
17 issues, aren't there, Your Honor? We're talking about
18 trafficking and we're talking about --

19 THE COURT: The second question deals with
20 trafficking. The first question deals with the
21 knowledge of whether it's Oxycodone or just illegal
22 drugs. So on the first question then I would propose
23 the State does not have to prove that the Defendant knew
24 that the drugs in the package were Oxycodone, just that
25 he knew that the package contained illegal drugs.

1 However, the State still has the burden of proof to
2 prove beyond a reasonable doubt that the drugs in the
3 package were Oxycodone. Were over four grams of
4 Oxycodone.

5 MR. CASKEY: That's what the law is.

6 THE COURT: Yes.. Okay.

7 MR. WILLIAMS: Okay.

8 THE COURT: Steve, mark this as a Court's exhibit
9 and hand it back to me. Let's bring the jury in:

10 (Whereupon, Court's Exhibit #5 marked for
11 Identification.)

12 (Whereupon, the jury returned to the courtroom.)

13 THE COURT: Ladies and gentlemen, I apologize for
14 the delay in getting you out here in regards to your
15 question. So the record is clear, I'm just going to
16 read to you. I took this as a two part question. The
17 first part is, "Does the state have to prove that the
18 defendant knowingly brought into the state four grams or
19 more of Oxycodone or just any amount of illegal drugs in
20 order to consider this trafficking?"

21 And my response to you is that the law in South
22 Carolina is the State does not have to prove that the
23 Defendant knew that the drugs in the package were
24 Oxycodone, just that he knew that the package contained
25 illegal drugs. However, the State does have to prove

1 beyond a reasonable doubt that the illegal drugs that
2 were in the package was more than four grams of
3 Oxycodone. So the State continues to carry that burden.

4 Then your second question was, "Does the state have
5 to prove that he intended to traffic?"

6 And the law in South Carolina with regards to
7 trafficking is this: The term traffic or trafficking
8 under South Carolina law deals with or refers to the
9 weight of the illegal drugs. To prove trafficking the
10 State must prove that the amount of the illegal drugs
11 was four grams or more. If it was less than four grams,
12 then it's not trafficking. So trafficking deals with
13 the weight, okay? All right. If you would please
14 return to your deliberations.

15 (Whereupon, the jury returned to the jury room to
16 resume their deliberations.)

17 THE COURT: All right. Any objections or exceptions
18 to the Court's instructions?

19 MR. CASKEY: Nothing from the State.

20 THE COURT: From the defense?

21 MR. WILLIAMS: Yes, Your Honor. In regards to the
22 first part of the instruction by the Court, underneath
23 the statute that we're dealing with which is
24 44-53-370(e)(3), the statute says any person who
25 knowingly, then it goes on, or conspires to sell or who

1 knowingly is in actual constructive possession or who
2 knowingly attempts to become in actual constructive
3 possession of four grams or more of morphine, opium,
4 salt isomer, what have you. Your Honor, the way the
5 statute is, if you read strict statutory construction it
6 would indicate that the person has to have knowledge of
7 the drug. And, Your Honor, reading further over into
8 the Honorable Ralph King Anderson's charge book, when he
9 references the drug, he says, he talks about actual and
10 constructive possession of the drugs. In no part of his
11 charges that he references he talks about the drug. The
12 drug. Not a drug. And I think it's important that the,
13 I don't know if you call that an adjective or not, the,
14 that in the charge that he's using he's actually
15 referring to the charge that the person is cited with by
16 using the adjective the. So we would argue that you
17 have to prove - or the State has to prove beyond a
18 reasonable doubt that the Defendant knew that he was
19 trafficking in that drug. Knew or -- And he could prove
20 that by actual or constructive.

21 THE COURT: All right. Let me ask you this:
22 Because I also believe that under statutory
23 interpretation you have to go with the presumption that
24 the legislature did not enact a statute that is
25 unenforceable or unprosecutable in this case of a

1 criminal statute. Let's use this case as an example.
2 If we use your interpretation of the statute and we use
3 the facts of this case based on what has been presented
4 in this case, then it would have required this Court to
5 direct a verdict of acquittal because there is no way
6 that even under the intent statute it even talks about
7 how you can't cut open a person's brain to figure out
8 what's in there.

9 If the statute requires that a person must know the
10 exact drug that the package contains, and I'm referring
11 to cases now such as this where you have a closed
12 package, you have a bundle, you have a container, then
13 under the law as you interpret the law those cases are
14 not prosecutable short of a defendant admitting that he
15 or she knew that it was crack cocaine or that it was
16 meth amphetamine or that it was marijuana or whatever
17 the drug happens to be.

18 MR. WILLIAMS: Unless you have the other evidence
19 which you normally have if it's a sale. Say it's a sale
20 of crack cocaine --

21 THE COURT: Let's use this case as an example.

22 MR. WILLIAMS: That's why he's entitled to directed
23 verdict. I don't disagree.

24 THE COURT: Exactly. So that what you're saying is
25 that under your interpretation of the statute any case

1 where drugs are shipped into this state in a closed
2 container, those cases are not prosecutable.

3 MR. WILLIAMS: You have to have some evidence that
4 the person is conducting some sort of criminal act.
5 That he knows he is conducting some sort of criminal
6 act.

7 THE COURT: Okay. In this case there is evidence
8 depending on how the jury views it that Mr. Miles
9 admitted he knew the container contained illegal drugs.
10 That's what they had. And I agree with you. If they
11 didn't have that, they would have been hard pressed to
12 prosecute this case at all. I'm not saying they
13 couldn't. I'm just saying it would be difficult. Now,
14 is that enough? Will the jury believe that that
15 statement is true? I don't know how the jury is going
16 to consider the evidence. But that's the evidence in
17 this case. So that's where we have the knowing that
18 comes in. But under your interpretation it would have
19 had to specifically have been either his admission or
20 some other evidence that he knew it was Oxycodone.

21 Let's say it was crack. Let's say it wasn't
22 Oxycodone. Then again we are in the same position. So
23 I certainly note your objection to the instruction and
24 to the Court's interpretation of the statute, and we'll
25 see. But that's -- The way I interpret the statute is

1 that the knowledge must be, or the knowing in the
2 statute where it says that the person was knowingly in
3 possession of, requires the knowing of an illegal
4 substance and then once the package is opened, I guess
5 that determines what statute you prosecute under. But I
6 may be absolutely wrong on that. I don't see how the
7 statute is able to even function in cases with closed
8 containers short of that but...

9 MR. WILLIAMS: Well, the thing that really makes
10 this particular charge illegal is the volume, isn't it?

11 THE COURT: I'm sorry.

12 MR. WILLIAMS: Is the volume, the amount of
13 Oxycodone that he had? If he had one Oxycodone -- Well,
14 I guess that's the trafficking. Never mind. I guess
15 that's the trafficking.

16 THE COURT: That's why we are in trafficking, yeah.
17 All right.

18 BAILIFF: We have a verdict, Your Honor.

19 THE COURT: All right. Is the State ready for the
20 jury's verdict?

21 MR. CASKEY: We are, Your Honor.

22 THE COURT: All right. Is the defense ready?

23 MR. WILLIAMS: We are, Your Honor.

24 THE COURT: Okay. Bring in the jury.

25 (The jury returns to open court to report its

1 verdict at 5:17 p.m.)

2 THE COURT: All right. Madam Forelady, has the jury
3 reached a unanimous verdict?

4 MS. JOSLIN: Yes.

5 (Verdict handed to the Bailiff who hands it to the
6 Clerk who hands it to the Court.)

7 THE COURT: All right. Thank you. Madam Clerk,
8 if you would, please, publish the verdict of the jury.

9 THE CLERK: The State of South Carolina versus Lance
10 Leon Miles. Indictment number 2014-GS-32-00603. We the
11 jury find the Defendant Lance Leon Miles guilty of
12 trafficking in illegal drugs. This is signed by
13 Elizabeth Joslin.

14 THE COURT: All right. Ladies and gentlemen of the
15 jury, you have heard Madam Clerk read the verdict of the
16 jury. If this is, in fact, your verdict, please signify
17 by raising your right hand.

18 (The entire jury raises their right hand.)

19 THE COURT: All right. Thank you, ladies and
20 gentlemen.

21 MR. WILLIAMS: Your Honor, we would request an
22 individual poll.

23 THE COURT: All right.

24 THE CLERK: When I call your name, please raise your
25 right hand.

1 THE COURT: Let me get you to do me a favor, if you
2 would.

3 THE CLERK: Okay.

4 THE COURT: Does everyone know your juror number?
5 You know your number? Give me the jury number. When
6 you do the polling, do it by juror number.

7 THE CLERK: Juror 186, please raise your hand if
8 this is your verdict and still your verdict?

9 BRANDON SKELLY: It is.

10 THE CLERK: Juror 128, is this your verdict and is
11 it still your verdict?

12 TARA LENTZ-FRIEDRICHS: Yes, ma'am.

13 THE CLERK: Juror 93, is this your verdict and is it
14 still your verdict?

15 LAKAISHA HOUSER: Yes, ma'am.

16 THE CLERK: Juror 101, is this your verdict and is
17 it still your verdict?

18 DAVID JEFFCOAT: Yes.

19 THE CLERK: Juror 110, is this your verdict and is
20 it still your verdict?

21 ELIZABETH JOSLIN: Yes, ma'am.

22 THE CLERK: Juror 28, is this is your verdict and is
23 it still your verdict?

24 SHANNON CARDER: Yes.

25 THE CLERK: Juror 67, is this your verdict and is it

1 still your verdict?

2 MARK FURTICK: It is.

3 THE CLERK: Juror 214, is this your verdict and is
4 it still your verdict?

5 JENNIFER WHITESIDES: Yes.

6 THE CLERK: Juror 158, is this your verdict and is
7 it still your verdict?

8 MICHAEL ORNELAS: Yes, it is.

9 THE CLERK: Juror 121, is this your verdict and is
10 it still your verdict?

11 BRITTANY KNOWLES: Yes, ma'am.

12 THE CLERK: Juror 70, is this your verdict and is it
13 still your verdict?

14 RONNIE GANTT: Yes.

15 THE CLERK: Juror 182, is this year verdict and is
16 it still your verdict?

17 NATHAN SANDERS: Yes.

18 THE CLERK: All jurors polled.

19 THE COURT: Thank you. Ladies and gentlemen, I want
20 to thank you for your service this week. You all have
21 been an outstanding panel. You have been kindly.
22 You've been here when you were supposed to be here, and
23 I don't say that lightly because you would be surprised
24 at how many times when we have juries, jurors straggle
25 in here late and we ask them to be here at 9:30 and they

1 show up at a quarter to ten and things of that nature.
2 But you all have been wonderful and outstanding to work
3 with and I really do appreciate it. This does conclude
4 your service for the week. We don't have anything for
5 you tomorrow. We have court tomorrow, but we don't have
6 anything that we need the jury's assistance on. So
7 I want to thank you for your service.

8 Now, I tell members of the jury and I'll leave it up
9 to you. We will proceed here in just a moment with - as
10 we go into the sentencing phase. If you wish to be
11 present for that, you're welcome to remain with us. But
12 if you want to be excused and go home, you're more than
13 welcome to do that. I tell juries all the time there is
14 no requirement. Your service is concluded so you're
15 free to go. Some jurors ask if they can stay and I
16 always let them know that they absolutely have the right
17 to be present for that if they choose to do that. So
18 I'm going to leave that up to you. The only thing I
19 would ask is, Ms. Joslin, I'm going to need you to sign
20 the indictment for Madam Clerk before you go. So if you
21 don't mind doing that. For the balance of the panel
22 those of you that wish to leave, you're free to go and
23 as I said your service is concluded for the week. Thank
24 you very much.

25 (The jury was excused.)

1 THE COURT: At this time I'll be happy to entertain
2 if there are any motions after the polling of the
3 jury.

4 MR. WILLIAMS: Yes, Your Honor. We would renew all
5 the motions that are customarily made at this time and
6 that is to set aside the jury's verdict, grant the
7 Defendant a new trial and those would be based on the
8 motions that I made at the end of the State's case as
9 well as at the end or the conclusion of all of the
10 evidence. They dealt with the amount of evidence. They
11 also dealt with, I guess, the other two items that I
12 don't want to go into ad nauseam over, but the other two
13 items that we talked about which I think we touched on
14 even when we had this jury instruction dealing with
15 whether or not they actually had to prove that my client
16 knew or didn't know about the Oxycodone.

17 We would renew also, Your Honor, the motion - my
18 objections -- We don't have to renew that objection I
19 don't think, Your Honor, as with regards to the jury
20 instruction.

21 THE COURT: No. I don't think so. All right. I'm
22 going to respectfully deny those motions. I think this
23 whole situation was, I think it was a jury issue. I
24 think it was a factual issue, and how the jury perceived
25 those facts and how they received those facts and the

1 inferences that could be drawn from those facts. I'm
2 not of the belief that after having heard all the facts
3 such as the jury did that the verdict flies in the face
4 of those depending on how that's viewed. Certainly
5 there was a basis for their verdict. So I would
6 respectfully deny those motions. Is the State ready to
7 proceed to sentencing?

8 MR. CASKEY: We are, Your Honor. Your Honor, if I
9 may approach? I have the sentencing sheet prepared as
10 well as certified true copies of the Defendant's prior
11 convictions from Marlboro County. I have tabbed the
12 conviction which will enhance this sentence from a
13 trafficking in illegal drugs first offense to a
14 trafficking in illegal drugs second offense. I will
15 share the rest of his record with the Court if the Court
16 would like to hear it.

17 THE COURT: Yes, sir.

18 MR. CASKEY: The Defendant has been convicted in
19 2004 DUS, two counts - three counts of distribution of
20 crack, a PWID marijuana and in 2006 a PWID marijuana, a
21 distribution of crack and a distribution of crack in
22 proximity to a school. Additionally there's a 2009
23 conviction for forgery less than five thousand. 2009
24 conviction for DUS second, a seat belt violation, and
25 then a 2012 open container.

1 THE COURT: All right. Thank you, sir.

2 Mr. Williams, I'll be happy to hear from you and anyone.
3 I know that you are aware that the statute doesn't give
4 me any leeway here.

5 MR. WILLIAMS: Yes, Your Honor. It's a harsh result
6 for a man who was getting a hundred dollars for what he
7 thought was marijuana.

8 THE COURT: I don't disagree. And again the statute
9 really doesn't -- Usually I'm listening to you because
10 you're very eloquent and very persuasive, but in this
11 case I don't have -- there's no range. There's no range
12 of sentencing here so I'll certainly be happy to hear
13 anything you may wish to --

14 MR. WILLIAMS: I guess I could talk about the fact
15 that the last time he got in trouble was 2012 with a
16 DUS. The time before that was a forgery or a bad check
17 in 2009. The fact that he's now employed and has two
18 small children and a wife and that what he got in
19 trouble with was a hundred dollars that he allegedly was
20 going to get to pick up a package which he really didn't
21 know what was in there, but he assumed was marijuana.

22 MR. MILES: Exactly.

23 MR. WILLIAMS: And that's about as much as I can
24 say, if there was anything that could lessen the amount
25 of time that he could get.

1 THE COURT: All right, sir. As I stated, the code
2 section under which this case was prosecuted, the
3 sentence of the Court is set by the legislature upon a
4 conviction, and so following that, that sentence set by
5 the legislature on indictment 2014-GS-32-603 the
6 sentence of the Court is that you be committed to the
7 State Department of Corrections for a period of 25 years
8 and pay a fine of \$100,000.00. Good luck to you, sir.

9 Mr. Caskey, I'm going to return this to you. And,
10 Madam Clerk, I'm going to return -- Do you have the
11 indictment?

12 THE CLERK: I have it.

13 THE COURT: Sign the verdict form and the indictment
14 sheet.

15 END OF PROCEEDINGS
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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

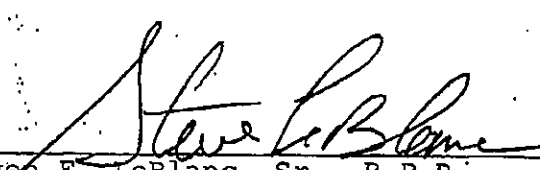
3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Court Reporter for the Eleventh Judicial Circuit
7 in and for the State of South Carolina, do hereby certify
8 that I reported the proceedings in the before captioned case
9 in the Court of General Sessions in and for the State of
10 South Carolina on the 11th day of February through the 12th
11 day of February, 2015.

12 I FURTHER CERTIFY that the forgoing 363 pages
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither related,
16 counsel to, nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand at
18 Lexington County, this 28th day of April, 2015.

19
20
21 
22 Steven E. LeBlanc, Sr., R.P.R.
23 Eleventh Circuit Court Reporter
24 State of South Carolina.
25

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LANCE LEON MILES,

APPELLANT

APPELLATE CASE NO. 2015-000308

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS..... 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUES ON APPEAL 5

STATEMENT OF THE CASE..... 6

STATEMENT OF THE FACTS..... 7

ARGUMENTS 16

CONCLUSION 34

TABLE OF AUTHORITIES

Cases

<i>Bradley v. State</i> , 316 S.C. 255, 449 S.E.2d 492 (1994)	29
<i>Calhoun v. State</i> , 460 So.2d 268 (Al. Ct. Crim. App. 1984).....	21
<i>Ducworth v. Neely</i> , 319 S.C. 158, 456 S.E.2d 896 (Ct. App. 1995).....	19
<i>Hair v. State</i> , 305 S.C. 77, 406 S.E.2d 332 (1991)	18
<i>Jackson v. Denno</i> , 378 U.S. 368 (1964)	passim
<i>Jackson v. Virginia</i> , 443 U.S. 307, 99 S.Ct. 2781 (1979)	23
<i>Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense</i> , 380 S.C. 219, 670 S.E.2d 371 (2008)	20
<i>Malloy v. Hogan</i> , 378 U.S. 1 (1964)	28
<i>Martin v. Commonwealth</i> , 409 S.W.2d (Ky. 2013)	21
<i>Miranda v. Arizona</i> , 384 U.S. 426 (1966)	passim
<i>Missouri v. Seibert</i> , 542 U.S. 600 (2004)	30, 31, 32
<i>Moran v. Burbine</i> , 475 U.S. 412 (1986).....	30
<i>Stansbury v. California</i> , 511 U.S. 318 (1994)	28
<i>State v. Asbury</i> , 328 S.C. 187, 493 S.E.2d 349 (1997).....	23
<i>State v. Attardo</i> , 263 S.C. 546, 211 S.E.2d 868 (1975)	25
<i>State v. Baucom</i> , 340 S.C. 339, 531 S.E.2d 922 (2000)	18
<i>State v. Bostick</i> , 392 S.C. 134, 708 S.E.2d 774 (2011).....	23, 24, 26
<i>State v. Brown</i> , 360 S.C. 581, 602 S.E.2d 392 (2004)	23
<i>State v. Buckmon</i> , 347 S.C. 316, 555 S.E.2d 402 (2001)	24
<i>State v. Campbell</i> , 297 S.C. 24, 374 S.E.2d 668 (1988).....	17

<i>State v. Coleman</i> , 742 S.E.2d 346 (NC Ct. App. 2013)	21
<i>State v. Cutler</i> , 374 S.C. 376, 264 S.E.2d 420 (1980)	18
<i>State v. Dudick</i> , 213 S.E.2d 458 (WV 1975)	22
<i>State v. Evans</i> , 354 S.C. 579, 582 S.E.2d 407 (2003)	28
<i>State v. Henry</i> , 63 P.3 490 (Id. Ct. App. 2003)	22
<i>State v. Huckabee</i> , 388 S.C. 232, 244, 694 S.E.2d 781, 787 (Ct. App. 2010)	17
<i>State v. Hudson</i> , 346 S.C. 139, 551 S.E.2d 253 (2001)	18
<i>State v. Lollis</i> , 343 S.C. 580, 541 S.E.2d 254 (2001)	23, 24
<i>State v. Mitchell</i> , 341 S.C. 406, 535 S.E.2d 126 (2000)	24
<i>State v. Mollison</i> , 319 S.C. 41, 459 S.E.2d 88 (Ct. App. 1995)	25
<i>State v. Morgan</i> , 352 S.C. 359, 574 S.E.2d 203 (Ct.App.2002)	17, 18
<i>State v. Navy</i> , 386 S.C. 294, 688 S.E.2d 838 (2010)	31, 32
<i>State v. Odems</i> , 395 S.C. 582, 720 S.E.2d 48 (2011)	23
<i>State v. Smith</i> , 304 S.C. 129, 403 S.E.2d, 162 (Ct. App 1991)	17
<i>State v. Stewart</i> , 278 S.C. 296, 295 S.E.2d 627 (1982)	23
<i>State v. Sweat</i> , 379 S.C. 367, 665 S.E.2d 645 (Ct. App. 2008)	21
<i>State v. Taylor</i> , 323 S.C. 162, 473 S.E.2d 817 (Ct. App. 1996)	17, 24
<i>State v. White</i> , 311 S.C. 276, 44 S.E.2d 741 (1947)	19, 25
<i>State v. Zetina-Torres</i> , 400 S.W.2d 343 (Mo. Ct. App. WD 2013)	21
<i>Thompson v. Keohane</i> , 516 U.S. 99 (1995)	29
<i>Way v. State</i> , 475 So.2d 239 (Fl. 1987)	21
<i>Whitner v. State</i> , 328 S.C. 1, 492 S.E.2d 777 (1997)	18
<i>Wilson v. State</i> , 718 S.E.2d 31 (Ga. Ct. App. 2011)	21

Yates v. United States, 135 S.Ct. 1074 (2015) 18

Young v. Commonwealth, 659 S.E.2d 308 (Va. 2008)..... 21

Statutes

720 Ill. Comp. Stat. Ann. § 570/401.1(a)..... 22

Mass. Gen. Laws Ann. ch. 94C, § 32A 22

Me. Rev. Stat. tit. 17-A, § 1103(1-A)..... 22

S.C. Code Ann. § 44-53-370(e)..... passim

Other Authorities

The Criminal Law of South Carolina (5th ed. 2007) 20, 25

Constitutional Provisions

S.C. Const. art. V, § 21 (2009)..... 17

U.S. Const. amend. V..... 28

U.S. Const. amend. XIV 28

STATEMENT OF ISSUES ON APPEAL

- I. The trial court erred reversibly by instructing the jury that the State did not need to prove that Appellant knew the drugs in the package he possessed were oxycodone; rather, for Appellant to be guilty of trafficking, the State only needed to prove that Appellant knew the package contained any illegal drugs.
- II. The trial erred reversibly by refusing to grant a directed verdict acquitting Appellant of trafficking in illegal drugs where the State presented no direct or substantial circumstantial evidence that Appellant knew that the package he possessed contained oxycodone as required by S.C. Code Ann. § 44-53-370(e)(3)(a).
- III. Appellant's right against self-incrimination as guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution was violated by the introduction of his statements to police where the first statement was the product of an interrogation by officers who failed to advise Appellant of his *Miranda*¹ rights and his subsequent statements were tainted by the initial violation and the product of an involuntary waiver.
 - A. The court erred in admitting statements made by Appellant prior to officers advising Appellant of his *Miranda* rights and obtaining a valid waiver of those rights where Appellant clearly was in custody based upon the totality of the circumstances.
 - B. The trial court erred in admitting statements made by Appellant subsequent to the officer advising him of his *Miranda* rights and obtaining an involuntary waiver of those rights because the statement was tainted by the initial violation where the same officer questioned Appellant in the same location with no temporal break between the post-advisement interrogation and the prior, unwarned interrogation.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

STATEMENT OF THE CASE

On March 10, 2014, the Lexington County Grand Jury indicted Appellant Lance L. Miles for one count of trafficking in illegal drugs. R. 326-327.

On February 11-12, 2015, Appellant proceeded to trial before the Honorable Thomas A. Russo and a jury. Robert "Theo" Williams represented Appellant, and Assistant Solicitors Micah Caskey and Casey Rankin represented the State.

The jury found Appellant guilty as charged. R. 314, ll. 2-13. The trial court sentenced Appellant to twenty-five years imprisonment. R. 321, ll. 1-8.

STATEMENT OF FACTS

On the morning of September 13, 2013, Agent Doug Edmonson of the Lexington County Sheriff's Department was at a FedEx warehouse near the Columbia Metropolitan Airport looking at arriving packages in an effort to determine if they contained drugs. R. 65, ll. 6 - 67, ll. 13. Edmonson would allege that one particular package had "indicators of maybe containing some type of illegal narcotic." R. 8, ll. 12-19.

According to Edmonson the package was suspicious because: (1) it was "excessively" taped, (2) it was being sent overnight from California, (3) the sender paid in cash; and (4) the sender waived the signature requirement for the recipient. R. 44, ll. 6-23. Edmonson noted the recipient, the address and released the package for delivery. *Id.* He then ran the name of the recipient through a law enforcement database. The name did not match the delivery address. R. 50, ll. 18 - p 51, ll. 23.

Based on this information, Edmonson decided to conduct surveillance of the delivery address. Edmonson enlisted the help of Lexington City Police Officer Marc Miramontes and Lexington County Deputy Travis Bass. Miramontes, sitting in an undercover vehicle, observed the package being delivered and witnessed a never-identified black female, who was talking on a cell phone, step out of the apartment where the package was delivered. R. 31, ll. 3 - 32, ll. 14.

The unknown female looked at the package briefly, then went back inside the apartment. Shortly thereafter, Miramontes saw Appellant walk up to the apartment and pick-up the package. *Id.* Appellant then began to walk towards the back of the apartment complex. Edmonson and Bass drove into the complex's parking lot to intercept Appellant. R. 19, ll. 1 - 21, ll. 19.

Both officers exited their vehicles with guns drawn and ordered Appellant "to the ground." R. 37, ll. 1 - 38, ll. 13. When Appellant failed to immediately do so, the officers forced him to the

ground and handcuffed him. Edmonson interrogated Appellant.² *Id.* Without administering *Miranda* warnings, Edmonson demanded Appellant explain what he was doing with the package and what he thought was in it. R. 10, ll. 4-25.

Appellant initially denied knowing what was in the package. *Id.* Edmonson posited that he believed the package contained narcotics. *Id.* Still handcuffed, Appellant conceded that the package might contain drugs. *Id.* At trial Edmonson would recall, “[a]fter he told me that it might have drugs in it, then I *Mirandized*.” *Id.* at ll. 22-25 (*emphasis added*). Edmonson then told Appellant “I said ‘we need to talk about this . . . I want to talk about this. I want you to tell me everything you know about this.’” R. 12, ll. 19-24. Edmonson alleged that Appellant still wanted to talk about the package.

Having extracted a confession from the recently tackled and handcuffed Appellant without administering *Miranda* warnings, Edmonson then reiterated his initial questions asking Appellant again what did he believe was in the package. R. 11, ll. 10 - 12, ll. 24. Appellant repeated that he believed the package probably contained drugs. *Id.* Crucially, Appellant did not know what kind of drugs were in the package. *Id.* There was no evidence that Edmonson explained to Appellant that his *pre-Miranda* statements were very likely inadmissible.

According to Edmonson, Appellant then gave permission for police to open the package. However, because he “has no problem going the extra mile,” Edmonson requested that a K-9 unit

² During trial, the assistant solicitor joked with Edmonson that he must be “the largest physicist in the world,” referencing Edmonson’s undergraduate degree. R. 81, ll. 10-11. Edmonson agreed, adding that he was “one of the strongest ones in the world. That’s a fact.” *Id.* at ll. 12-13.

Defense counsel noted on cross-examination that, at the time of his arrest, Appellant would have seen two cars converging on him, “one with a rather large strong black man” coming out and is immediately forced to the ground and handcuffed. R. 122, ll. 14-22. Edmonson agreed with the characterization. *Id.*

inspect the package. R. 21, ll. 21 - 22, ll. 21. Once deployed the dog gave a “positive alert” indicating that there may be narcotics in the package. *Id.*

Then, rather than opening the package, Edmonson called Deputy Dennis Tracy who completed a pre-formatted search warrant and presented it to a magistrate. R. 125, ll. 1- 126, ll. 12. The magistrate signed the search warrant and Edmonson finally opened the package. Inside the package were a tee-shirt, a teddy bear, and a wax candle. R. 131, ll. 8 -24; R. 136, ll. 16-24. Police broke open the wax candle and discovered three hundred tablets of oxycodone, with total drug weight amounting to nine grams of oxycodone. R. 251, ll. 8 - 252, ll. 12.

Approximately, thirty to forty-five minutes after he was seized and interrogated without being given *Miranda* warnings, law enforcement had Appellant provide written answers to a series of questions regarding the package. R. 176, ll. 8-18; R. 195, ll. 6-15. Edmonson would recall ordering Appellant, for a third time, to “tell me everything that you know about this and write it down for me.” R. 12, ll. 19-24. Appellant was then belatedly *Mirandized* for a second time. *Id.* Appellant’s written statement indicated that he believed there were drugs in the package, but did not know what kind of drugs they were. R. 13, ll. 3 - 15, ll. 12.

At law enforcement’s prompting, Appellant admitted that he had retrieved packages on three different occasions. R. 25, ll. 8-14. Further, Appellant stated that he did not know the legal name of the drug dealer that directed him to pick up the package. R. 107, ll. 2-13. In addition, police never asked him where he delivered packages on prior occasions and did not ask him where he was to deliver the package at issue.

Law enforcement never identified the black female located in the apartment and never attempted to contact California law enforcement to determine where the package had been sent from. R. 119, ll. 5 - 121, ll. 4. Police ended their investigation once Appellant was arrested. *Id.*

*Jackson v. Denno*³ Hearing

Appellant moved pre-trial to suppress the oral and written statements he made to police at the time of his arrest. The State conceded that Appellant's pre-*Miranda* oral statements made during custodial interrogation were inadmissible. R. 7, ll. 1-10. However, the State argued that the written statement, which was substantially similar to Appellant's pre-*Miranda* statements, was freely and voluntarily given. R. 41, ll. 4-19.

Edmonson, Miramontes, and Bass all testified. The officers agreed that Appellant gave his written statement approximately thirty to forty-five minutes after he was tackled and handcuffed by law enforcement. R. 176, ll. 8-18; R. 195, ll. 6-9. Edmonson was the only officer able to provide a complete timeline of Appellant's seizure and interrogation.

He conceded that he first interrogated Appellant without giving *Miranda* warnings. R. 19, ll. 16 - 21, ll. 19. Edmonson testified that he only *Mirandized* Appellant after Appellant stated, in response to Edmonson's questioning, that he believed that the package likely contained drugs. Edmonson then had Appellant repeat his confession post-*Miranda*. *Id.* Then for a second time Edmonson belatedly re-*Mirandized* Appellant prior to having him provide written responses to a series of questions - which were virtually identical to his pre-*Miranda* questions. R. 12, ll. 19 - 15, ll. 12.

The trial court ruled that the written statement was "entered into freely and voluntarily without coercion" and that Appellant had been adequately advised of his rights. R. 42, ll. 16-23. However, the court also ruled that Appellant's statements regarding other occasions when he had previously picked-up packages must be redacted from the statement before it was submitted to the jury. *Id.*

³ *Jackson v. Denno*, 378 U.S. 368 (1964).

Trial

Edmonson, Miramontes, and Bass all testified for the State. Deputy Ted Xanthakis also testified to the positive alert by the drug dog.⁴ R. 8, ll. 12 - 9, ll. 7.

Trial Testimony of Doug Edmonson

Edmonson was the State's first and most important witness. Edmonson testified as to the factors that made the package suspicious and how he assembled several other police officers to begin surveillance of the delivery address. R. 88, ll. 7-21. Edmonson recalled that after he was notified that Appellant had taken the package, he and Bass drove up to Appellant, exited their cars with guns drawn, and "secured" him by forcing him to the ground and handcuffing him. R. 94, ll. 3-19.

Edmonson claimed that he believed Appellant was going to run and that Appellant had attempted to discard the package once he saw police. R. 95, ll. 3-13. Edmonson testified that Appellant confessed that he knew "narcotics" were in the package and that he gave permission for Edmonson to open it. R. 95, ll. 1-19. Edmonson then explained the "extra-mile" that he went to have a dog inspect the package and to call in a search warrant. *Id.*

Over the renewed objection of defense counsel, the State introduced Appellant's written statement. R. 102, ll. 4 - 106, ll. 16. When reviewing the statement with Edmonson, the State stressed that Appellant admitted he knew the package contained drugs. R. 106, ll. 24 - 110, ll. 11. However, Appellant's statement never indicated that Appellant knew the drugs were oxycodone. *Id.* In fact, Edmonson conceded on cross-examination that even he believed the package contained

⁴ Curiously, Xanthakis testified that the dog was never tested on its ability to identify oxycodone. R. 228, ll. 3-8.

marijuana. R. 126, ll. 13 - 127, ll. 4. During cross-examination, Edmonson testified that Appellant initially denied knowing what was in the package. R. 123, ll. 1-12.

Additional *Voir Dire* Testimony on Appellant's Pre-Miranda Statements

During a break in questioning, the State argued that the defense had opened the door to all of Appellant's pre-Miranda statements by asking Edmonson if Appellant had initially denied knowing the contents of the package. R. 146, ll. 3-21. The State now claimed that Appellant had apparently made additional, lengthy pre-Miranda statements going beyond simply denying knowledge of the package's contents and then conceding that the package likely contained drugs. *Id*

Specifically, the State sought to introduce previously undisclosed pre-Miranda statements by Appellant that he was acting as a "mule" to support his family, that he handled packages before, that he had just been released from prison, and that he could not find a job. R. 149, ll. 20 - 150, ll. 6. On *voir dire*, Edmonson reiterated that Appellant did not know what types of drugs were in the package. R. 156, ll. 7-12.

The State claimed that they had not disclosed these statements because they had conceded that the all pre-Miranda statement were inadmissible. R. 158, ll. 2-8. However, now that the defense had opened the door on cross-examination, the statements provided proof of trafficking by conspiracy. R. 154, ll. 15 - 155, ll. 25. The trial court voiced concerns that the State could not prove that the other instances were sufficiently close in time to be admissible under the common scheme or plan exception. R. 160, ll. 13 - 161, ll. 7.

Conveniently, Edmonson claimed - for the first time - that Appellant had told him pre-Miranda that he had picked-up other packages "within that year." R. 161, ll. 18-25. Edmonson helpfully added, also for the first time, that when he interrogates people he always tries to get a timeline "so it won't be so vague." *Id*. Edmonson further alleged, again for the first time, that

Appellant confessed pre-*Miranda* to having done pick-ups between three and seven times in the past year, rather than the three times recorded in the written statement. R. 162, ll. 2-13.

A surprised defense counsel noted ruefully “that’s the first time we have heard this discussion It’s getting better.” R. 162, ll. 14-17. Ultimately, the trial court ruled that the prejudicial impact of Appellant’s alleged admission that he had previously picked-up packages outweighed its probative value. R. 163, ll. 4-13. The court did allow Edmonson to testify that Appellant told him he knew he was being paid to pick-up a package containing drugs. *Id.*

Directed Verdict

At the close of the State’s case, defense counsel moved for a directed verdict arguing that the State presented no evidence that Appellant knew that the drugs in the package were oxycodone. R. 264, ll. 22-24. The State countered that Appellant’s written statement, “clearly acknowledges that he knew the drugs were in there.” R. 265, ll. 3-6. Without taking further argument, the court denied the motion. *Id.* at ll. 7.

The defense rested without presenting any testimony and defense counsel renewed the directed verdict motion. R. 269, ll. 4-17. Defense counsel reiterated that the State had failed to present any evidence that Appellant knew that the package contained oxycodone and that all the testimony presented during the trial indicated that Appellant and the police believed the package contained marijuana. *Id.* The court again denied the motion. *Id.* at ll. 18-24.

Jury Instructions

Defense counsel argued that Appellant was entitled to an instruction that “before you commit a crime, you must have criminal intent to commit the crime, meaning you must have knowledge.” R. 273, ll. 23 - 295, ll. 3. The court disagreed, believing that the trafficking statute did not require an accused “to intend to possession oxycodone.” R. 274, ll. 4-15. Instead, the court

determined that trafficking only required Appellant to know that there are illegal drugs in the package. *Id.* at ll. 23-24.

Unsurprisingly, the State agreed with the court's reasoning. The assistant solicitor averred - without citing to any supporting legal authority - that, "the law is clear, as long as [Appellant] knows they are illegal drugs, we have satisfied that element." R. 276, ll. 12-17.

Jury Question

During its deliberation the jury submitted a two-part question: "[d]oes the State have to prove that the defendant knowingly brought into the State four grams or more of oxycodone or just any amount of illegal drugs in order to consider this trafficking?" R. 317, ll. 1-6. In response the court suggested:

[T]he State does not have to prove that the defendant knowingly brought into the state this particular drug, just that the statute requires knowing that it was illegal drugs. . . . [Appellant] [d]oes not have to know the particular drug that is in question. Simply that he knew they were illegal drugs. . . . My proposed response would be that the State does not have to prove that the Defendant knew the drugs were oxycodone, just that the package contained illegal drugs.

R. 317, ll. 7 - 318, ll. 4.

Defense counsel argued that the legislature created the trafficking statute, with its enhanced penalties, to punish individuals who knowingly possess a large amount of a certain drug; meaning that the defendant must know what drug they are possessing. R. 321, ll. 9-14. The court voiced concern that requiring the State to prove that a defendant knowingly trafficked in a certain drug would render the law unenforceable except in circumstances where the defendant confessed to knowing the type of drug he was trafficking. R. 322, ll. 11-24.

Defense counsel, looking to the trafficking statute, argued that the statute clearly required that the defendant "knowingly sells, et. cetera, then it says four grams or more of morphine." R. 323

5-15. Defense counsel noted that interpreting the statute in order to fit the facts of the case was improper and that straightforward reading of the trafficking statute evidenced that the legislature intended to require the State to prove that a defendant accused of trafficking, knowingly committed any of the enumerated acts with a specific drugs. R. 320, ll. 5-11; R. 323, ll. 5-15; S.C. Code Ann. § 44-53-370(e)(1)-(8).

The Court ultimately decided that because § 44-53-370(e)(3), the statute under which Appellant was indicted, was titled "Trafficking in Illegal Drugs" that the State need only prove that the Appellant knew that the package contained illegal drugs, not that it contained oxycodone. R. 323, ll. 16-22; R. 326, ll. 16 - 327, ll. 16. Focusing on the facts of Appellant's case, the court concluded that, "[y]ou also have to assume that the legislature didn't draft statutes that are meaningless." R. 324, ll. 11-13.

In summary the court noted that, "my interpretation is that the burden of proof on the State, it does not have to prove that a person knew that those particular drugs were oxycodone. . . Simply that they were illegal drugs." R. 326, ll. 21-25. The Court then instructed the jury: "the law in South Carolina is the State does not have to prove that the Defendant knew that the drugs in the package were oxycodone, just that he knew that the package contained illegal drugs." R. 329, ll. 21-25.

ARGUMENTS

I.

The trial court erred reversibly by instructing the jury that the State did not need to prove that Appellant knew the drugs in the package he possessed were oxycodone; rather, for Appellant to be guilty of trafficking, the State only needed to prove that Appellant knew the package contained any illegal drugs.

As seen during deliberations, the jury inquired if the State had to prove beyond a reasonable doubt that “the defendant knowingly brought into the State four grams or more of oxycodone or just any amount of illegal drugs in order to consider this trafficking?” R. 317, ll. 1-6. There was no evidence put forward at trial that Appellant knew the box contained oxycodone. Agent Edmonson recalled that Appellant admitted to him that he believed the package contained “narcotics.” R. 95, ll. 1-19. Crucially, Edmonson also recalled that Appellant told him he did not know what kind of drugs were in the package. R. 11, ll. 10-18; R. 21, ll. 13-15; R. 156, ll. 11-15. Edmonson personally believed that the package contained marijuana. R. 179, ll. 1-8.

Defense counsel argued that in order to be guilty of trafficking the State had to prove Appellant knew that the package contained oxycodone. R. 318, ll. 5 - 328, ll. 22. The trial court disagreed, specifically noting that § 44-53-370(e)(3) defined an offense known as “trafficking in illegal drugs” and reasoning that adopting the defense’s argument would render trafficking cases “unprosecutable.” *Id.* Thus, the court instructed the jury that “the State does not have to prove that the Defendant knew that the drugs in the package were Oxycodone, just that he knew that the package contained illegal drugs.” R. 329, ll. 22-25.

The trial court erred in erred reversibly by instructing the jury that the State did not need to prove that Appellant knew the drugs in the package he possessed were oxycodone for Appellant to be guilty of trafficking. The court’s instructions inaccurately stated the law and were based on a forced interpretation of § 44-53-370(e)(3), as well as South Carolina’s other trafficking statutes. The

clear legislative intent of the trafficking statutes is to *severely punish individuals who knowingly undertake a broad variety of activities involving certain amounts of specific drugs*. *State v. Taylor*, 323 S.C. 162, 164-166, 473 S.E.2d 817 (Ct. App. 1996) (court's erroneous instruction that defendant could be convicted of trafficking in crank if she acted with criminal negligence was not harmless where the trafficking statute specifically required that a defendant act "knowingly" and the main issue before jury was whether defendant was merely present but not participating in drug transaction or whether she was an active participant) (*emphasis added*).

Accordingly, to be guilty of trafficking oxycodone under § 44-53-370(e)(3), the State must prove beyond a reasonable doubt that Appellant knowingly possessed oxycodone and the trial court's instructions to the contrary were an incorrect statement of the law.

Jury Instructions and Rules of Statutory Construction

A trial judge must narrowly tailor his or her response to the specific question asked by the jury. *State v. Smith*, 304 S.C. 129, 132, 403 S.E.2d, 162, 164 (Ct. App 1991). The answer provided by a trial judge must not mislead the jury as to an element charged in the indictment or improperly suggest the answer to a question of fact. *Id.* at 131, 403 S.E.2d at 163. "Judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. art. V, § 21 (2009).

The Court has the responsibility to answer the jury's question correctly and in a way that clarifies the issues for the jury. *State v. Huckabee*, 388 S.C. 232, 244, 694 S.E.2d 781, 787 (Ct. App. 2010). In answering a question from the jury, the trial court must also keep in mind the juror's reliance on the Court to instruct them on the applicable law and the great weight that jurors give to the judge's pronouncements. *State v. Campbell*, 297 S.C. 24, 26, 374 S.E.2d 668, 669 (1988).

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct.App.2002) (*citing State v.*

Baucom, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct.App.1999) *cert. denied as improvidently granted*, *State v. Hudson*, 346 S.C. 139, 551 S.E.2d 253 (2001).

The legislature's intent should be ascertained primarily from the plain language of the statute. *Morgan* at 366, 574 S.E.2d 203, 547 S.E.2d at 206. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. *Id.*

Courts should consider, not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. *Whitner v. State*, 328 S.C. 1, 492 S.E.2d 777 (1997). The terms must be construed in context and their meaning determined by looking at the other terms used in the statute. *Hudson*, 336 S.C. 237, 519 S.E.2d 577.

Finally, penal statutes must be strictly construed against the State and in favor of the defendant. *Hair v. State*, 305 S.C. 77, 406 S.E.2d 332 (1991). Any doubt as to the proper construction should be resolved in favor of the citizen against the state. *State v. Cutler*, 374 S.C. 376, 264 S.E.2d 420 (1980); *see also Yates v. United States*, 135 S.Ct. 1074 (2015) (ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity).

To be Convicted of Trafficking under § 44-53-370(e)(3), the State must prove that Appellant knew that the drugs in the package he possessed were Oxycodone. It was reversible error for the trial court to instruct the jury that the State only needed to prove Appellant knew that he was possessing an illegal substance.

The structure of § 44-53-370(e)(3) makes clear that the legislature intended to punish individuals who are “knowingly⁵ in actual or constructive possession” of four grams or more of “any morphine, opium, salt, isomer, or salt of an isomer thereof.” South Carolina’s trafficking offenses are divided by drug type and then further divided by the amount of the specific drug with sentencing ranges also determined based, in part, on the number of the defendant’s prior offenses. § 44-53-370(e)(1)-(8). A plain reading of the § 44-53-370(e)(3) requires the State to prove that Appellant knew he was possessing oxycodone.

The trial court’s distress over the prospect of rendering trafficking statutes unenforceable was misplaced. R. 321, ll. 4 - 325, ll. 10. The Court’s preoccupation with the specific facts of Appellant’s case resulted in a forced and inconsistent interpretation of § 44-53-370(e)(3) at odds with the plain language of the trafficking statute and its purpose. In crafting its interpretation, the trial court repeatedly stressed that § 44-53-370(e)(3) defined a crime titled “trafficking in illegal drugs;” consequently, the State only had to prove that Appellant knew there were some kind of illegal drugs in the package. R. 329, ll. 13 - 351, ll. 14.

On the contrary, applying the court’s interpretation to the other seven drug specific subsections of § 44-53-370(e) demonstrates that the legislature clearly intended the “knowingly”

⁵ Our Supreme Court has held that “knowledge” can to be equated with a defendant having a “firm belief” or awareness of a particular element or fact. *State v. White*, 311 S.C. 276, 44 S.E.2d 741 (1947)(former receipt of stolen goods statute required that State to prove that defendant knew he was receiving stolen goods). It will often be proved by circumstantial evidence. *Id.* Our courts have rejected a definition of “knowledge” that encompasses “willful blindness” as it would improperly “broaden the meaning of knowledge.” *Ducworth v. Neely*, 319 S.C. 158, 456 S.E.2d 896 (Ct. App. 1995).

requirement to encompass not only the criminal act, but a defendant's knowledge of the specific drug being trafficked. For example, § 44-53-370(e)(1) defines "trafficking in marijuana;" § 44-53-370(e)(2) defines "trafficking in cocaine;" § 44-53-370(e)(8) defines "trafficking in MDMA;" and so on.

Moreover, the South Carolina Judicial Department's suggested jury charges support this consistent interpretation of § 44-53-370(e): "[t]he Defendant is charged with trafficking in _____ [drug]. The State must prove beyond a reasonable doubt that the Defendant knowingly sold . . . was knowingly in actual or constructive possession, [or] knowingly attempted to become in actual or constructive possession of _____ [drug]." *Suggested Jury Instructions - Criminal*, South Carolina Judicial Department (November 4, 2015), <http://www.sccourts.org/juryCharges/GSInstructions.2015.pdf>.

In contrast, the trial court's interpretation of § 44-53-370(e) would require the State to prove a defendant knew the specific drug at issue in every trafficking case, *except when a defendant is accused of trafficking under § 44-53-370(e)(3)*. See *Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008) (courts must reject an interpretation which leads to an absurd result that could not have been intended by the legislature) (*emphasis added*).

This inconsistent outcome could not have been the intent of the legislature. The specific drugs identified in § 44-53-370(e)(3) show that "trafficking in illegal drugs" is more accurately described as trafficking in heroin or opiates, or its derivatives. Heroin was among the first drugs - along with marijuana, cocaine, LSD, and crack cocaine, included in the trafficking statute. McAninch, Fairey & Coggiola, *The Criminal Law of South Carolina* 447 (5th ed. 2007).

Over the years, the General Assembly has revised the trafficking statute to increase the number of prohibited acts and to include new drugs such as GHB and MDMA. *Id.* The evolution and expansion of § 44-53-370(e) strongly suggests that the “trafficking in illegal drugs” title of § 44-53-370(e)(3) is simply ill-conceived and out-of-date. *State v. Sweat*, 379 S.C. 367, 665 S.E.2d 645 (Ct. App. 2008) (“language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose”).

The title of the statute does not indicate that the General Assembly intended to inexplicably lessen the degree of knowledge required when a person is found in possession of a qualifying amount of oxycodone as opposed to a qualifying amount of any other of the enumerated drugs.

Trafficking Statutes in Other States

States with trafficking statutes substantially similar to South Carolina’s require prosecutors to prove that the defendant knew what drug he was trafficking. *See Way v. State*, 475 So.2d 239 (Fl. 1987) (trafficking statute requires “knowing” possession of cocaine); *Young v. Commonwealth*, 659 S.E.2d 308 (Va. 2008) (defendant must have knowledge of the nature and character of the substance in his possession); *Calhoun v. State*, 460 So.2d 268 (Al. Ct. Crim. App. 1984) (prosecutors must prove that “the accused knew he was in possession of more than one kilogram of marijuana”); *Wilson v. State*, 718 S.E.2d 31 (Ga. Ct. App. 2011) (cocaine trafficking statute explicitly requires that defendant know substance possessed and know it is cocaine); *State v. Zetina-Torres*, 400 S.W.2d 343 (Mo. Ct. App. WD 2013) (must prove defendant knew methamphetamine was in vehicle and that defendant exercised control over it); *Martin v. Commonwealth*, 409 S.W.2d (Ky. 2013) (defendant must know that substance he possessed was cocaine); *State v. Coleman*, 742 S.E.2d 346 (N.C. Ct. App. 2013) (court erred in failing to give instruction that the State must prove defendant’s knowledge of the type of contraband he was carrying); *State v. Dudick*, 213 S.E.2d 458

(W.V. 1975) (must prove beyond a reasonable doubt defendant knew there was marijuana where police found it and that defendant exercised control over it); *State v. Henry*, 63 P.3 490 (Id. Ct. App. 2003) (trafficking requires defendant to have knowledge that the substance was methamphetamine).

Conversely, trafficking statutes that only require proof a defendant knew the substance trafficked was an illegal substance, rather than a specific drug, are organized and worded differently than § 44-53-370. For example, the Illinois' trafficking statute states:

Except for purposes as authorized by this Act, **any person who knowingly brings or causes to be brought into this State for the purpose of manufacture or delivery or with the intent to manufacture or deliver a controlled substance other than methamphetamine or counterfeit substance in this or any other state or country is guilty of controlled substance trafficking.**

720 Ill. Comp. Stat. Ann. § 570/401.1(a) (*emphasis added*).

Massachusetts' trafficking statute provides: "[a]ny person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute or dispense a **controlled substance in Class B** of section thirty-one shall be punished by imprisonment. . . ." Mass. Gen. Laws Ann. ch. 94C, § 32A (*emphasis added*). Likewise, Maine's trafficking statute holds, "[A] person is guilty of **unlawful trafficking in a scheduled drug** if the person intentionally or knowingly trafficks in what the person knows or believes to be a **scheduled drug**." Me. Rev. Stat. tit. 17-A, § 1103(1-A) (*emphasis added*).

Accordingly, the trial court committed reversible error by instructing the jury that the State did not need to prove beyond a reasonable that Appellant knowingly possessed oxycodone, rather the State needed only to prove that the Appellant knowingly possessed a controlled substance. This response was a misstatement of the applicable law and based on an improper construction of § 44-53-370(e) and § 44-53-370(e)(3).

II.

The trial erred reversibly by refusing to grant a directed verdict acquitting Appellant of trafficking in illegal drugs where the State presented no direct or substantial circumstantial evidence that Appellant knew that the package he possessed contained oxycodone as required by S.C. Code Ann. § 44-53-370(e)(3)(a).

Discussion

Our Supreme Court has held that when reviewing a trial judge's refusal of a defendant's motion for a directed verdict, that it is required to consider "not whether there is 'any' evidence to support the conviction, but whether viewing the evidence in the light most favorable to the prosecution, there is sufficient evidence to justify a rational trier of fact to find guilt beyond a reasonable doubt." *State v. Stewart*, 278 S.C. 296, 295 S.E.2d 627, 632 (1982), citing *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781 (1979); see, also, *State v. Asbury*, 328 S.C. 187, 493 S.E.2d 349 (1997). The accused is entitled to a directed verdict when the State fails to present evidence to support every element of the charged offense. See *State v. Brown*, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004); see also *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011).

When considering a motion for directed verdict of acquittal, "the trial court is concerned with the existence or non-existence of evidence, not its weight." *Brown*, 360 S.C. at 586, 602 S.E.2d at 395. "When the State fails to produce *substantial circumstantial evidence* that the defendant committed a particular crime, the defendant is entitled to a directed verdict." *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011) (*emphasis added*). In *Odems*, the Court cited *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011) and *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001) as "jurisprudence . . . instructive in explaining the proof required in cases built wholly on circumstantial evidence." *Id.* Specifically, the trial court "should grant a directed verdict motion when the evidence *merely raises a suspicion* that the accused is guilty." *Odems*, 395 S.C. at 586, 720 S.E.2d at 50 (*emphasis added*) (citation omitted).

“Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” *See State v. Buckmon*, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2001) (citing *Lollis*, 343 S.C. 580, 541 S.E.2d 254). Therefore, a case based solely upon circumstantial evidence should be submitted to the jury only “if there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.” *Bostick*, 392 S.C. at 139, 708 S.E.2d at 776-777 (citing *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)).

The evidence presented by the State merely raised the suspicion of Appellant’s guilt, as the State failed to present evidence any substantial circumstantial evidence that Appellant knew that the package he was taking possession of contained oxycodone. R. 11, ll. 10-18; R. 21, ll. 13-15; R. 156, ll. 11-15.

Appellant was indicted for trafficking in illegal drugs under S.C. Code Ann. § 44-53-0370(e)(3)(a):

That [Appellant] did in Lexington County, South Carolina on or about September 23, 2013 **knowingly, intentionally, willfully**, and unlawfully sell, cultivate, manufacture, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or **was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession** of any morphine, salt, isomer, or salt of an isomer thereof . . . To Wit: **Oxycodone**, in a quantity of four (4) grams or more but less than fourteen (14) grams.

R. 347-348 (*emphasis added*). Section 44-53-370(e) requires a defendant to act “knowingly, mere criminal negligence is not sufficient.” *Taylor*, 323 S.C. at 164-166 (Ct. App. 1996) (trafficking statute specifically required defendant act “knowingly”). “If there is a reasonable doubt as to whether the defendant was aware of the nature of substance possessed or being manufactured, [the

defendant] would not be guilty of the offense. Willaim S. McAninch, W. Gaston Fairey & Lesley M. Coggiola, *The Criminal Law of South Carolina* 448 - 449 (5th ed. 2007)

The State presented no direct or substantial circumstantial evidence that Appellant knew that the package he took possession of contained oxycodone. Edmonson testified that Appellant told him that he believed the package contained narcotics, but that he did not know what kind. R. 13, ll. 3 - 15, ll. 12. There was no testimony that Appellant knew or had any reason to know that the package contained oxycodone.

The trial court did not explain his reason for denying the motion, but, in crafting an answer to a question from the jury on the same issue, the court expounded on its reasoning and concerns to defense counsel:

Let me ask you this: Because I also believe that under statutory interpretation you have to go with the presumption that the legislature did not enact a statute that is unenforceable or unprosecutable in this case of a criminal statute. Let's use this case as an example. **If we use your interpretation of the statute and we use the facts of this case based on what has been presented in this case, then it would have required this Court to direct a verdict of acquittal because there is no way that even under the intent statute it even talks about how you can't cut open a person's brain to figure out what's in there.**

R. 332, ll. 2-8.

Absent a confession or first-hand witness, a defendant's guilty knowledge must often be proved by circumstantial evidence. *State v. White*, 311 S.C. 276, 44 S.E.2d 741 (1947). "The knowledge element may be proved circumstantially by evidence of acts, declarations, or conduct of the accused from which an inference may be drawn that the accused knew of the existence of the prohibited substance." *State v. Mollison*, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995) (citing *State v. Attardo*, 263 S.C. 546, 211 S.E.2d 868 (1975)).

As discussed above, the trial court's instructed to the jury that "the State does not have to prove that the Defendant knew that the drugs in the package were Oxycodone, just that he knew that the package contained illegal drugs" wrongly stated the law. R. 329, ll. 22-25. To be guilty of trafficking, the State must prove that Appellant knowingly committed one of the prohibited acts, knew the specific drug involved, and that the total amount of that drug exceeded the drug-specific statutory minimums. § 44-53-370(e)(1) - (8). The trial court's denial of Appellant's directed verdict motion rests on the same improper statutory interpretation.

The State presented no direct or substantial circumstantial evidence reasonably tending to prove Appellant's guilt, or from which his guilt may be fairly and logically deduced. *See Bostick*, 392 S.C. at 139, 708 S.E.2d at 776-777. Accordingly, the trial court erred in refusing to grant a directed verdict on Appellant's indictment for trafficking in oxycodone where the State failed to present any evidence that Appellant was "knowingly and intentionally in actual or constructive possession" of oxycodone, as required under § 44-53-370(e)(3).

III.

Appellant's right against self-incrimination as guaranteed by the Fifth and the Fourteenth Amendments to the U.S. Constitution was violated by the introduction of his statements to police where the first statement was the product of an interrogation by officers who failed to advise Appellant of his *Miranda*⁶ rights and his subsequent statements were tainted by the initial violation and the product of an involuntary waiver.

Police interrogated Appellant immediately after forcing him to the ground and placing him in handcuffs. The interrogating officer, Doug Edmonson, admitted that he confronted Appellant about the contents of the package before administering *Miranda* warnings. R. 10, ll. 4-25. Appellant first denied any knowledge of the package's contents, but under continued interrogation, eventually admitted that he believed the package contained illegal drugs. *Id.*

Approximately thirty to forty-five minutes after being seized by law enforcement, Appellant was finally advised of his *Miranda* rights and signed a waiver of those rights. R. 12, ll. 19 - 15, ll. 12. There was no break in the interrogation. At law enforcement's instigation, Appellant made a written statement virtually identical to the admissions he made pre-*Miranda*. *Id.*

During the *Jackson v. Denno* hearing, Edmonson claimed that the pre-*Miranda* interrogation was limited to a few questions about the contents of the package. R. 10, ll. 4-25. The State conceded that the pre-*Miranda* statements were inadmissible. R. 41, ll. 4-19. However, the State argued that the post-*Miranda* statements were freely given and thus admissible. *Id.* The trial court agreed. R. 42, ll. 16-23.

After Edmonson was cross-examined at trial, the State sought to introduce the pre-*Miranda* statements arguing the defense had opened the door to those statements. R. 146, ll. 3-21. The State revealed and alleged for the first time that the pre-*Miranda* interrogation was significantly more extensive than portrayed at the *Denno* hearing and that Appellant had, according to the State,

⁶ *Miranda v. Arizona*, 384 U.S. 436 (1966).

implicated himself in a year-long drug trafficking conspiracy. R. 149, ll. 20 - 150, ll. 6. Ultimately, the trial court ruled portions of Appellant's *pre-Miranda* statements where Appellant allegedly claimed that he knew "he was being paid to pick up a box of drugs" and that he was unable to find employment were admissible. R. 148, ll. 15-21; R. 163, ll. 4-13.

Discussion

- A. The court erred in admitting statements made by Appellant prior to officers advising Appellant of his *Miranda* rights and obtaining a valid waiver of those rights where Appellant clearly was in custody based upon the totality of the circumstances.**

The Fifth Amendment provides that no person shall be compelled to be a witness against himself in a criminal matter. U.S. Const. amend. V. The Fourteenth Amendment secures against state invasion of the same privilege that the Fifth Amendment guarantees against federal infringement. *Malloy v. Hogan*, 378 U.S. 1, 8 (1964); *see also* U.S. Const. amend. XIV.

"[A] defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession." *Jackson v. Denno*, 378 U.S. 368, 376 (1964). Prior to any questioning by law enforcement, "the person must be warned that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to the presence of an attorney, either retained or appointed." *Miranda*, 384 U.S. at 444.

"Law enforcement must state the *Miranda* warnings 'after a person has been taken into custody or otherwise deprived of his freedom of action in any way.'" *State v. Evans*, 354 S.C. 579, 583, 582 S.E.2d 407, 410 (2003) (quoting *Miranda*, 384 U.S. at 444). Custodial interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 445; *see also Stansbury v. California*, 511 U.S. 318, 322 (1994).

Determining whether a defendant is in custodial interrogation is an objective assessment of the facts and circumstances surrounding the questioning:

[W]hat were the circumstances surrounding the interrogation; and . . . given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave. . . . [T]he court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with formal arrest.

Thompson v. Keohane, 516 U.S. 99, 112 (1995); see *Bradley v. State*, 316 S.C. 255, 257, 449 S.E.2d 492, 493-494 (1994). In order to introduce a statement produced during custodial interrogation, the prosecution must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with *Miranda v. Arizona*, 384 U.S. 436 (1966); see also *State v. Moses*, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010).

Clearly, Appellant was in custody when Edmonson interrogated him. Bass and Edmonson (the self-described largest and strongest physicist/police officer in the world) exited their vehicles with guns drawn and ordered Appellant to the ground. R. 37, ll. 1- 38, ll. 13. Appellant was physically forced to the ground and handcuffed. *Id.* Edmonson's interrogation started immediately thereafter.

Accordingly, the court erred in permitting the introduction of any portion of Appellant's pre-*Miranda* statements due to the officer's failure to inform Appellant of his rights prior to subjecting Appellant to a custodial interrogation.

- B. The trial court erred in admitting statements made by Appellant subsequent to the officer advising him of his *Miranda* rights and obtaining an involuntary waiver of those rights because the statement was tainted by the initial violation where the same officer questioned Appellant in the same location with no temporal break between the post-advisement interrogation and the prior, unwarned interrogation.**

The waiver has two distinct dimensions. It must be "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception," and it must

be “made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Moran v. Burbine*, 475 U.S. 412, 421 (1986).

In *Missouri v. Seibert*, 542 U.S. 600 (2004), the United States Supreme Court confronted a case very similar to the present case. Officers awakened Seibert at 3 a.m. and transported her to the police station. There, an officer questioned Seibert for thirty to forty minutes without giving her *Miranda* warnings and obtained an admission from Seibert that she knew a mentally-ill teenager living with her family was meant to die in a house fire, which was started to cover up the death of Seibert’s own disabled child. The officer then gave Seibert a twenty-minute break. *Id.* at 604-605.

When the interrogation resumed, the officer turned on a tape recorder and gave Seibert the *Miranda* warnings. He also obtained a written waiver from her. The officer restarted questioning by confronting Seibert with her pre-warning statements. Again, the officer obtained the desired answer – that Seibert knew the teenager was supposed to die in the fire. *Id.* at 605.

At trial, the judge suppressed Seibert’s pre-warning statements, but admitted the post-warning statements. *Id.* at 606. The United States Supreme Court held this was in error because “[t]he object of question-first is to render *Miranda* warnings ineffective by waiting for a particularly opportune time to give them, after the suspect has already confessed.” *Id.* at 611. The Court held “when *Miranda* warnings are inserted in the midst of coordinated and continuing interrogation, they are likely to mislead and ‘deprive a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them.’” *Id.* at 613-614 (quoting *Moran*, 475 U.S. at 424).

The facts presented in *Seibert* were that the unwarned interrogation was conducted in the police station, and “the questioning was systematic, exhaustive, and managed with psychological skill.” *Id.* at 602. Officers paused only for twenty minutes before resuming questioning after

administering the warnings and “said nothing to counter the probable misimpression that the advice that anything Seibert said could be used against her also applied to the details of the inculpatory statement previously elicited.” *Id.* at 617.

The style of questioning, including repeated references to past responses, fostered the impression that resumed questioning was a continuation of the earlier interrogation. *Id.* at 616 - 617. Thus, “these circumstances must be seen as challenging the comprehensibility and efficacy of the *Miranda* warnings to the point that a reasonable person in the suspect’s shoes would not have understood them to convey a message that she retained a choice about continuing to talk.” *Id.*

Our Supreme Court confronted this issue in *State v. Navy*, 386 S.C. 294, 688 S.E.2d 838 (2010). After the death of his son, Navy gave a statement to police at the hospital. Officers later learned that the cause of death was smothering or suffocation. *Id.* at 297, 688 S.E.2d at 839. The next day, Navy was driven by police to the station and gave a statement in which he described the child having breathing problems and his ensuing panic. *Id.* at 297-298, 688 S.E.2d at 839.

Afterwards, officers informed Navy that the child had suffocated and that there was evidence of broken ribs. Navy was told he was not under arrest. The officers then asked follow-up questioning. “At this juncture, the nature of the interrogation and [Navy]’s status changed, and what had begun as a voluntary question and answer session matured into custodial interrogation.” In this second statement, Navy admitted to popping the child on the back and possibly patting the child on the mouth. *Id.* at 298-299, 688 S.E.2d at 840.

After a short break, officers then advised Navy of his *Miranda* warnings. Thereafter, Navy gave his second statement, this time in writing. The statement mirrored the first adding only that Navy admitted to placing his hand over the child’s mouth to stop the crying multiple times and to “popping” the child on the back. *Id.* at 299-300, 688 S.E.2d at 840. Officers contacted the

pathologist who stated the actions detailed in Navy's second statement could not have caused the child's death. In response, officers obtained a third written statement from Navy admitting that he could have held his hand over the child's nose and mouth for longer than he first said. *Id.* at 300, 688 S.E.2d at 840-841.

The Court held the first statement at the hospital was admissible because there was evidence to support the trial judge's finding that Navy was not in custody. However, the second and third statements were inadmissible as they were obtained in violation of *Seibert*. Courts examine four factors to determine whether a constitutional violation occurred in this setting, including (1) the completeness and detail of the questions and answers in the first interrogation; (2) the timing and setting of the first and second interrogations; (3) the continuity of police personnel; and (4) the degree to which the interrogator's questions treated the second round as continuous with the first. *Navy*, 386 S.C. at 302, 688 S.E.2d at 841-842.

The Court found the officers initiated the questioning with the knowledge of the cause of death and with the intention of eliciting a confession. *Id.* at 303, 688 S.E.2d at 842. Once Navy was at the police station, officers "began an unwarned custodial interrogation designed to elicit incriminating information." *Id.* After receiving incriminating statements, officers permitted Navy a break, and then administered *Miranda* warnings. The interrogation resumed with the same officers, who made no attempt to cure by warning Navy that his statement made prior to the administration of the warnings may not be admissible or by providing a substantial break in time or change in circumstances. The Court found all four *Seibert* factors were satisfied. *Navy*, 386 S.C. at 303, 688 S.E.2d at 842.

The interrogation of Appellant presents a similar factual scenario as in *Seibert* and *Navy*. Officers interrogated Appellant for an extended period of time prior to advising him of his rights. At

the onset of the pre-advisement interrogation, Appellant initially denied knowing the contents of the package. R. 10, ll. 4-25. Unsatisfied with this answer, Agent Edmonson continued to probe Appellant, telling him that he believed there were drugs in the package. *Id.*

Appellant eventually conceded that there were very likely drugs in the package. *Id.* In response to continued questioning, Appellant also allegedly admitted that he had previously picked-up other packages in the past year, and that he did so because he could not find other employment to support his family. R. 149, ll. 20 - 150, ll. 6. As law enforcement was not forthcoming at trial regarding the extent of its pre-*Miranda* interrogation, the exact contours of the pre-*Miranda* interrogation are unclear.

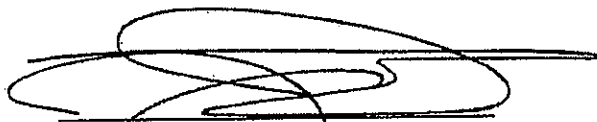
What is clear is that after obtaining a written waiver of Appellant's rights, the same officer, Edmonson, continued to ask Appellant the same questions and Appellant's post-*Miranda* statements were virtually identical to his pre-*Miranda* statements. Moreover, there was no break whatsoever between the unwarned statements and the warned statements as Appellant made his written statement only thirty to forty-five minutes after being tackled and handcuffed by police. R. 176, ll. 8-18; R. 195, ll. 6-15. The setting of the interrogation did not change. The arresting officers did not attempt to cure their error by informing Appellant that his pre-*Miranda* statements could not be used against him.

Accordingly, the trial court erred reversibly in admitting Appellant's post-*Miranda* statements because the statements were tainted by the initial violation as the same officers questioned Appellant in the same location and in close temporal proximity to the prior unwarned interrogation.

CONCLUSION

Based on the foregoing arguments, Appellant Lance L. Miles respectfully requests that this Court reverse Appellant's conviction and remand this case to the Lexington County Court of General Sessions (Issues I and III), or in the alternative, issue an Order of acquittal (Issue II).

Respectfully submitted,


John H. Strom
Appellate Defender

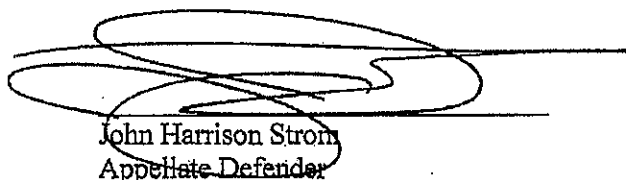
ATTORNEY FOR APPELLANT

This 2nd day of June, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief 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."

June 2nd, 2016



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

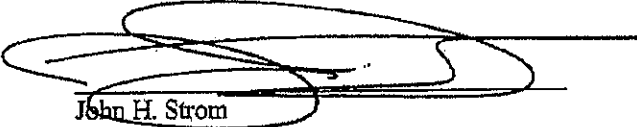
LANCE LEON MILES,

APPELLANT

APPELLATE CASE NO. 2015-000308

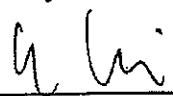
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Megan Harrigan Jameson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2nd day of June, 2016.


John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of June, 2016.


_____(L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of AppealsAPPEAL FROM LEXINGTON COUNTY
Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2015-000308

THE STATE,

Respondent,

vs.

LANCE LEON MILES,

Appellant.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
ARGUMENT.....	8
I. The trial court properly instructed the jury that the State only needed to prove Appellant knew the package contained illegal drugs to convict him of trafficking in illegal drugs, where the jury asked the court during deliberations whether the State needed to prove Appellant knew the package contained Oxycodone specifically or illegal drugs generally and the court properly and correctly responded to the jury's question.	11
II. The trial court properly denied Appellant's motion for a directed verdict and submitted the case to the jury where the State presented substantial evidence from which the jury could fairly and logically find Appellant knowingly possessed more than four grams of illegal drugs as required for trafficking pursuant to S.C. Code Ann. § 44-53-370(e)(3)(a).	19
III. The trial court properly admitted Appellant's statements to law enforcement into evidence.	26
CONCLUSION	42

TABLE OF AUTHORITIES

Cases

<u>Burton v. Cnty. of Abbeville</u> , 312 S.C. 359, 440 S.E.2d 396 (Ct. App. 1994).....	30
<u>Crawford v. United States</u> , 375 F.2d 332 (D.C. Cir. 1967)	20, 21
<u>Gilstrap v. S.C. Budget and Control Board</u> , 310 S.C. 210, 423 S.E.2d 101 (1992)	13
<u>In re McCracken</u> , 346 S.C. 87, 551 S.E.2d 235 (2001)	12
<u>Jackson v. Denno</u> , 378 U.S. 368 (1964)	6
<u>Miranda v. Arizona</u> , 384 U.S. 436 (1966)	passim
<u>Missouri v. Seibert</u> , 542 U.S. 600 (2004)	33, 35, 36, 37, 38, 39, 40
<u>Sheppard v. State</u> , 357 S.C. 646, 594 S.E.2d 462 (2004)	12
<u>State v. Taylor</u> , 323 S.C. 162, 473 S.E.2d 817 (Ct. App. 1996)	18, 21, 22
<u>State v. Adcock</u> , 194 S.C. 234, 9 S.E.2d 730 (1940)	31
<u>State v. Adkins</u> , 353 S.C. 312, 577 S.E.2d 460 (Ct. App. 2003)	12
<u>State v. Anderson</u> , 322 S.C. 89, 470 S.E.2d 103 (1996)	12
<u>State v. Attardo</u> , 263 S.C. 546, 211 S.E.2d 868 (1975)	14, 16, 22, 23, 24, 25
<u>State v. Baccus</u> , 367 S.C. 41, 625 S.E.2d 216 (2006)	11, 34
<u>State v. Barksdale</u> , 311 S.C. 210, 428 S.E.2d 498 (Ct. App. 1993)	12
<u>State v. Beam</u> , 336 S.C. 45, 518 S.E.2d 297 (Ct. App. 1999)	31
<u>State v. Bennett</u> , 415 S.C. 232, 781 S.E.2d 352 (2016)	20, 24
<u>State v. Buckner</u> , 341 S.C. 241, 534 S.E.2d 15 (Ct. App. 2000)	12
<u>State v. Burkhardt</u> , 350 S.C. 252, 565 S.E.2d 298 (2002)	12
<u>State v. Butler</u> , 407 S.C. 376, 755 S.E.2d 457 (2014)	19
<u>State v. Cherry</u> , 361 S.C. 588, 606 S.E.2d 475 (2004)	20
<u>State v. Curtis</u> , 356 S.C. 622, 591 S.E.2d 600 (2004)	33
<u>State v. Ezell</u> , 321 S.C. 421, 468 S.E.2d 679 (Ct. App. 1996)	21
<u>State v. Foust</u> , 325 S.C. 12, 479 S.E.2d 50 (1996)	12
<u>State v. Freeland</u> , 106 S.C. 220, 91 S.E. 3 (1916)	14, 17, 25
<u>State v. Fripp</u> , 396 S.C. 434, 721 S.E.2d 465 (Ct. App. 2012)	30
<u>State v. Gaster</u> , 349 S.C. 545, 564 S.E.2d 87 (2002)	20, 25, 34
<u>State v. Gore</u> , 318 S.C. 157, 456 S.E.2d 419 (Ct. App. 1995)	14
<u>State v. Hernandez</u> , 382 S.C. 620, 677 S.E.2d 603 (2009)	22
<u>State v. Holland</u> , 385 S.C. 159, 682 S.E.2d 898 (Ct. App. 2009)	12
<u>State v. Kelley</u> , 319 S.C. 173, 460 S.E.2d 368 (1995)	34
<u>State v. Kennedy</u> , 143 S.C. 318, 141 S.E. 559 (1928)	32
<u>State v. Littlejohn</u> , 228 S.C. 324, 89 S.E.2d 924 (1955)	20, 21
<u>State v. Mansfield</u> , 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000)	31
<u>State v. McCray</u> , 332 S.C. 536, 506 S.E.2d 301 (1998)	30
<u>State v. McDonald</u> , 343 S.C. 319, 540 S.E.2d 464 (2000)	34
<u>State v. Mollison</u> , 319 S.C. 41, 459 S.E.2d 88 (Ct. App. 1995)	14, 22, 24
<u>State v. Myers</u> , 359 S.C. 40, 596 S.E.2d 488 (2004)	34, 40

<u>State v. Navy</u> , 386 S.C. 294, 688 S.E.2d 838 (2010).....	33, 37,38, 39, 40
<u>State v. Nichols</u> , 325 S.C. 111, 481 S.E.2d 118 (1997).....	13
<u>State v. Nix</u> , 288 S.C. 492, 343 S.E.2d 627 (Ct. App. 1986).....	20
<u>State v. Page</u> , 378 S.C. 476, 663 S.E.2d 357 (Ct. App. 2008).....	31
<u>State v. Quattlebaum</u> , 338 S.C. 441, 527 S.E.2d 105 (2000).....	34
<u>State v. Rabon</u> , 275 S.C. 459, 272 S.E.2d 634 (1980).....	35
<u>State v. Raffaldt</u> , 318 S.C. 110, 456 S.E.2d 390 (1995)	22
<u>State v. Rice</u> , 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007)	32
<u>State v. Robinson</u> , 310 S.C. 535, 426 S.E.2d 317 (1992).....	13
<u>State v. Rochester</u> , 301 S.C. 196, 391 S.E.2d 244 (1990)	34
<u>State v. Rye</u> , 375 S.C. 119, 651 S.E.2d 321 (2007).....	12
<u>State v. Simmons</u> , 384 S.C. 145, 682 S.E.2d 19 (Ct. App. 2009).....	11, 35
<u>State v. Sweat</u> , 386 S.C. 339, 688 S.E.2d 569 (2010).....	16
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001).....	34
<u>State v. Young</u> , 364 S.C. 476, 613 S.E.2d 386 (Ct. App. 2005).....	31
<u>Turner v. United States</u> , 396 U.S. 398 (1970)	17
<u>United States v. Giovannetti</u> , 919 F.2d 1223 (7th Cir. 1990)	17, 18
<u>United States v. Jewell</u> , 532 F.2d 697 (9th Cir. 1976).....	17, 18

Statutes

S.C. Code Ann. § 44-53-370.....	passim

STATEMENT OF ISSUES ON APPEAL

- I. The trial court properly instructed the jury that the State only needed to prove Appellant knew the package contained illegal drugs to convict him of trafficking in illegal drugs, where the jury asked the court during deliberations whether the State needed to prove Appellant knew the package contained Oxycodone specifically or illegal drugs generally and the court properly and correctly responded to the jury's question.
- II. The trial court properly denied Appellant's motion for a directed verdict and submitted the case to the jury where the State presented substantial evidence from which the jury could fairly and logically find Appellant knowingly possessed more than four grams of illegal drugs as required for trafficking pursuant to S.C. Code Ann. § 44-53-370(e)(3)(a).
- III. The trial court properly admitted Appellant's statements to law enforcement into evidence.

STATEMENT OF THE CASE

On September 13, 2013, Lexington County law enforcement officers arrested Appellant Lance Leon Miles following the controlled delivery and subsequent seizure of three hundred tablets of Oxycodone concealed inside a package. In March 2014, the Lexington County Grand Jury indicted Appellant for trafficking in illegal drugs. On February 11, 2015, Appellant proceeded to a jury trial before the Honorable Thomas A. Russo. On February 12, 2015, the jury convicted Appellant as indicted. Judge Russo sentenced Appellant to twenty-five years imprisonment. Thereafter, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

During the early morning hours of September 13, 2013, Agent Douglas Edmonson, a narcotics investigator with the Lexington County Sheriff's Department, was working at the Federal Express shipping and distribution center in West Columbia. (R. 8, 16, 43-44, 80-83). Edmonson was a member of the Lexington County Multi Agency Narcotics Team and focused solely on parcel interdiction and package monitoring at major shipping companies to thwart narcotics trafficking. (R. 8-9, 16, 81-85, 185). Edmonson's shift began routinely alongside fellow officer Dennis Tracy, with the two watching the conveyor belt for suspicious packages. (R. 16-17, 82-87). During the morning, Edmonson noticed a particular box with excessive tape that roused his suspicions. (R. 8, 16-17, 44, 82-87). In accordance with standard procedures, Edmonson used his cellular phone to photograph the package's label for further investigation in the future and allowed the package to continue down the conveyor belt. (R. 8, 45, 85-88).

A few hours later, Edmonson resumed his investigation into the suspicious package. (R. 87-88). He and Tracy ran information from the label through a law enforcement database and determined the listed information for the sender and recipient was either vague or inaccurate. (R. 45-46, 88, 116). Edmonson also noted the shipper sent the box overnight from California to South Carolina via the United States Postal Service at a considerable expense. (R. 44-45, 112-15). Recognizing these factors as common signs that the package contained illegal drugs, Edmonson decided to investigate further. (R. 44, 88). Edmonson set up a team with fellow investigators, including Travis Bass and Marc Miramontes, to conduct surveillance at the delivery location, ■■■ Villas Court. (R. 9, 88).

At approximately 9:30 a.m., Miramontes drove an undercover vehicle to the Villas Court complex and parked in a location enabling him to view the apartment where the delivery was to take place and the central mailbox unit for the complex. (R. 90, 199-201). Edmonson and Bass drove two separate undercover vehicles to the complex and parked out of view. (R. 90-91). The three communicated by radio, with Miramontes relaying his observations to Edmonson and Bass. (R. 90-91).

Miramontes watched as the mail carrier filled various boxes and noticed a man, later identified as Appellant, come out of an apartment, get on a bicycle, ride to the mailboxes to retrieve mail, and ride back to the same apartment. (R. 201). Appellant then exited his apartment again and milled around the parking lot until the mail carrier finished filing the boxes. (R. 201). Once finished, the mail carrier proceeded to deliver the packages too large to fit into the boxes, including the suspicious package Edmonson identified earlier that morning. (R. 201-02). The mail carrier drop the suspicious package on the doorstep of ■ Villa Court, rang the doorbell, and left. (R. 201-02). Miramontes observed Appellant, who on his cellular phone, walking towards the apartment. (R. 201-02). He relayed this information to Edmonson and Bass by radio. (R. 201-02). Simultaneously, a young woman on her cellular phone came out of the apartment, bent down to look at the box, but went inside without picking up or otherwise touching the box. (R. 201-02). Appellant approached the apartment, picked up the box, and started walking back towards his apartment. (R. 202).

Edmonson and Bass converged on Appellant, who threw the package near a vehicle and began looking around as if he was trying to find an escape route. (R. 92-94, 122, 187-88). Bass exited his vehicle with his gun drawn and ordered Appellant to the ground. (R. 121, 187-88). When Appellant failed to comply, Bass assisted Appellant to

the ground and placed him in handcuffs. (R. 94, 121, 188). Edmonson identified himself as law enforcement and asked Appellant what was in the package. (R. 94-95). Appellant indicated the package likely contained illegal drugs. (R. 95, 170). Edmonson read Appellant his rights pursuant to Miranda¹ and Appellant orally waived his rights. (R. 9-10, 94-95). Appellant acknowledged the package likely contained narcotics and gave consent to open the package. (R. 11, 95). Edmonson elected to call a canine unit trained to identify narcotics before opening the package. (R. 95).

Canine handler Ted Xanthakis and his dog Arcos arrived on the scene shortly thereafter. (R. 123, 218-19). Xanthakis circled Arcos around the vehicle near the package and reported that Arcos's behaviors indicated the package contained narcotics. (R. 223-24). Xanthakis informed Edmonson of Arcos's response and Edmonson took control of the package. (R. 223-24).

Edmonson contacted his partner, Dennis Tracy, who was working off-site, and asked him to get a search warrant for the package. (R. 46-47, 54-61, 96-97). Tracy obtained a search warrant from a magistrate and called Edmonson while still before the magistrate to tell him the search warrant had been signed. (R. 46-47, 54-61, 96-97, 125-26). Edmonson opened the package and saw that it contained a gift bag, a stuffed toy, child's t-shirt, and a wax candle. (R. 97-99, 132, 136-37, 224-25). Edmonson broke apart the wax candle and found three-hundred Oxycodone pills hidden inside three separate plastic bags. (R. 99-101, 133-35, 224-25).

After discovering the pills, Edmonson asked Appellant what was going on and Appellant agreed to give a statement. (R. 100-01). Edmonson advised Appellant of his Miranda rights for second time and Appellant acknowledged in writing he understood

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

those rights and wished to waive them. (R. 101-02, 106-08). Appellant gave a written statement that he was picking up the package for one-hundred dollars, was to deliver it to its owner, and knew it contained illegal drugs. (R. 106-07). Following his statement, Edmonson transferred Appellant to the Lexington County Detention Center. (R. 110).

Edmonson took the pills into his custody and placed them into an evidence bag, commonly referred to as a BEST Kit, before turning it over to the Lexington County Sheriff's Department evidence custodians. (R. 110-12). The pills remained sealed in the BEST Kit within the custody of the Lexington County Sheriff's Department evidence custodians until chemist Emily Homer-Conrad removed the kit for testing on February 7, 2014. (R. 238-41). Homer-Conrad tested the pills on February 10 and 18, 2014, and determined the pills were Oxycodone. In total, the three-hundred pills amounted to nine grams of Oxycodone, a Schedule II drug. (R. 244-60).

Appellant proceeded to trial on February 12, 2015. During pre-trial hearings, Appellant moved to suppress his oral and written statements made at the scene and the trial court conducted a Jackson v. Denno² hearing. (R. 7). During the hearing, the State presented testimony from Edmonson, Miramontes, and Bass. Edmonson testified he and Bass ordered Appellant to stop and placed him in handcuffs before they asked Appellant what he was doing. (R. 9-10, 20-21). Edmonson testified Appellant initially denied being in possession of the package or knowing what was inside the package, but eventually indicated the package likely contained narcotics. (R. 10-11, 19-21). Edmonson then read Appellant his rights pursuant to Miranda. (R. 10-11). After Edmonson informed Appellant of his rights, Appellant indicated again the package likely contained illegal drugs—likely narcotics—and agreed to waive his rights and speak with law enforcement.

² 378 U.S. 368 (1964).

(R. 10-12). Appellant agreed to give a written statement and Edmonson advised him of his rights pursuant to Miranda for a second time. (R. 12-13, 345-46, Court's Ex. No. 1). Appellant signed a written waiver of his rights and provided a written statement that he knew drugs were in the package and he was picking it up for money. (R. 12-15, 345-46, Court's Ex. No. 1). Miramontes testified he watched Appellant pick up the package from the doorstep, but was not present when Appellant gave any statements. (R. 28-33). Bass testified similarly to Edmonson to the events surrounding Appellant's statements, but recalled Appellant receiving Miranda warnings before giving his initial oral statement that the package likely contained drugs. (R. 34-39). Appellant did not testify and did not call any witnesses on his behalf.

Following the testimony from the three law enforcement witnesses, Appellant moved to suppress his oral and written statements and argued he was under duress when he made the statements. (R. 40). Appellant also argued there was conflicting testimony as to whether Edmonson questioned Appellant prior to giving any Miranda warnings. (R. 40). The State conceded Appellant's statements made pre-Miranda warnings were inadmissible and it would not seek to introduce those in its case in chief. (R. 41). The trial court ruled Appellant's oral and written statements made following the advisement of Miranda warnings were given knowingly, freely, and voluntarily, and therefore, were admissible. (R. 42). However, the trial court determined the portions of Appellant's statements pertaining to his prior involvement in retrieving packages for money must be redacted. (R. 41-43).

During trial, the State presented Edmonson, Bass, Miramontes, Xanthakis, and Homer-Conrad as witnesses, along with Lexington County Sheriff's Department Evidence Custodian Margaret Elizabeth Holliman. During Edmonson's testimony, the

State presented Appellant's oral and written statements establishing Appellant knew the package contained illegal drugs. (R. 95-110). During cross-examination, Appellant's counsel questioned Edmonson if Appellant initially denied knowing what was in the package. (R. 123). Following cross-examination, the State argued Appellant had opened the door to allow it to question Appellant on his pre-Miranda statements to law enforcement by questioning Edmonson if Appellant initially denied knowing the package's contents. (R. 146-49). The trial court allowed the State to proffer its intended line of questioning, which was intended to elicit testimony regarding Appellant's recent release from prison, his inability to find employment, and his previous involvement picking up packages he knew contained illegal drugs. (R. 148-56). After argument from both parties, the trial court ruled the preferred testimony was more prejudicial than probative, but did allow the State to elicit testimony from Edmonson that Appellant knew the package contained illegal drugs and was picking it up for payment. (R. 152-63, 169-70).

Following the State's case, Appellant moved for a directed verdict on two grounds. First, Appellant argued the State failed to present sufficient evidence that the total weight of Oxycodone was more than four grams or that Oxycodone is a Schedule II drug. (R. 262). The trial court declined to grant Appellant a directed verdict on these grounds. (R. 262). Next, Appellant argued he was entitled to a directed verdict because the State failed to present sufficient evidence Appellant knew the drugs inside the package were Oxycodone. (R. 264-65). The State replied Appellant's statements established he knew the package contained drugs. (R. 265). The trial court denied Appellant's directed verdict motion. (R. 265). Appellant did not present a defense and renewed his motions for directed verdict, which the trial court again denied. (R. 269).

The trial court then asked both parties if they had any charge requests. (R. 269-70). The State requested the court charge all elements of the trafficking in illegal drug statute. (R. 270). The court responded it would charge only the relevant portion of the statute and asked for a proposed charge including the relevant portions. (R. 270-73). Appellant asked the trial court to charge criminal intent as knowledge and argued Appellant must have knowledge that the drugs were Oxycodone. (R. 273-74). The trial court disagreed, stating Appellant merely needed to know the package contained illegal drugs. (R. 274).

During deliberations, the jury sent the trial court a note asking, "Does the State have to prove that the defendant knowingly brought into the state four grams or more of Oxycodone or just any amount of illegal drugs in order to consider this trafficking?" (R. 317). After sharing the note with both parties, the trial court proposed responding that the State only needed to prove Appellant knew the package contained illegal drugs, not specifically Oxycodone because the required intent is to "possess, control, deliver, [or] move illegal drugs." (R. 317-19). Appellant objected, arguing the legislature intended that a defendant must know the specific drug he is possessing. (R. 321-27). The trial court disagreed, noting under Appellant's approach, the State would not be able to prosecute unless the defendant gave a statement implicating himself as knowing the particular illegal drug enumerated in Section 44-53-370(e)(3). (R. 322-27). The trial court ultimately responded to the jury,

"[T]he law in South Carolina is the State does not have to prove that the Defendant knew that the drugs in the package were Oxycodone, just that he knew that the package contained illegal drugs. However, the State does have to prove beyond a reasonable doubt that the illegal drugs that were in the package was more than four grams of Oxycodone. So the State continues to carry that burden.

Then your second question was, "Does the state have to prove that he intended to traffic?"

And the law in South Carolina with regards to trafficking is this: The term traffic or trafficking under South Carolina law deals with or refers to the weight of the illegal drugs. To prove trafficking the State must prove that the amount of the illegal drugs was four grams or more. If it was less than four grams, then it's not trafficking. So trafficking deals with the weight, okay?

(R. 329-30). The jury then continued its deliberations, resulting in a verdict of guilt. (R. 335).

ARGUMENT

- I. The trial court properly instructed the jury that the State only needed to prove Appellant knew the package contained illegal drugs to convict him of trafficking in illegal drugs, where the jury asked the court during deliberations whether the State needed to prove Appellant knew the package contained Oxycodone specifically or illegal drugs generally and the court properly and correctly responded to the jury's question.

Appellant contends the trial court committed reversible error by instructing the jury the State did not need to prove Appellant knew the drugs in the package were Oxycodone but only illegal drugs. Appellant asserts the trial court's instructions were based on an erroneous and forced interpretation of S.C. Code Ann. §44-53-370(e)(3), as "the clear legislative intent" of South Carolina trafficking statutes is to "severely *punish individuals who knowingly undertake a broad variety of activities involving certain amounts of specific drugs.*" (IBOR 17) (emphasis in original). Appellant avers that to be guilty of trafficking Oxycodone under §44-53-370(e)(3), the State must prove a defendant knowingly possessed Oxycodone specifically and therefore, the trial court's instructions were a reversible and incorrect statement of law. However, Appellant's contentions are incorrect and the trial court properly charged the jury on all relevant law and then correctly re-instructed the jury on those matters necessary to answer its question. Appellant's conviction should be affirmed.

In criminal cases, the 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 reviewing a trial court's jury instructions, the appellate court must view the jury 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). "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. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007).

During a trial, the law to be charged is determined by the evidence presented. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). When instructing the jury on the law, the trial court is required to charge only the current and correct law of South Carolina. State v. Buckner, 341 S.C. 241, 246, 534 S.E.2d 15, 18 (Ct. App. 2000). A trial court’s jury instructions are appropriate if they are substantially correct and adequately cover the law applicable to the particular case. 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.”). Only the substance of the law must be charged to the jury, not any particular verbiage. State v. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002). When reviewing the trial judge’s 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).

“When a jury requests an additional charge, it is sufficient for the court to charge only those matters necessary to answer the jury’s request.” State v. Barksdale, 311 S.C. 210, 216, 428 S.E.2d 498, 502 (Ct. App. 1993). It is proper to limit a re-charge to simply answering the jury’s questions. State v. Anderson, 322 S.C. 89, 94, 470 S.E.2d 103, 106 (1996); see In re McCracken, 346 S.C. 87, 96, 551 S.E.2d 235, 240 (2001) (ruling the trial judge did not improperly emphasize one portion of a jury charge over another during additional instructions given in response to a jury question when the judge merely reminded the jury about one element of an offense and then offered the statutory

definition of another element); State v. Nichols, 325 S.C. 111, 118-119, 481 S.E.2d 118, 122 (1997) (finding no error in the trial judge's failure to re-charge the law of self-defense when the jury did not specifically request clarification on that particular principle of law).

Pursuant to S.C. Code Ann. § 44-53-370(e)(3), "[a]ny 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 four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210, or four grams or more of any mixture containing any of these substances, is guilty of a felony which is known as "trafficking in illegal drugs." The trafficking in illegal drugs statute, like all trafficking statutes in South Carolina, is broad reaching and covers a multitude of behaviors as detailed in the statute, including: actual or constructive possession, sale, manufacture, cultivation, purchase, giving of financial assistance or any type of aid, or the attempt or conspiracy to do any of the above.

At issue in the present case is the legislative intent behind the "knowingly" element of Section 44-53-370(e)(3). When interpreting a statute, a court's primary function is to ascertain the intention of the legislature. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 318 (1992) (citing Gilstrap v. S.C. Budget and Control Board, 310 S.C. 210, 423 S.E.2d 101 (1992)). The words used in a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Id. Here, the forbidden act is "knowingly" undertaking one

of the specific acts with a certain substance as enumerated in the Section 44-53-370(e)(3). Under Section 44-53-370(e)(3), as well as the other trafficking statutory provisions, the “knowingly” element of the crime requires general, not specific intent. See State v. Attardo, 263 S.C. 546, 549, 211 S.E.2d 868, 869 (1975) (“This language evinces a legislative desire to fasten a general, but not a specific, criminal intent as an element of the offense.”). Accordingly, to obtain a conviction for trafficking, the State must prove a defendant either: committed, attempted to commit, or conspired to commit one of the enumerated behaviors as listed in the statute to establish a person is guilty of trafficking. However, the State is not required to establish the defendant knew the specific controlled substance to obtain a conviction for trafficking. This is true for trafficking in illegal drugs as well as all other trafficking subsections. See S.C. Code Ann. § 44-53-370.

Additionally, it is well-settled under South Carolina law that “every one may be presumed to know what he has in his possession.” State v. Freeland, 106 S.C. 220, 91 S.E. 3, 3 (1916); see State v. Attardo, 263 S.C. 546, 550, 211 S.E.2d 868, 869 (1975) (“Possession [of a controlled substance] . . . gives rise to an inference of the possessor’s knowledge of the character of the substance.”); State v. Gore, 318 S.C. 157, 163, 456 S.E.2d 419, 422 (Ct. App. 1995) (“Possession gives rise to an inference of the possessor’s knowledge of the character of the substance.”); State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995) (“Possession gives rise to an inference of the possessor’s knowledge of the character of the substance.”)

Here, the trial court’s original jury instructions properly covered all relevant portions of the law, including what the State must prove to convict Appellant of trafficking in illegal drugs pursuant to Section 44-53-370(e)(3). Following the court’s charge, the jury requested clarification as to whether the State must prove that Appellant

knew the package contained Oxycodone or any illegal drug. (R. 317). The trial court suggested responding that the State only needed to prove Appellant knew the package contained illegal drugs, not specifically Oxycodone. The trial court noted the required intent for trafficking in illegal drugs is to “possess, control, deliver, [or] move illegal drugs.” (R. 317-19). Appellant objected, averring the legislature intended that a defendant must know the specific illegal drug he is possessing. (R. 321-27). The trial court disagreed, noting if it was to adopt Appellant’s approach, the State would not be able to prosecute unless the defendant gave an incriminating statement indicating he knew the particular drug. (R. 322-27). The trial court then re-charged the jury as follows, “[T]he law in South Carolina is the State does not have to prove that the Defendant knew that the drugs in the package were Oxycodone, just that he knew that the package contained illegal drugs. However, the State does have to prove beyond a reasonable doubt that the illegal drugs that were in the package was more than four grams of Oxycodone.” (R. 329-30). The trial court properly instructed the jury that the State only needed to prove Appellant knew the package contained illegal drugs in response to the jury’s question.

In arguing the trial court’s additional jury instruction following the jury’s note warrants the reversal of his convictions, Appellant contends the trial court’s re-charge was reversible error because a plain reading of Section 44-53-370(e) requires the State to prove that Appellant knew he was possessing Oxycodone. In support of this position, Appellant argues a review of the seven other subsections of Section 44-53-370 demonstrate that the legislature clearly intended the “knowingly” requirement to encompass not only the criminal act, but a defendant’s specific knowledge of the exact controlled substance being trafficked. Appellant avers the trial court’s interpretation of “knowingly” would lead to an absurd result where the State would be required to prove

the defendant knew of the specific substance he was trafficking for every other subsection other than illegal drugs, effectively making it easier for the State to prosecute trafficking in illegal drugs compared to trafficking of other substances. However, this argument is misguided, as the “knowingly” element for all trafficking offenses, including trafficking in illegal drugs, requires general intent, not specific intent. See Attardo, 263 S.C. at 549, 211 S.E.2d at 869 (“This language evinces a legislative desire to fasten a general, but not a specific, criminal intent as an element of the offense.”).

Additionally, as the trial court noted, adopting Appellant’s interpretation of “knowingly” would lead to the absurd result where the State would be essentially unable to prosecute a defendant for trafficking in illegal drugs unless the defendant gave a statement implicating himself as knowing the particular illegal drug enumerated in Section 44-53-370(e)(3). This clearly could not have been the legislature’s intention as it would render the State unable to prosecute pursuant to Section 44-53-370(e)(3) in all but rare situations where the defendant has provided a statement implicating himself in knowing the specific illegal drug he is trafficking. See State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (internal citations omitted) (“Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.”). This interpretation would also lead to an absurd result where drug traffickers and the drug mules they employ would have an unfettered ability to conduct their criminal enterprise and move large quantities of controlled substances without punishment so long as the mules knowingly engaged in the transportation of drugs but intentionally remained ignorant as to the exact type of drug they possessed.

Simply put, adopting Appellant's interpretation of "knowingly" would lead to absurd results the legislature could not have intended when drafting and enacting Section 44-53-370.

Alternatively, assuming Appellant's interpretation of "knowing" was correct, the trial court's instructions would still be appropriate in this case because Appellant was willfully ignorant of the specific illegal drug he possessed. Appellant's deliberate and willful ignorance of the specific substance he was possessing, despite knowing it was illegal, amounts to guilty knowledge. See State v. Freeland, 106 S.C. 220, 91 S.E. 3, 4 (1916) (holding culpable ignorance is not an excuse to relieve liability from criminal acts). See also United States v. Giovannetti, 919 F.2d 1223, 1228 (7th Cir. 1990) (finding a "deliberate effort to avoid guilty knowledge is all the guilty knowledge the law requires"); United States v. Jewell, 532 F.2d 697, 700 (9th Cir. 1976), cert. denied, 426 U.S. 951 (1976) ("[D]eliberate ignorance and positive knowledge are equally culpable"). Here, Appellant admitted multiple times he knew he possessed illegal drugs, yet intentionally avoided knowledge as to the specific controlled substance. This intentional, deliberate ignorance amounts to guilty knowledge and the trial court's instructions were a correct and proper statement of the law. See Turner v. United States, 396 U.S. 398 (1970) (holding the jury was entitled to rely on instructions that it could infer from accused's unexplained possession of heroin that he knew that heroin he possessed had been unlawfully imported, in prosecution for receiving, concealing and facilitating transportation and concealment of heroin while knowing that the heroin had been unlawfully imported into United States).

Appellant argues the trial court's instruction allows the jury to convict Appellant invalidly based on a lesser standard of culpable negligence rather than "knowingly,"

citing to State v. Taylor, 323 S.C. 162, 473 S.E.2d 817 (Ct. App. 1996). However, this case is readily distinguishable from Taylor. In Taylor, the trial court instructed the jury that it could convict the defendant of trafficking in methamphetamine if she was at least criminal negligent. Id. This Court reversed Taylor's conviction, holding a defendant could not be convicted of trafficking in methamphetamine if she was criminally negligent, as the statute specifically required the defendant act "knowingly." Id. Here, the trial court's instructions did not inform the jury it could convict Appellant based on criminal negligence, but rather, used the correct "knowingly" standard. Furthermore, there is a significant difference between criminal negligence and a willful or intentionally lack of knowledge, which is the equivalent of actual knowledge and sufficient to prove the knowledge element of a criminal offense. Compare BLACK'S LAW DICTIONARY 1134 (9th ed. 2009) (defining "criminal negligence" as "[g]ross negligence so extreme that it is punishable as a crime" and defining "culpable negligence" as "[n]egligent conduct that, while not intentional, involves a disregard of the consequences likely to result from one's actions") with Giovannetti, 919 F.2d at 1228 (finding a "deliberate effort to avoid guilty knowledge is all the guilty knowledge the law requires") and Jewell, 532 F.2d at 700 ("[D]eliberate ignorance and positive knowledge are equally culpable"). The trial court's instructions to the jury charged the correct standard of law. Appellant's conviction should be affirmed.

- II. The trial court properly denied Appellant's motion for a directed verdict and submitted the case to the jury where the State presented substantial evidence from which the jury could fairly and logically find Appellant knowingly possessed more than four grams of illegal drugs as required for trafficking pursuant to S.C. Code Ann. § 44-53-370(e)(3)(a).**

Appellant contends the trial court erred in denying his directed verdict motion. In support of that contention, Appellant maintains the State failed to present sufficient evidence to establish he had knowledge of the specific illegal drug—Oxycodone—inside the package, which he avers was necessary to allow the case to proceed forward to deliberations. Contrary to Appellant's contentions, the State presented evidence and testimony establishing Appellant was aware of the package contained illegal drugs, intentionally took possession of the illegal drugs from the known delivery location, and responded in an inculpatory manner when confronted by law enforcement while still in possession of the illegal drugs. Additionally, the State presented evidence that the total weight of the three-hundred Oxycodone pills Appellant had been in possession of was nine grams. Viewing that evidence and testimony in a light most favorable to the State as required, the jury could logically and rationally conclude Appellant was guilty of the offense of trafficking in illegal drugs and, more specifically, the criminal act of trafficking in Oxycodone. Accordingly, the trial court properly denied Appellant's directed verdict motion and submitted the case to the jury. Appellant's conviction should be affirmed.

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. Pearson, Op. No. 27612 (S.C. filed Mar. 23, 2016) (Shearouse Adv. Sh. No. 12 at 18) (citing State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). An appellate court's review is limited to considering the existence or nonexistence of evidence, not its

weight. State v. Bennett, 415 S.C. 232, 235-36, 781 S.E.2d 352, 353 (2016) (citing State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478-79 (2004)). 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 court's ruling. Cherry, 361 S.C. at 593-94, 606 S.E.2d at 478. The appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial court's ruling. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). "[U]nless 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.").

"[T]he lens through which a court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury." Bennett, 415 S.C. at 236-37, 781 S.E.2d at 354 (citing State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955)). "Within the jury's inquiry, 'it 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.'" Id. (quoting Littlejohn, 228 S.C. at 328, 89 S.E.2d at 926). However, when ruling on a directed verdict motion, the trial court must view the evidence in the light most favorable to the State and must submit the case to the jury if there is "any substantial evidence which

reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.” *Id.* (quoting *Littlejohn*, 228 S.C. at 329, 89 S.E.2d at 926). “Therefore, although the *jury* must consider alternative hypotheses, the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt. This objective test is founded upon reasonableness. Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.” *Id.* (emphasis in original); see also *Crawford*, 375 F.2d at 334 (“The jury question of whether there was proof of guilt beyond a reasonable doubt presents a stricter or higher standard than the trial court’s consideration of whether there is sufficient evidence to allow the jury to find guilt beyond a reasonable doubt, and it rests in the unreviewable ratiocinations of twelve reasonable persons whose deliberations are protected by the highest security.”).

In South Carolina, it is unlawful to traffic in illegal drugs. See S.C. Code Ann. § 44-53-370(e)(3) (Supp. 2006) (prohibiting trafficking in illegal drugs). In relevant part, South Carolina’s definition of trafficking in illegal drugs includes: “Any person . . . who is knowingly in actual . . . possession” of four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210, or four grams or more of any mixture containing any of these substances.” S.C. Code Ann. § 44-53-370(e)(3). The offense of trafficking can be committed in a wide variety of ways, including by knowingly possessing a specified quantity of the illegal substance. *State v. Ezell*, 321 S.C. 421, 426, 468 S.E.2d 679, 681 (Ct. App. 1996); see *Taylor*, 323 S.C. at 165, 473 S.E.2d at 818 (instructing the offender

must act knowingly to be guilty of trafficking). 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) (citing Attardo, 263 S.C. at 550, 211 S.E.2d at 869). 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. Id. “It is the amount of [the illicit drug], rather than the criminal act, which triggers the trafficking statute, and distinguishes trafficking from distribution and simple possession.” Taylor, 323 S.C. at 167, 473 S.E.2d at 819 (citing State v. Raffaldt, 318 S.C. 110, 117, 456 S.E.2d 390, 394 (1995)). Possession gives rise to an inference of the possessor’s knowledge of the character of the substance. State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995) (citing Attardo, 263 S.C. 546, 211 S.E.2d 868). Additionally, as noted previously, the “knowingly” element for all trafficking offenses, including trafficking in illegal drugs, requires general intent, not specific intent. See Attardo, 263 S.C. at 549, 211 S.E.2d at 869 (“This language evinces a legislative desire to fasten a general, but not a specific, criminal intent as an element of the offense.”).

In Appellant’s case, Appellant contends he was entitled to a directed verdict on the charge of trafficking in illegal drugs because the State’s evidence “merely raised the suspicion of Appellant’s guilt, as the State failed to present any substantial circumstantial evidence that Appellant knew the package he was taking possession of contained oxycodone.”(App. Br 24). Contrary to Appellant’s contentions, looking at the evidence and all reasonable inferences in the light most favorable to the State as required, the trial court properly denied Appellant’s directed verdict motion because the State presented

substantial evidence and testimony establishing each element of the trafficking in illegal drugs, including Appellant's knowledge of illegal drugs.

Looking to the evidence presented during trial, the State presented direct and circumstantial evidence establishing that Appellant had knowledge of the illegal drugs, which was all that was required to satisfy the knowledge element of the offense. See Attardo, 263 S.C. at 549, 211 S.E.2d at 869 ("This language evinces a legislative desire to fasten a general, but not a specific, criminal intent as an element of the offense."). Specifically, Appellant acknowledged multiple times that he knew the package contained illegal drugs. When initially approached by law enforcement, Appellant indicated the package likely contained illegal drugs. (R. 95, 170). Then, Edmonson read Appellant his rights pursuant to Miranda and Appellant orally waived his rights and again acknowledged the package likely contained narcotics. (R. 9-11, 94-95). After Arcos, the trained canine, positively identified drugs in the package and Edmonson opened the package, Appellant yet again provided an oral statement that he knew the package contained illegal drugs and then gave a written statement that he was picking up the package for one-hundred dollars, was to deliver it to its owner, and knew it contained illegal drugs. (R. 103, 106-07, 343-46, State's Ex. No. 10-11). Furthermore, Appellant acted in an inculpatory manner when confronted by officers, throwing the package near a vehicle and looking for an escape route. Thus, the evidence and testimony presented during trial established Appellant had knowledge of the package's contents. Critically, viewing that evidence and testimony in a light most favorable to the State as required, the jury could have rationally and logically concluded Appellant knew the package contained the requisite amount of illegal drugs when possessing it, satisfying the requisite elements

necessary to convict him of trafficking in illegal drugs pursuant to Section 44-53-370(e)(3).

In arguing the trial court erred in denying his motion for a directed verdict, Appellant contends the State's evidence merely raised the suspicion of Appellant's guilt, as the State failed to present any substantial circumstantial evidence that Appellant knew the package specifically contained Oxycodone.³ (App. Br. 24-25) However, Appellant's argument is flawed for several reasons. Initially, Appellant's assertions that the State needed to establish he knew the identity of the particular illegal substance he was possessing to satisfy Section 44-53-370(e)(3) is incorrect, as trafficking in illegal drugs, like all trafficking offenses in South Carolina, is a general intent crime requiring knowledge that the substance is illegal. See Attardo, 263 S.C. at 549, 211 S.E.2d at 869 ("This language evinces a legislative desire to fasten a general, but not a specific, criminal intent as an element of the offense."). Additionally, as discussed above, Appellant's argument ignores the multitude of cases establishing that possession gives rise to an inference of the possessor's knowledge of the character of the substance. See e.g., Mollison, 319 S.C. at 45, 459 S.E.2d at 91 (holding possession gives rise to an

³In support of this position, Appellant argues the State must establish Appellant knew the specific illegal drug—Oxycodone—in the package and that "if there is a reasonable doubt as to whether [he] was aware of the nature of the substance possessed . . . he would not be guilty of the offense." Appellant appears to be using the incorrect standard for when a trial court is ruling on a directed verdict motion. As our Supreme Court stated in Bennett, when ruling on a directed verdict motion, the trial court must view the evidence in the light most favorable to the State and must submit the case to the jury if there is "any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." Bennett, 415 S.C. at 236-37, 781 S.E.2d at 354. This is a different analysis than when a jury is determining if there is any reasonable doubt as to whether Appellant is guilty. See Id. ("[T]he lens through which a court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury. . . Within the jury's inquiry, it 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. . . . However, when ruling on a directed verdict motion, the trial court must view the evidence in the light most favorable to the State and must submit the case to the jury if there is "any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.") (internal citations omitted).

inference that the possessor knows the character of the substance); Attardo, 263 S.C. 546, 211 S.E.2d 868 (same). Furthermore, Appellant's deliberate and willful ignorance of the specific substance he was possessing, despite knowing it was illegal, amounts to guilty knowledge. See Freeland, 106 S.C. 220, 91 S.E. 3 (holding intentional ignorance is not an excuse to relieve liability from criminal acts).

Because the testimony and evidence the State presented during trial established each element of the offense of trafficking in illegal drugs, the trial judge was required to deny Appellant's directed verdict motion and submit the charge to the jury. See Attardo, 263 S.C. at 550, 211 S.E.2d at 869 (holding Attardo's actual possession of narcotics supported an inference of his knowledge in regards to the character of the substance and made the knowledge element a question for the jury to resolve). Accordingly, the trial judge properly denied Appellant's directed verdict motion, and his ruling was supported by the evidence. See Gaster, 349 S.C. at 555, 564 S.E.2d at 92 ("On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling."). Appellant's convictions should be affirmed.

III. The trial court properly admitted Appellant's statements to law enforcement into evidence.

When Edmonson and Bass approached Appellant in the parking lot of the Villas Court apartment complex, Appellant threw the package near a vehicle and began looking around as if he was trying to find an escape route. (R. 92-94, 122, 187-88). Bass drew his weapon and ordered Appellant to the ground. (R. 121, 187-88). When Appellant failed to comply, Bass assisted Appellant to the ground and placed him in handcuffs. (R. 94, 121, 188). Edmonson identified himself as law enforcement and asked Appellant what was in the package. (R. 94-95). Appellant indicated the package likely contained illegal drugs. (R. 95, 170). Edmonson then read Appellant his rights pursuant to Miranda and Appellant orally waived his rights. (R. 9-10, 94-95). Appellant acknowledged the package likely contained narcotics and gave consent to open the package. (R. 11, 95). Edmonson elected to call a canine unit trained to identify narcotics before opening the package. (R. 95). After the canine indicated the package contained a controlled substance, Edmonson called his partner, who obtained a search warrant to open the package. (R. 46-47, 54-61, 96-97, 125-26, 146-47, 223-24).

Edmonson then opened the package and discovered three-hundred tablets of Oxycodone hidden inside a wax candle. (R. 99-101, 133-35, 224-25). After discovering the pills, Edmonson asked Appellant what was going on and Appellant agreed to give a statement. (R. 100-01). Edmonson advised Appellant of his Miranda rights for second time and Appellant acknowledged in writing he understood those rights and wished to waive them. (R. 101-02, 106-08). Appellant gave a written statement that he was picking up the package for one-hundred dollars, was to deliver it to its owner, and knew it

contained illegal drugs. (R. 106-07). Following his statement, Edmonson transferred Appellant to the Lexington County Detention Center. (R. 110).

During the Jackson v. Denno hearing, the State presented testimony from Edmonson, Miramontes, and Bass. Edmonson testified he and Bass ordered Appellant to stop and placed him in handcuffs before they asked Appellant what he was doing. (R. 9-10, 20-21). Edmonson testified Appellant initially denied being in possession of the package or knowing what was inside the package, but eventually indicated the package likely contained narcotics. (R. 10-11, 19-21). Edmonson then read Appellant his rights pursuant to Miranda. (R. 10-11). After Edmonson informed Appellant of his rights, Appellant indicated again the package likely contained illegal drugs—likely narcotics—and agreed to waive his rights and speak with law enforcement. (R. 10-12). Appellant agreed to give a written statement and Edmonson advised him of his rights pursuant to Miranda for a second time. (R. 12-13, 345-46, Court's Ex. No. 1). Appellant signed a written waiver of his rights and provided a written statement that he knew drugs were in the package and he was picking it up for money. (R. 12-15, 345-46, Court's Ex. No. 1). Miramontes testified he watched Appellant pick up the package from the doorstep, but was not present when Appellant gave any statements. (R. 28-33). Bass testified similarly to Edmonson to the events surrounding Appellant's statements, but recalled Appellant receiving Miranda warnings before giving his initial oral statement that the package likely contained drugs. (R. 34-39).

Appellant moved to suppress his oral and written statements and argued he was under duress when he made the statements. (R. 40). Appellant also argued there was conflicting testimony as to whether Edmonson questioned Appellant prior to giving any Miranda warnings. (R. 40). The State conceded Appellant's statements made pre-

Miranda warnings were inadmissible and it would not seek to introduce those in its case in chief. (R. 41). The trial court ruled Appellant's oral and written statements made following the advisement of Miranda warnings were given knowingly, freely, and voluntarily, and therefore, were admissible. (R. 42). However, the trial court determined the portions of Appellant's statements pertaining to his prior involvement in retrieving packages for money must be redacted. (R. 41-43).

During Edmonson's trial testimony, the State presented Appellant's oral and written statements establishing Appellant knew the package contained illegal drugs. (R. 95-110). During cross-examination, Appellant's counsel questioned Edmonson if Appellant initially denied knowing what was in the package. (R. 23). Following cross-examination, the State argued Appellant had opened the door to allow it to question Appellant on his pre-Miranda statements to law enforcement by questioning Edmonson if Appellant initially denied knowing the package's contents. (R. 146-49). The trial court allowed the State to proffer its intended line of questioning, which was intended to elicit testimony regarding Appellant's recent release from prison, his inability to find employment, and his previous involvement picking up packages he knew contained illegal drugs. (R. 148-56). After argument from both parties, the trial court ruled the preferred testimony was more prejudicial than probative, but did allow the State to elicit testimony from Edmonson that Appellant knew the package contained illegal drugs and was picking it up for payment. (R. 152-63, 169-70).

On appeal, Appellant contends the trial court erred in admitting his statements to law enforcement prior to and after he was administered Miranda warnings. Appellant argues his pre-Miranda statements were unconstitutionally taken while he was in custody and therefore are inadmissible. However, Appellant fails to make any argument

challenging the trial court's ruling that defense counsel opened the door to these statements through his cross-examination of Edmonson, and therefore, has waived this issue on appeal. Additionally, Appellant avers his post-Miranda statements were inadmissible because they were tainted by the initial violation and the product of an involuntary waiver. Appellant argues both statements therefore should have been suppressed and the trial court's refusal to do so is reversible error. To the contrary, Appellant's post-Miranda statements were made following a knowingly, voluntarily, and intelligently waiver and Appellant's pre-Miranda statements were admissible after Appellant opened the door. Accordingly, the trial court properly admitted the statements into evidence during trial and his ruling was fully supported by the evidence and testimony presented during trial. Appellant's convictions should be affirmed.

- A. **The trial court's ruling that Appellant's pre-Miranda statements were admissible once the door was opened is not challenged on appeal and, therefore, is now the law of the case and not preserved for review. Regardless, the trial court did not abuse its discretion in admitting into evidence Appellant's initial statements to law enforcement regarding his knowledge that the package contained illegal drugs because defense counsel opened to door to such testimony.**

Following the Jackson v. Denno hearing, the State conceded Appellant's pre-Miranda statements were inadmissible and that it would not seek to introduce them during its case in chief. However, following Edmonson's cross-examination, the State argued defense counsel had opened the door by questioning Edmonson as to whether Appellant had denied knowing the package's contents initially. After allowing the State to proffer its intended line of questioning, the trial court allowed the State to elicit testimony from Edmonson that Appellant knew the package contained illegal drugs and was picking it up for payment, ruling defense counsel had opened the door.

- i. The trial court's ruling that Appellant's pre-Miranda statements were admissible once the door was opened is not challenged on appeal and therefore, is now the law of the case and not preserved for this Court's review.

On appeal, Appellant argues the trial court erred in admitting his statements to law enforcement prior to receiving his Miranda warnings because he was "clearly in custody based upon the totality of the circumstances." (App. Br. 28). However, he fails to make any argument as to the trial court's ruling that the door had been opened. Because he has failed to present any argument as to why the trial court erred in ruling the door was opened, but instead, presents argument on a different alleged error, the trial court's ruling is the law of the case and this issue is not preserved for appellate review. See State v. Fripp, 396 S.C. 434, 441-42, 721 S.E.2d 465, 468-69 (Ct. App. 2012) (finding Fripp's argument not preserved for appellate review and the trial court's ruling was the law of the case where Fripp did not dispute the correctness of the trial court's ruling that he opened the door to Officer Heany's hearsay testimony, but challenged it on other grounds); Burton v. Cnty. of Abbeville, 312 S.C. 359, 363, 440 S.E.2d 396, 398 (Ct. App. 1994) (stating the appellant's failure to challenge the trial court's ruling in the appellate brief renders the unchallenged ruling the law of the case). See also State v. McCray, 332 S.C. 536, 542, 506 S.E.2d 301, 303 (1998) (finding where an appellate argument differs from the argument made at trial, the argument is unpreserved for appeal). Because Appellant did not dispute the correctness of the trial court's ruling that he opened the door to his initial statements to law enforcement before he received Miranda warnings, this ruling is the law of the case and not preserved for this Court's review.

- ii. **Regardless, the trial court did not abuse its discretion in admitting Appellant's initial statements to law enforcement regarding his knowledge that the package contained illegal drugs into evidence after defense counsel opened to door to such testimony.**

Assuming this issue was properly preserved for appellate review, the trial court properly admitted Appellant's initial statements to law enforcement regarding his knowledge that the package contained illegal drugs into evidence after defense counsel opened to door to such testimony.

The admissibility of evidence is within the trial judge's discretion, and, therefore, evidentiary rulings of the trial court will not be reversed on appeal absent an abuse of discretion or the commission of a prejudicial legal error. State v. Mansfield, 343 S.C. 66, 77, 538 S.E.2d 257, 263 (Ct. App. 2000). Likewise, a decision as to whether a party opens the door to the admission of otherwise inadmissible evidence during a trial is left to the sound discretion of the trial judge. State v. Page, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008); see State v. Adcock, 194 S.C. 234, 239-240, 9 S.E.2d 730, 732 (1940) ("It appears that counsel opened wide the door for the presentation to the Court of the facts touching appellant's connection with the slot machine. . . . [T]his Court will not interfere with the trial Judge's exercise of his discretion, unless there is a manifest abuse of it[.]").

It is firmly established that otherwise inadmissible evidence can be properly admitted after opposing counsel opens the door to that evidence. Page, 378 S.C. at 482, 663 S.E.2d at 359. "[W]hen a party introduces evidence about a particular matter, the other party is entitled to explain it or rebut it, even if the latter evidence would have been incompetent or irrelevant had it been offered initially." State v. Beam, 336 S.C. 45, 52, 518 S.E.2d 297, 301 (Ct. App. 1999); see State v. Young, 364 S.C. 476, 485, 613 S.E.2d

386, 391 (Ct. App. 2005) ("The jurisprudence of this State contains a plethora of enlightening cases establishing and explicating the proposition that a defendant may open the door to what would otherwise be improper evidence."). "[A]n appellant cannot complain of prejudice resulting from the admission of evidence to which she opened the door." State v. Rice, 375 S.C. 302, 329, 652 S.E.2d 409, 422 (Ct. App. 2007).

During trial, Appellant's counsel questioned Edmonson if Appellant initially denied knowing what was in the package. (R. 123). Following cross-examination, the State argued Appellant had opened the door to allow it to question Appellant on his pre-Miranda statements to law enforcement by questioning Edmonson if Appellant initially denied knowing the package's contents. (R. 146-49). The trial court allowed the State to proffer its intended line of questioning, which was intended to elicit testimony regarding Appellant's recent release from prison, his inability to find employment, and his previous involvement picking up packages he knew contained illegal drugs. (R. 148-56). After argument from both parties, the trial court ruled the preferred testimony was more prejudicial than probative, but did allow the State to elicit testimony from Edmonson that Appellant knew the package contained illegal drugs and was picking it up for payment based on a finding that Appellant had opened the door based on his cross-examination of Edmonson. (R. 152-63, 169-70).

By asking Edmonson about whether Appellant initially denied knowing what was in the box, Appellant opened the door for the solicitor to inquire into his initial statements to law enforcement before he was read his Miranda rights. Appellant was not permitted to introduce only the portion of his initial statement beneficial to himself and then bar the State from presenting a full and complete explanation of all of the details of those statements. See State v. Kennedy, 143 S.C. 318, 321-322, 141 S.E. 559, 560 (1928)

(finding previously inadmissible testimony elicited during redirect examination was properly admitted in response to questioning by the appellant of the same witness along similar lines during cross-examination). The additional testimony related to Appellant's initial statement to law enforcement was necessary for a complete presentation of the context of his statements and was merely offered to explain the testimony elicited by Appellant. Therefore, the trial court did not abuse his discretion in admitting the previously inadmissible testimony regarding Appellant's initial pre-Miranda statement. See State v. Curtis, 356 S.C. 622, 632, 591 S.E.2d 600, 605 (2004) ("Given that [the defendants] maintained that PPS did not allow pornographic materials or links on the website, it is patent that they opened the door to this line of inquiry."). Appellant's conviction should be affirmed.

- B. The trial court properly admitted Appellant's post-Miranda statements into evidence after determining the statements were knowingly, intelligently, and voluntarily made under the totality of the circumstances and because the trial court's ruling was supported by the undisputed testimony and evidence presented during trial establishing Appellant knowingly, intelligently, and voluntarily waived his rights before making his statements.**

Appellant argues the trial court erred in finding his oral and written statements made after he received Miranda warnings were voluntary and admissible because they were tainted by the initial violation where Edmonson questioned Appellant prior to advising him of his rights. In support of his argument, Appellant cites to Missouri v. Seibert, 542 U.S. 600 (2004) and State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010), both of which he asserts are factually similar to his case. However, this is unpersuasive, as Appellant's case is readily distinguishable from both Seibert and Navy. The trial court properly admitted Appellant's post-Miranda statements into evidence after determining

the statements were knowingly, intelligently, and voluntarily made under the totality of the circumstances. Appellant's conviction should be affirmed.

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). The reviewing court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but instead, simply determines whether the trial judge's ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

The admission or exclusion of evidence rests on the sound discretion of the trial judge and will not be reversed absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). "A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995).

Under Miranda v. Arizona, 384 U.S. 436, 444 (1966), prior to custodial interrogation, a suspect must be warned he has a right to remain silent, any of his statements may be used against him, and he has a right to an attorney. A defendant can waive these constitutional rights with a knowing and voluntary waiver. Id.

A confession or statement by a defendant is not admissible unless voluntarily made. State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). If a defendant is advised of his constitutional rights and then chooses to make a statement, the burden is on

the State to prove by a preponderance of the evidence the defendant voluntarily waived his rights. State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990). When considering the admissibility of a defendant's statements, the trial judge should examine the totality of the circumstances surrounding the incident to determine whether the State has met its burden of proof. State v. Rabon, 275 S.C. 459, 461, 272 S.E.2d 634, 635 (1980). On appeal, the trial judge's decision as to the voluntariness of a statement will not be reversed unless the ruling was so erroneous it constituted an abuse of discretion. State v. Simmons, 384 S.C. 145, 162, 682 S.E.2d 19, 28 (Ct. App. 2009).

In Missouri v. Seibert, 542 U.S. 600, 604 (2004), the United States Supreme Court determined incriminating statements elicited prior to the recitation of the constitutionally-required warnings were not admissible even if the statements were repeated after the appropriate warnings. In Seibert, the police arrested Seibert at 3:00 a.m. and took her to the police station for an interview. Seibert at 604. The arresting officer deliberately refrained from providing Miranda warnings and left Seibert alone in an interview room. Id. After fifteen to twenty minutes, a different officer arrived and questioned Seibert for thirty to forty minutes while squeezing her arm and encouraging her to admit her role in the crime. Id. at 604-605. After Seibert finally admitted her guilt, she was permitted a twenty-minute coffee and smoke break. Id. Following this break, the officer turned on a tape recorder, gave Seibert her Miranda warnings, and obtained a signed waiver of those rights. Id. He then resumed questioning by confronting Seibert with the incriminating statements she made prior to the break and rehashed all of the same incriminating information. Id.

The United States Supreme Court held that the "question-first" procedure employed by the police in Seibert's case was constitutionally infirm because the

“midstream recitation of warnings after interrogation and unwarned confession could not effectively comply with Miranda’s constitutional requirement.” Id. at 604. In reaching this conclusion, the Court pointed out the following relevant factors that bear upon whether “midstream” Miranda warnings could be effective enough to accomplish their object:

- (1) The completeness and detail of the questions and answers in the first round of interrogation;
- (2) The overlapping content of the two statements;
- (3) The timing and setting of the first and the second rounds of interrogation;
- (4) The continuity of police personnel; and
- (5) The degree to which the interrogator’s questions treated the second round as continuous with the first.

Id. at 615. In Seibert’s case, the unwarned interrogation occurred in the station house, and the questioning was “systematic, exhaustive, and managed with psychological skill.” Id. In fact, when the police were finished with this first round, “there was little, if anything, of incriminating potential left to be said.” Id. at 616. The warned phase of the questioning proceeded after only a short break and took place in the same location. Id. The same officer conducted the first and second rounds of questioning. Id. The officer did not advise Seibert that her prior statement might be inadmissible in court and in fact made the second round of questioning seem like two sessions that were parts of a “continuum”; under these circumstances it would be “unnatural” to refuse to repeat during the second round what had already been said before. Id. at 616-17. Accordingly, the Court found that a statement repeated after Miranda warnings in such circumstances is inadmissible. Id. at 617.

In 2010, our Supreme Court analyzed Seibert in State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010). In the case, Navy's son was rushed to the hospital after being found unresponsive in his crib. After the death of his son, Navy gave a statement to law enforcement while he was still at the hospital, but because he was "so upset and distraught," officers thought the statement was incomplete. Officers later learned from the pathologist who performed the autopsy that the cause of death was smothering or suffocation. Id. at 297, 688 S.E.2d at 839.

The following day, officers went to Navy's home with the intent of transporting him to the sheriff's office for further questioning. Thereafter, Navy gave a statement in which he described noticing the child having breathing problems and his subsequent panic. Id. at 297-298, 688 S.E.2d at 839. Thereafter, officers informed Navy his son had suffocated and there was evidence of broken ribs. Navy asked if he was under arrest and was told he was not. The officers then engaged in follow-up questioning. "At this juncture, the nature of the interrogation and [Navy]'s status changed, and what had begun as a voluntary question and answer session matured into custodial interrogation." In this first statement, Navy admitted to popping the child on the back and possibly patting the child on the mouth. After this statement, Navy received another smoke break. Id. at 298-299, 688 S.E.2d at 840.

Officers then advised Navy of his Miranda warnings. Afterward, Navy gave his second statement, which was his first in writing. This statement echoed his previous oral statement except Navy admitted to placing his hand over his son's mouth to stop his crying multiple times, including possibly covering his nose area as well, popping him on the back causing the child to cry out loudly, and feeling frustrated because the child was crying. Id. at 299-300, 688 S.E.2d at 840.

Following this second statement, officers contacted the pathologist, who told them the description provided by Navy in his second statement could not have caused the child's death. In response to this information, officers obtained a third written statement from Navy. Navy then admitted that he could have held his hand over his son's nose and mouth for longer than he first said, possibly for up to two minutes. *Id.* at 300, 688 S.E.2d at 840-841.

Our Supreme Court held Navy's first statement was admissible because the record contained evidence to support the trial court's finding Navy was not in custody. The Court noted was "debatable whether a reasonable person would have believed himself to be in custody at the time the first statement was given." *Id.* at 301, 688 S.E.2d 841. Conversely, the Court held Navy's second and third statements were obtained in violation of Seibert and were therefore inadmissible. The Court found:

The officers began the questioning of respondent with knowledge that the child had been suffocated and with the intention of eliciting a confession. After respondent's first oral statement, the officers "sprang" the suffocation/healing rib fractures information on respondent, and began an unwarned custodial interrogation designed to elicit incriminating information, that is, questioning designed to have respondent admit to having hit the child and to having smothered him. Once those incriminating answers were given—i.e. after respondent admitted he had popped the child on the back and "patted" his mouth—respondent was permitted a supervised cigarette break, then given Miranda warnings, with interrogation by the same officer resuming immediately.

Navy, 386 S.C. at 303, 688 S.E.2d at 842. The Court concluded the Seibert factors were met and "none of the curative measures suggested by Justice Kennedy, i.e. an additional warning that the answers given after the first statement but before the administration of Miranda warnings may not be admissible, a substantial break in time, or change of circumstances, occurred here." Navy, 386 S.C. at 303, 688 S.E.2d at 842.

The present case is distinguishable from Seibert and Navy and a review of the five factors set forth in Seibert weigh in favor of admission of Appellant's post-Miranda statements. Appellant was approached by police while he had the package of Oxycodone in his possession and upon realization that he had been caught, he attempted to discard the package and find an escape route. (R. 19). At that time, Edmonson and Bass ordered Appellant to the ground and handcuffed him. (R. 9-10). Edmonson asked Appellant what was in the package and he initially denied knowing it contained contraband but quickly changed his story and admitted the package contained illegal drugs. (R. 10, 20-21, 149-50). Edmonson then administered Miranda warnings to Appellant and asked Appellant if he would like to talk. (R. 10-11, 21). Appellant acknowledged he understood his rights and agreed to waive them and talk to law enforcement. (R. 11-12). Appellant admitted he knew the package contained illegal drugs, he was picking up the package for money because he could not find a job because he had recently been released from prison, and gave consent to open the box in this second oral statement. (R. 11-12, 21, 150). After a drug-sniffing canine made a positive identification, a search warrant was obtained, and Edmonson opened the box to discover the three hundred tablets of Oxycodone, Appellant again indicated he would talk to law enforcement. (R. 12-13). Edmonson then re-administered Miranda warnings to Appellant and Appellant gave a written statement approximately forty-five minutes after first encountering police. (R. 12-15, 183).

Appellant's initial statement to law enforcement was brief and consisted of him denying then quickly admitting he knew the package contained illegal drugs. He did not provide any detail about why he had picked up the box or his role in previous drug transactions. In contrast, his second and third statements were much more detailed and lengthy, with Appellant again admitting to knowing the box contained illegal drugs, but

also informing law enforcement he was acting as a mule to support his family due to trouble finding work. Additionally, Appellant's final written statement was taken less than forty-five minutes after officers approached him and he gave his first oral statement. During this time, there was a significant break in questioning, where Edmonson called in a drug-sniffing canine that made a positive identification of drugs inside the box, obtained a search warrant from a magistrate, opened the box, and broke apart the candle to reveal the Oxycodone. These are all marked distinctions from Seibert and Navy and establish that Appellant's second and third statements were admissible. Cf. Seibert, 542 U.S. at 616 ("The unwarned interrogation was conducted in the station house, and the questioning was systematic, exhaustive, and managed with psychological skill. When the police were finished, there was little, if anything, of incriminating potential left unsaid." (emphasis added)) and Navy, 386 S.C. at 303, 688 S.E.2d at 842 ("Once the incriminating answers were given—i.e. after respondent admitted he had popped the child on the back and "patted" his mouth—respondent was permitted a supervised cigarette break, then given Miranda warnings, with interrogation by the same officer resuming immediately." (emphasis added)). Furthermore, unlike the defendants in Seibert and Navy, Appellant has a lengthy record and was familiar with law enforcement and the criminal justice system, thereby reducing the effect of taint from a failure to initially receive his Miranda warnings. Because Appellant's second and third statements were voluntarily made after an informed waiver of rights, the trial court did not err in admitting the statements. See, e.g., Myers, 359 S.C. at 44, 596 S.E.2d at 490 ("The totality of the circumstances does not demonstrate that Appellant's will was overborne by the police. As there is no evidence that the confession was not voluntary we therefore hold that the

trial court did not err in admitting Appellant's confession."). Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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June 8, 2016

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2015-000308

THE STATE,

Respondent,

vs.

LANCE LEON MILES,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that 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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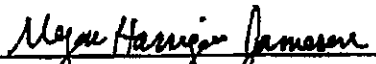
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PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS..... 1

TABLE OF AUTHORITIES 2

ARGUMENT IN REPLY 3

CONCLUSION 14

TABLE OF AUTHORITIES

Cases

<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	13
<i>State v. Beam</i> , 753 S.E.2d 232 (N.C. Ct. App. 2014).....	9, 10
<i>State v. Belcher</i> , 385 S.C. 597, 685 S.E.2d 802 (2009)	9
<i>State v. Coleman</i> , 742 S.E.2d. 346 (N.C. Ct. App. 2013)	9, 10
<i>State v. Fripp</i> , 396 S.C. 434, 721 S.E.2d 465 (2012).....	13
<i>State v. Galaviz-Torres</i> , 772 S.E.2d 434 (N.C. Ct. App. 2015).....	10
<i>State v. Hernandez</i> , 382 S.C. 620 S.E.2d 603 (2009)	8, 11
<i>State v. Keys</i> , 361 S.E.2d 286 (1987)	5
<i>State v. Lopez</i> , 626 S.E.2d 736 (N.C. Ct. App. 2006), ...	8
<i>State v. Marshall</i> , 250 S.C. 448, 158 S.E.2d 650 (1968).....	4
<i>State v. Miller</i> , 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2007).....	12
<i>State v. Mollison</i> , 319 S.C. 4, 459 S.E.2d 88 (Ct. App. 1995).....	4
<i>State v. Navy</i> , 386 S.C. 294, 688 S.E.2d 838 (2010).....	12
<i>State v. Rogers</i> , 231 S.E.2d 919 (N.C. Ct. App. 1977)	6
<i>State v. Shelman</i> , 584 S.E.2d 88 (N.C. Ct. App. 2003)	5
<i>State v. Washington</i> , 296 S.C. 54, 370 S.E.2d 611 (1988)	14
<i>State v. Weldon</i> , 333 S.E.2d 701 (N.C. 1985).....	6

Statutes

Ala. Code § 13A-12-231	4
Fla. Stat. Ann. § 893.135.....	4
Ga. Code Ann., § 16-13-31	4

Idaho Code Ann. § 37-2732B	4
Ill. Comp. Stat. Ann. § 570/401.1(a).....	5
Ky. Rev. Stat. Ann. § 218A.1412 <i>et seq.</i>	5
Mass. Gen. Laws Ann. ch. 94C	5
Me. Rev. Stat. tit. 17-A, § 1103(1-A)	5
Mo. Ann. Stat. § 195.222 <i>et seq.</i>	5
N.C. Gen. Stat. Ann. § 90-95(h).....	5, 6
S.C. Code Ann. § 44-53-370(e).....	5, 6, 11
Tenn. Code Ann. § 39-17-417	5
Va. Code Ann. § 18.2-248	5
Vt. Stat. Ann. tit. 18, § 4201 <i>et seq.</i>	5
W. Va. Code Ann. § 60A-4-401 <i>et seq.</i>	5
Wash. Rev. Code Ann. § 69.50.401.....	5
Wis. Stat. Ann. § 961.41	5

ARGUMENTS IN REPLY

I.

The State's contention, that requiring prosecutors to prove that Appellant knowingly trafficked in opiates would lead to an "absurd result" effectively making it impossible to prosecute trafficking cases absent a confession, is without merit. Numerous other states with similar trafficking statutes require prosecutors to prove that a defendant knowingly trafficked in a specific drug.

The State contends that requiring prosecutors to prove that Appellant knew he was trafficking in heroin in order to be convicted of trafficking in heroin "would lead to the absurd result where the State would be essentially unable to prosecute a defendant for trafficking in illegal drugs unless the defendant gave a statement implicating himself as knowing the particular drug." Resp't Br. p. 16.

This hypothetical is completely divorced from the reality of drug prosecutions and it ignores the role of permissive inferences in criminal cases. *State v. Mollison*, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995) ("The knowledge element may be proved circumstantially by evidence of acts, declarations, or conduct of the accused from which an inference may be drawn that the accused knew of the existence of the prohibited substance."). The State also appears to have forgotten that jurors are not required to believe a defendant's claims or accept his evidence at face value. *State v. Marshall*, 250 S.C. 448, 450, 158 S.E.2d 650, 651 (1968) ("The credibility of the witnesses, including the appellant himself, was for the jury. If the jury had believed his testimony a finding of not guilty would have been warranted.").

Tellingly, the State's hyperbolic predictions ignore the long history of successful trafficking prosecutions in the many states' that do require prosecutors to prove a defendant knowingly trafficked or possessed a specific drug. Ala. Code § 13A-12-231; Fla. Stat. Ann. § 893.135 (West); Ga. Code Ann., § 16-13-31; Idaho Code Ann. § 37-2732B (West); Ky. Rev. Stat. Ann. § 218A.1412

et seq. (West); Mo. Ann. Stat. § 195.222 *et seq.* (West); N.C. Gen. Stat. Ann. § 90-95(h); Va. Code Ann. § 18.2-248 (West); Vt. Stat. Ann. tit. 18, § 4201 *et seq.* (West); W. Va. Code Ann. § 60A-4-401 *et seq.* (West).

Comparison: S.C. Code Ann. § 44-53-370(e) and N.C. Gen. Stat. Ann. § 90-95(h).

A particularly relevant example is that of our sister state of North Carolina where drug trafficking convictions continue, despite prosecutors having to prove (1) knowing possession, either actual or constructive, (2) of a specified amount of a specific drug. *State v. Keys*, 361 S.E.2d 286, 288 (1987) (trafficking in heroin).

North Carolina's trafficking statute is substantially similar to ours. Like S.C. Code Ann. § 44-53-370(e), N.C. Gen. Stat. Ann. § 90-95(h) is divided by the kind of drug being trafficked with punishments further subdivided by the amount trafficked.¹ Like our courts, North Carolina courts have held that the amount of drug being trafficked is a strict liability element. *State v. Shelman*, 584 S.E.2d 88, 93 (N.C. Ct. App. 2003) (“[T]o convict an individual of drug trafficking the State is not required to prove that defendant had knowledge of the weight or amount of methamphetamine which he knowingly possessed or transported.”).

The only difference between § 44-53-370(e) and N.C. Gen. Stat. Ann. § 90-95(h) is that our statute includes the word “knowingly” three times while the North Carolina statute does not. In addition, N.C. Gen. Stat. Ann. § 90-95(h) repeats the wide variety of conduct that can constitute

¹ By comparison, states that only require prosecutors to prove that a defendant knew that he was in possession of a controlled substance, as opposed to the specific identity of the substance, have drug trafficking or possession statutes that are organized by drug schedules instead of specific drugs. 720 Ill. Comp. Stat. Ann. § 570/401.1(a); Mass. Gen. Laws Ann. ch. 94C, § 32A; Me. Rev. Stat. tit. 17-A, § 1103(1-A); Tenn. Code Ann. § 39-17-417 (West); Wash. Rev. Code Ann. § 69.50.401 (West); Wis. Stat. Ann. § 961.41.

trafficking each time it delineates a separate drug-based trafficking offense. For example North Carolina defines trafficking in opium or heroin as:

Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which shall be known as “trafficking in opium or heroin” and if the quantity of such controlled substance or mixture involved

N.C. Gen. Stat. Ann. § 90-95(h)(4). Similarly, South Carolina defines trafficking in 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:

- (3) four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210, or four grams or more of any mixture containing any of these substances, is guilty of a felony which is known as “trafficking in illegal drugs” and, upon conviction, must be punished as follows if the quantity involved is

S.C. Code Ann. § 44-53-370(e)(3) (*emphasis added*).

Despite N.C. Gen. Stat. Ann. § 90-95(h) not specifying a mental state, North Carolina courts have consistently held that a defendant must knowingly possess the controlled substance. *State v. Weldon*, 333 S.E.2d 701, 702 (N.C. 1985) (“To convict defendant of trafficking in heroin ... the state was required to prove that defendant knowingly possessed the [heroin]”); *State v. Rogers*, 231 S.E.2d 919, 922 (N.C. Ct. App. 1977) (“Felonious possession of a controlled substance has two essential elements. The substance must be possessed, and the substance must be ‘knowingly’ possessed.”)

Comparison of Jury Instructions: North and South Carolina.

Mirroring the similarities in their respective statutes, the two states' model or recommended jury instructions for drug trafficking are also very similar. The South Carolina Judicial Department's suggested jury charges state that, "[t]he Defendant is charged with trafficking in _____ [drug]. The State must prove beyond a reasonable doubt that the Defendant knowingly sold . . . was knowingly in actual or constructive possession, [or] knowingly attempted to become in actual or constructive possession of _____ [drug]."

The North Carolina Pattern Jury Instructions for Criminal Cases explains to jurors that:

For you to find the defendant guilty of [trafficking] the State must prove two things beyond a reasonable doubt: First, that the defendant knowingly⁴ possessed [name controlled substance]. A person possesses (name controlled substance) if the person is aware of its presence and has (either by oneself or together with others) both the power and intent to control the disposition or use of that substance.

And Second, that the amount of (name controlled substance) which the defendant possessed was (state amount).

N.C.P.I. - Crim. 260.30. Footnote 4 in the instructions states, "[i]f the defendant contends that he did not know the true identity of what he transported, add this language to the first sentence: 'and the defendant knew what he possessed was (name substance).'" *Id.* at n. 4.

Thus, the proper instruction when a defendant contests lack of knowledge as to the true identity of the drug possessed is: "First, that the defendant knowingly possessed [name controlled substance] and the defendant knew what he possessed was [name controlled substance]." N.C.P.I. - Crim. 260.30 amended.

A straightforward reading of both states' instructions makes clear that prosecutors must prove beyond a reasonable doubt that a defendant knowingly trafficked in a specific drug. The North Carolina instructions expressly command, that if there was evidence at trial that the

defendant did not know the specific drug he was trafficking, the jury must receive additional instruction that the State must prove the defendant knew what drug he was trafficking.

Application of North Carolina's requirement that the State prove a defendant knew what drug he was trafficking.

In *State v. Lopez*, 626 S.E.2d 736 (N.C. Ct. App. 2006), the North Carolina Court of Appeals affirmed one defendant's conviction for trafficking in heroin while reversing his co-defendant's conviction. Like Appellant's case, Lopez and his co-defendant Sanchez were arrested following the controlled delivery of a refrigerator from California that police had intercepted after discovering it contained 2,000 grams of heroin. 626 S.E.2d at 738-739.

Lopez and Sanchez were arrested approximately ten minutes after the refrigerator was delivered to a house. *Id.* They were standing outside the house near a vehicle containing a secret compartment. Lopez's prints were found on the left side of the refrigerator. *Id.* Lopez testified at trial that he did not know the refrigerator contained heroin and that he had simply been hired by a man named "Eric" to insure that the refrigerator was delivered to the house. *Id.* Sanchez did not testify. Both men were convicted.

Like South Carolina, North Carolina prosecutors are aided in meeting their burden of proof by permissive inferences that the jury may adopt. Chief among them is, that "[k]nowledge that one possesses contraband is [inferred] by the act of possession unless the defendant denies knowledge of possession and contests knowledge as a disputed fact." *Lopez*, 626 S.E.2d at 741; *see also State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)(defendant's possession gives rise to an inference that defendant knows the character of the substance possessed).

On appeal, Lopez and Sanchez both alleged that the trial court erred in failing to instruct the jury that it must conclude that the men knew that they possessed heroin in order to convict them of

trafficking. *Lopez*, 626 S.E.2d at 740. On this basis, the appellate court reversed Lopez's conviction, "as he contended in his testimony that he was unaware that heroin was in the refrigerator that he had been paid to receive for a third party." *Id.* at 742. However, Sanchez's conviction was affirmed as he presented no evidence that he was unaware of the contents of the refrigerator. *Id.*

In *State v. Coleman*, 742 S.E.2d 346 (N.C. Ct. App. 2013), the defendant was arrested during a traffic stop after admitting that he had marijuana. A search of his vehicle uncovered 45 grams of heroin in box also containing additional marijuana. *Id.* at 346-347. Throughout his interrogation, Coleman maintained that he thought the box he was transporting contained marijuana and cocaine, not heroin. *Id.* at 349. His interrogation was played at trial during the State's case-in-chief. *Id.*

On appeal, Coleman claimed the trial court erred in failing to instruct the jury that it must find that he knew that the substance he was transporting was heroin. *Id.* The Court of Appeals agreed, holding that the failure to so instruct the jury constituted plain error as Coleman's "entire defense was predicated upon a lack of knowledge that the substance he possessed was heroin" and there was "substantive evidence that [the] defendant did not know that the substance he possessed was heroin sufficient to amount to a contention that would trigger" the additional jury instruction regarding knowledge of the specific substance. *Id.* at 351; *Cf. State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009) ("use of a deadly weapon" implied malice instruction is improper where there is evidence that would reduce, mitigate, excuse or justify the killing or attempted murder).

In *State v. Beam*, 753 S.E.2d 232 (N.C. Ct. App. 2014), the appellate court upheld the trial court's refusal to instruct jury concerning proof of the defendant's awareness that the substance he transported was heroin. Beam was arrested after he and another individual drove to an informant's

house in order to sell him heroin. 753 S.E.2d at 232. Once the two arrived, police approached the truck and watched the passenger drop two bags of heroin onto the vehicle floor. *Id.*

Beam requested the court instruct the jury that “in order to convict Defendant, the State must prove that Defendant ‘knew what he transported was [heroin].’” *Id.* at 233. His conviction was affirmed as Beam “presented no evidence or argument that he was confused as to the correct identity of the illegal drugs . . . Defendant’s argument at trial was that he was just driving [the passenger], and had no knowledge that [the passenger] was carrying any illegal drugs whatsoever. *Id.* The Court observed “the jury clearly did not believe Defendant’s argument”. *Id.*

Finally, in *State v. Galaviz-Torres*, 772 S.E.2d 434 (N.C. Ct. App. 2015), the North Carolina Supreme Court overruled the Court of Appeals and reinstated the Defendant’s conviction for trafficking cocaine. The Defendant was arrested while selling cocaine to an informant in a Taco Bell parking lot. *Id.* at 435. A gift bag next to the driver’s seat contained over a kilogram of cocaine. *Id.* While being interrogated, the Defendant told police that he had purchased the cocaine.

At trial, the Defendant testified that he simply borrowed the van and that he did not know that it contained cocaine. *Id.* The Court of Appeals reversed the Defendant’s conviction relying on *Coleman*. The North Carolina Supreme Court disagreed, distinguishing *Coleman* thusly:

The defendant in *Coleman* admitted that he knew of the box that contained marijuana and heroin. However, while he admitted that he thought that the box contained cocaine in addition to marijuana, he said that he did not believe that the box contained heroin. In this case, defendant denied any knowledge of either the gift bag located in the van that he was driving or its contents. . .

Thus, the basic pattern instruction given here, which required the jury to find that defendant “knowingly possessed” the drug,—that he was in fact “aware of its presence” and had the ability to exercise control over it—adequately informed the jury of the determination that it must make in light of the position that defendant asserted.

Id. at 439. In sum, North Carolina prosecutors continue to successfully convict individuals of trafficking, even in cases where the defendant does not confess, despite having to prove beyond a reasonable doubt that the defendant knowingly trafficked in a specific drug.

Conclusion

At trial, the State benefits from the permissible inference that a person is presumed to know the identity and nature of an item that they possess. *Hernandez*, 382 S.C. at 624, 677 S.E.2d at 605. This inference extends to items found on their property or in their vehicles. *Id.*

In Appellant's case, the State presented testimony in its case-in-chief from Officer Edmondson that Appellant believed the package that he was picking up likely contained marijuana. Tr. p. 123, l. 4 - p. 131, l. 11. There was no evidence that Appellant knew or even suspected that the package contained OxyContin. By its terms, S.C. Code Ann. § 44-53-370(e)(3) requires the State to prove that Appellant knowingly possessed over four grams of opiates.

As the long experience of other states, such as North Carolina, shows the State's apocalyptic predictions of the end of trafficking prosecutions are grossly exaggerated. Accordingly, the trial court's instruction to the jury that Appellant only had to know or believe that he was possessing "illegal drugs" - as opposed to opiates specifically - was a misstatement of the law that substantially lowered the State's burden of proof and removed an element of the crime. Tr. p. 297, ll. 12-17. This was reversible error and Appellant is entitled to a new trial.

II.

The issue of whether the trial court reversibly erred by admitting into evidence Appellant's statements to police where the first statement was the product of an interrogation by officers who failed to advise Appellant of his *Miranda*² rights and where his subsequent statements were tainted by the initial violation and the product of an involuntary waiver, is preserved for appellate review.

In its brief, the State alleges that Appellant has waived this issue on appeal by failing to challenge the trial court's later ruling that defense counsel had opened the door to Appellant's pre-*Miranda* statements during his cross-examination of Agent Edmonson. Resp't Br. p. 29 - 30.

The rules of error preservation are not a suicide pact. Defense counsel moved pre-trial to suppress both the pre-*Miranda* and post-*Miranda* statements that Appellant made while being interrogated by law enforcement. Tr. p. 40, l. 16 - p. 42, l. 19. The trial court ruled that the post-*Miranda* statements were admissible. Tr. p. 63, ll. 16-23. This ruling was a legal error. Appellant's post-*Miranda* interrogation was a continuous extension of the pre-*Miranda* interrogation. *State v. Navy*, 386 S.C. 294, 688 S.E.2d 838 (2010). Defense counsel made proper and timely objections.

The State's waiver argument misapprehends the bifurcated process for determining the voluntariness of a post-*Miranda* statement. "Once the trial judge determines that the statement is admissible, it is up to the jury to ultimately determine, beyond a reasonable doubt, whether the statement was voluntarily made." *State v. Miller*, 375 S.C. 370, 383, 652 S.E.2d 444, 451 (Ct. App. 2007).

By the time defense counsel cross-examined Edmonson, the court had already ruled on the statement's admissibility. Defense counsel, an experienced litigator, was then faced with a tactical decision regarding how to most effectively argue to the jury that Appellant's statement was

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

involuntarily made. Counsel elected, in light of the court's ruling, to provide the jury with the pre-*Miranda* statements in an effort to place Appellant's statements in their proper context.

The State's reliance on *State v. Fripp*, 396 S.C. 434, 721 S.E.2d 465 (2012), is misplaced. Fripp was convicted of burglary based largely on having been identified on a burglarized convenience store's video surveillance footage. During cross-examination, the lead investigator testified that another officer had seen Fripp in a neighbor's backyard adjacent to the robbed store on the day after the robbery. *Id.* at 437-438, 721 S.E.2d at 466. On redirect, the lead investigator stated that the other officer had told him that Fripp was wearing clothes that matched those of the robber. *Id.*

On appeal, Fripp alleged the trial court erred in allowing the lead investigator to testify about what the other officer, who did not testify at trial, had told him. *Id.* at 438-439, 721 S.E.2d at 467-468. Fripp separately alleged that his statement to law enforcement was involuntary. *Id.* In affirming his conviction, this Court ruled that Fripp had opened the door to the hearsay testimony by asking the lead investigator about the officer's observation during cross-examination. *Id.* This Court also **separately held** that Fripp's statement was voluntarily made after *Miranda* warnings were administered. *Id.* at 441-442, 721 S.E.2d at 468-469.

Other than being in the same paragraph, this Court's holdings on the admissibility of hearsay testimony and on the voluntariness of Fripp's statement were entirely unrelated. Thus, Appellant's case is readily distinguishable from *Fripp*. The testimony in *Fripp* that defense counsel opened the door to was not the subject of a pre-trial ruling and dealt with completely different legal questions - exceptions to the rule against hearsay and a defendant's right to confront adverse witnesses. *Id.*

At trial, Appellant was faced with the admission of his *post-Miranda* statements, despite those statements being a virtually uninterrupted continuation of law enforcement's pre-*Miranda* interrogation. Tr. p.33, ll. 19 - p. 36, ll. 12. The State appears to believe that Appellant was required to make a kind of Faustian bargain whereby to preserve his objection to the admission of the post-*Miranda* statements, Appellant was precluded from making any reference to pre-*Miranda* statements before the jury. Resp't Br. p. 29 - 30.

This position is totally at odds with our courts' well-established framework for determining the voluntariness of statements made to police while the declarant is under custodial interrogation. *State v. Washington*, 296 S.C. 54, 55, 370 S.E.2d 611, 612 (1988) (trial judge determines voluntariness of a statement by a preponderance of the evidence; if admitted, the jury determines whether statement was freely and voluntarily given beyond a reasonable doubt).

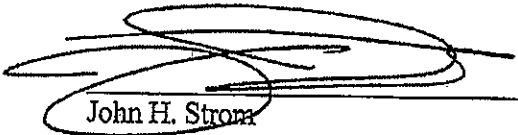
Unlike Fripp, Appellant did not contribute to the trial court's error. Nor did Appellant waive his objection by cross-examining Edmonson on the circumstances under which Appellant gave his post-*Miranda* statements, including that Appellant had been interrogated by law enforcement prior to the giving of *Miranda* warnings. Defense counsel's duty was to preserve his objection to the admission of the post-*Miranda* statements - which he did - then to mitigate the damage and make his case to the jury that Appellant's statements were involuntary and should not be believed. Tr. p. 123, l. 15 - 129, l. 14.

Accordingly, whether the trial court reversibly erred by admitting into evidence Appellant's statements to police when the first statement was the product of an interrogation by officers who failed to advise Appellant of his *Miranda* warnings and his subsequent statements were tainted by the initial violation and the product of an involuntary waiver, is preserved for appellate review.

CONCLUSION

For these additional reasons, Appellant Lance L. Miles respectfully requests that this Court reverse his conviction and remand this case to the Lexington County Court of General Sessions.

Respectfully submitted,


John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT.

This 2nd day of June, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

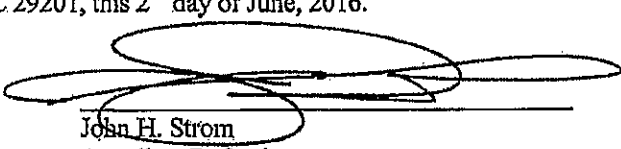
LANCE L. MILES,

APPELLANT

APPELLATE CASE NO. 2015-000308

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Megan Harrigan Jameson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2nd day of June, 2016.


 John H. Strom
 Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
 this 2nd day of June, 2016.

 (L.S.)
 Notary Public for South Carolina

My Commission Expires: May 12, 2025.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Lance Leon Miles, Appellant.

Appellate Case No. 2015-000308

Appeal From Lexington County
Thomas A. Russo, Circuit Court Judge

Opinion No. 5511
Heard June 7, 2017 – Filed August 23, 2017

AFFIRMED

Appellate Defender John Harrison Strom, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Senior
Assistant Deputy Attorney General Megan Harrigan
Jameson, Assistant Deputy Attorney General David A.
Spencer, all of Columbia; and Solicitor Samuel R.
Hubbard, III, of Lexington, for Respondent.

HILL, J.: Lance L. Miles appeals his conviction for trafficking in illegal drugs in violation of section 44-53-370(e)(3) of the South Carolina Code (Supp. 2016). He argues the trial court erred by: (1) instructing the jury, in reply to a question they posed during deliberation, that the State did not have to prove Miles knew the drugs were oxycodone; (2) denying his directed verdict motion; and (3) admitting three

statements he contends were obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1960). We affirm.

I.

While scanning parcels for illegal drugs at the Federal Express office in West Columbia, agents from the Lexington County Sheriff's Office became suspicious of a package. They arranged for a controlled delivery to the listed address, which was within an apartment complex. Surveilling the delivery, they observed the delivery person ring the doorbell and leave the package by the front door. A few moments later, an agent noticed Miles exit a nearby apartment and begin walking around the parking lot. The agent then saw a young female emerge from the delivery address. She looked at the box, got on her phone, quickly hung up and went back inside. Miles then got on his phone while walking towards the box. Miles picked up the box and started back to his apartment. Seeing the agents advancing to intercept him, he tried to ditch the box. The agents apprehended and handcuffed him.

Agent Edmonson immediately questioned Miles about the contents of the box. Miles claimed he did not know what was inside. Edmonson then asked if there were drugs inside the box; Miles responded there probably were, but he did not know what kind. At this point, Edmonson read Miles his *Miranda* rights and asked Miles again whether there were drugs in the box. Miles again responded the box could contain drugs, but he did not know what kind. Upon obtaining a search warrant and Miles' consent, the agents opened the box and discovered three hundred pills that a chemist later testified contained a total of nine grams of oxycodone. Edmonson next asked Miles to write down everything he knew about the box and the drugs. Edmonson then reread Miles his *Miranda* rights, and Miles wrote a statement admitting he had been paid one hundred dollars to pick up the box, someone named "Mark" had called him to pick it up, and the "owner" was a "Stacks" from Tennessee.

Edmonson then wrote out two questions. First, "Did you know drugs are in the parcel 'box'?" Miles wrote, "Yes." The second question and answer—related to Miles' admission that he had previously picked up packages for money—were redacted and not presented to the jury.

Miles was indicted for trafficking in illegal drugs, in violation of section 44-53-370(e)(3). He did not testify at his trial and moved unsuccessfully for directed verdict, arguing in part there was insufficient evidence he knew the box contained oxycodone. During the jury charge, the trial court gave the following instruction:

Mr. Miles is charged with trafficking in illegal drugs and in this case we are referring to [o]xycodone. The State must prove beyond a reasonable doubt that the Defendant knowingly delivered, purchased, brought into this state, provided financial assistance or otherwise aided, abetted, attempted or conspired to sell, deliver, purchase, or bring into this state and was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive pos[session] of the [o]xycodone. Possession may be either . . . actual or constructive.

The trial court charged that the State bore the burden of proving the amount of oxycodone was more than four grams. The trial court further instructed that the State had to prove criminal intent, which required a "conscious wrongdoing," and that intent may be inferred from the conduct of the parties and other circumstances. After deliberating for some time, the jury asked the following question: "Does the [S]tate have to prove that the defendant knowingly brought into the state four grams or more of [o]xycodone or just any amount of illegal drugs in order to consider this trafficking?"

The trial court, over Miles' objection, replied to the jury as follows:

[T]he law in South Carolina is the State does not have to prove that the Defendant knew that the drugs in the package were [o]xycodone, just that he knew that the package contained illegal drugs. However, the State does have to prove beyond a reasonable doubt that the illegal drugs that were in the package w[ere] more than four grams of [o]xycodone.

The jury later returned with a verdict of guilty. Because Miles had at least two prior drug convictions, he was sentenced to the mandatory minimum term of twenty-five years, and ordered to pay a \$100,000 fine.

II.

Miles' primary argument on appeal is the trial court's supplemental charge misinformed the jury that the State did not need to prove beyond a reasonable doubt that Miles knew the drug he possessed was oxycodone. We review jury instructions to determine whether they, as a whole, adequately communicate the law in light of

the issues and evidence presented at trial. *State v. Logan*, 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013).

Section 44-53-370(e)(3) provides in part:

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: . . . four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210, or four grams or more of any mixture containing any of these substances, is guilty of a felony which is known as "trafficking in illegal drugs"

(emphases added).

Miles contends the term "knowingly" as used in subsection (e) applies to each element of the trafficking offense, including the specific type of drugs listed in (e)(3). The issue of whether trafficking requires proof, not only that the defendant knowingly intended to "sell[], manufacture[], cultivate[] . . ." or "posses[]" illegal drugs, but also had knowledge of the precise identity of the illegal drug being trafficked, has, surprisingly, never been addressed by our appellate courts.

We are mindful that "statutory interpretation begins (and often ends) with the text of the statute in question. Absent an ambiguity, there is nothing for a court to construe, that is, a court should not look beyond the statutory text to discern its meaning." *Smith v. Tiffany*, 419 S.C. 548, 555–56, 799 S.E.2d 479, 483 (2017) (citations omitted).

Courts grapple often with that tricky adverb "knowingly." In *United States v. Jones*, 471 F.3d 535, 538 (4th Cir. 2006), the court construed a federal statute that punished "[a] person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce . . . with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense." (quoting 18 U.S.C. § 2423(a) (2000 & Supp. 2003)). Rejecting the argument that the government was required to prove the defendant knew the

person transported was a minor, Judge Wilkinson noted:

[C]onstruction of the statute demonstrates that it does not require proof of the defendant's knowledge of the victim's minority. It is clear from the grammatical structure of § 2423(a) that the adverb "knowingly" modifies the verb "transports." Adverbs generally modify verbs, and the thought that they would typically modify the infinite hereafters of statutory sentences would cause grammarians to recoil. We see nothing on the face of this statute to suggest that the modifying force of "knowingly" extends beyond the verb to other components of the offense.

Id. at 539.

The United States Supreme Court has not been so gun-shy about the adverb.¹ They ordinarily read a "statute that introduces the elements of a crime with the word 'knowingly' as applying that word to each element." *Flores-Figueroa v. United States*, 556 U.S. 646, 652 (2009). They have also found "the word 'knowingly' applies not just to the statute's verbs but also to the object of those verbs." *McFadden v. United States*, 135 S. Ct. 2298, 2304 (2015).

But the Court has not gone so far as to hold that a criminal statute that opens with "knowingly" invariably requires each element be proven by that level of intent. It is commonplace that "different elements of the same offense can require different mental states." *Staples v. United States*, 511 U.S. 600, 609 (1994). Even in *Flores-Figueroa*, the Court acknowledged that "knowingly" does not always modify every element, particularly where the statutory sentences at issue "involve special contexts or . . . background circumstances that call for such a reading." 556 U.S. at 652. The Court emphasized that "the inquiry into a sentence's meaning is a contextual one." *Id.*; see also *Avis Rent A Car Sys., Inc. v. Hertz Corp.*, 782 F.2d 381, 385 (2d Cir. 1986) ("Fundamental to any task of interpretation is the principle that text must yield to context.") (Friendly, J.).

Our duty is to determine legislative intent, and the text of the statute is often the best evidence of that intent. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Yet the text "must be construed in context and in light of the intended purpose of the statute in a manner which harmonizes with its subject matter and

¹ We suspect the bar for causing grammarians to recoil is low.

accords with its general purpose." *Cabiness v. Town of James Island*, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011) (citation and internal quotations omitted).

We find that by using "knowingly" in subsection (e), the Legislature did not intend to require the State to prove a defendant knew the specific type of illegal drug he was trafficking. Section 44-53-370 is concerned with criminalizing numerous forms of conduct involving illegal drugs. Thus, subsection (c) decrees "[i]t shall be unlawful for any person knowingly or intentionally to possess a controlled substance," subject to certain exceptions not relevant here. S.C. Code Ann. § 44-53-370(c) (Supp. 2016). Our supreme court has held the language now codified in subsection (c) requires the State to prove beyond a reasonable doubt that the defendant knew he possessed a "controlled substance." *State v. Attardo*, 263 S.C. 546, 549, 211 S.E.2d 868, 869 (1975). Subsection (d) then sets forth the penalties for possession based on the type of controlled substance. S.C. Code Ann. § 44-53-370(d) (Supp. 2016).

This brings us to trafficking, subsection (e). Tellingly, our supreme court has explained "[i]t is the amount of [the controlled substance], rather than the criminal act, which triggers the trafficking statute, and distinguishes trafficking from distribution and simple possession." *State v. Raffaldt*, 318 S.C. 110, 117, 456 S.E.2d 390, 394 (1995). While the court in *Raffaldt* was not confronted with the mental state required for a trafficking conviction, that issue was addressed in *State v. Taylor*, 323 S.C. 162, 166, 473 S.E.2d 817, 819 (Ct. App. 1996). In *Taylor*, the defendant was charged with trafficking more than ten grams of crack, in violation of section 44-53-375(C) of the South Carolina Code (Supp. 1995), which contains language nearly identical to section 44-53-370(e), including placement of the adverb "knowingly." Taylor argued the language required the trial court to charge the jury that "they could not find [her] guilty of trafficking in crack unless she knew there were ten grams or more." *Taylor*, 323 S.C. at 107, 473 S.E.2d at 819. Relying on *Raffaldt*, we disagreed. *Id.*

Raffaldt and *Taylor* illuminate the "special context" revealed by viewing section 44-53-370 as a whole. Because section 44-53-370(c) only requires knowledge that the substance is "controlled," and because *Raffaldt* and *Taylor* tell us the only difference between the elements of distribution and simple possession and the elements of trafficking is the amount of the controlled substance involved, there is no reason to suspect the Legislature meant to require knowledge of the specific type of controlled substance in trafficking prosecutions. Miles' interpretation depends upon isolating "knowingly" in subsection (e) and extending its modifying reach not only to "possession," but to the specific type of drugs listed. Magnifying individual

words of a statute and insisting they be interpreted concretely can lead to strange results. One could, for example, myopically diagram subsection (e)(3) and conclude it criminalizes the possession of more than four grams of table salt, or even the conduct of the delivery person in this case. Further, were we to adopt Miles' version of subsection (e), the State would have to convince the jury beyond a reasonable doubt the defendant not only knew the drugs were oxycodone, but also knew that oxycodone is a "morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210, or . . . any mixture containing any of these substances." We doubt the Legislature, in passing the drug trafficking laws, meant to create a scenario where a defendant is culpable only if armed with a proficiency in chemistry on par with a pharmacist or Walter White.² That is why considering the words in their surrounding environment is essential, especially here where the statute runs to nearly five-thousand words and represents the Legislature's will in the massive field of drug interdiction. Given this background, "[i]f ever we are justified in reading a statute, not narrowly as through a keyhole, but in the broad light of the evils it aimed at and the good it hoped for, it is here." *United States ex rel. Marcus v. Hess*, 317 U.S. 537, 557 (1943) (Jackson, J., dissenting).³

When a statute can be read in its ordinary sense, courts have no right to engineer an extraordinary one. That the Legislature titled the offense defined by subsection (e) as "trafficking in illegal drugs" affirms our conclusion that a defendant need not know the precise identity of the controlled substance to be guilty. *See Univ. of S.C. v. Elliott*, 248 S.C. 218, 221, 149 S.E.2d 433, 434 (1966) ("[I]t is proper to consider the title or caption of an act in aid of construction to show the intent of the legislature."). This sense becomes inescapable when we consider subsection (e)'s reference to sections 44-53-190 and 44-53-210 of the South Carolina Code (Supp. 2016), which set forth Schedules I and II governing classification of controlled substances. While we can interpret statutes by bringing in rules of grammar, logic, and other tools, we must be careful not to construe common sense out.

Courts in many other states share our conclusion that proving the defendant knew the specific type of drug is not required in trafficking and other controlled substance offenses. *See, e.g., State v. Stefani*, 132 P.3d 455, 461 (Idaho Ct. App. 2005); *People v. Bolden*, 379 N.E.2d 912, 915 (Ill. 1978); *Com. v. Rodriguez*, 614 N.E.2d 649, 653

² *Breaking Bad* (AMC 2008–13).

³ Our emphasis on context and structure bears on the threshold decision of whether the statute is ambiguous, and is not meant to dilute the rule of lenity, as we later discuss.

(Mass. 1993); *State v. Ali*, 775 N.W.2d 914, 919 (Minn. Ct. App. 2009); *State v. Edwards*, 607 A.2d 1312, 1313 (N.J. Super. Ct. App. Div. 1992); *State v. Engen*, 993 P.2d 161, 170 (Or. 1999); *State v. Sartin*, 546 N.W.2d 449, 455 (Wis. 1996).

We cannot leave this issue without discussing the important canon of statutory construction that penal statutes are to be strictly construed. This rule of lenity applies when a criminal statute is ambiguous, and requires any doubt about a statute's scope be resolved in the defendant's favor. *Berry v. State*, 381 S.C. 630, 633, 675 S.E.2d 425, 426 (2009). But the rule of lenity is not a device to create ambiguity, nor should a court invoke it before considering the words of the statute in context. *State v. Dawkins*, 352 S.C. 162, 166–67, 573 S.E.2d 783, 785 (2002); *State v. Firemen's Ins. Co. of Newark, N.J.*, 164 S.C. 313, 162 S.E. 334, 338 (1931) ("The rule that a penal statute must be strictly construed does not prevent the courts from calling to their aid all the other rules of construction and giving each its appropriate scope, and is not violated by giving the words of the statute a reasonable meaning according to the sense in which they were intended, and disregarding . . . even the demands of exact grammatical propriety." (citation and internal quotations omitted)); *see also United States v. Bass*, 404 U.S. 336, 347 (1971) (court should rely on lenity only if, "[a]fter 'seiz[ing] every thing from which aid can be derived,' it is 'left with an ambiguous statute' (quoting *United States v. Fisher*, 6 U.S. 358, 386 (1805) (Marshall, C.J.))).

One of the foundations of the rule of lenity is the concept of fair notice—the idea that those trying to walk the straight and narrow are entitled to know where the line is drawn between innocent conduct and illegality. *McBoyle v. United States*, 283 U.S. 25, 27 (1931) ("[I]t is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear."). The line for conduct involving contraband is not merely clear but fluorescent. At least since *State v. Freeland*, 106 S.C. 220, 91 S.E. 3 (1916), we have required a defendant to know or be willfully ignorant that he was dealing with contraband drugs to satisfy criminal intent. This removes innocent activity, inadvertence or accident from the law's grasp. At any rate, we need not apply the rule of lenity here, as context has convinced us section 44-53-370(e)(3) does not require proof of knowledge of the specific identity of the controlled substance. *Carter v. United States*, 530 U.S. 255, 269 (2000) (courts are required "to read into a statute only that *mens rea* which is necessary to separate wrongful conduct from 'otherwise innocent conduct'").

Another foundation of the rule of lenity is the separation of powers. Our Constitution commits the task of defining criminal offenses solely to the Legislative Branch.

Bass, 404 U.S. at 347-48; *United States v. Wiltberger*, 18 U.S. 76, 95 (1820). If the Legislature believes our interpretation expands or is otherwise contrary to the scope it intended section 44-53-370(e)(3) and its harsh penalty scheme to have, they can amend the statute.

The trial judge's instructions—including his initial charge that criminal intent consists of "conscious wrongdoing"—conveyed the pertinent legal standards to the jury. He further correctly charged that the State still bore the burden of proving the drug quantity and identity.

III.

Miles next argues he was entitled to a directed verdict because the State presented insufficient evidence that he knowingly trafficked oxycodone. As we have held, the State needed only to prove Miles knew the item was a controlled substance. Because there was evidence Miles possessed the box, the jury was free to infer he knew what was in it. As the assistant solicitor pointed out, the evidence was literally lying at Miles' feet. *See State v. Gore*, 318 S.C. 157, 163, 456 S.E.2d 419, 422 (Ct. App. 1995) ("Possession gives rise to an inference of the possessor's knowledge of the character of the substance."). Of course, Miles also admitted he knew the box contained drugs. Viewing the evidence in the light most favorable to the State, these circumstances go far beyond mere suspicion. There was ample direct and substantial circumstantial evidence from which Miles' guilt could be fairly and logically deduced. Rule 19, SCRCrimP; *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

IV.

Miles contends the series of three statements he gave to law enforcement should have been suppressed because the agents engaged in the "question-first" manipulation of *Miranda* forbidden by *Missouri v. Seibert*, 542 U.S. 600 (2004), and *State v. Navy*, 386 S.C. 294, 688 S.E.2d 838 (2010). He asserts Agent Edmonson's immediate questioning of him upon arrest was a custodial interrogation triggering *Miranda*. At trial, the State conceded as much and agreed not to present evidence of Miles' first two statements. But, during a later bench conference, Miles agreed to their admissibility, which is unsurprising as this strategy allowed Miles to get his theory of the case—that he didn't know what kind of drugs were in the package—before the jury without having to take the stand. *See State v. Bryant*, 372 S.C. 305, 642 S.E.2d 582 (2007) (stating an issue conceded at trial cannot be argued on appeal).

The issue of whether admission of Miles' third, written statement violated *Seibert* and *Navy* is unpreserved. Miles did not raise these cases or the "question-first" principle to the trial court. *See State v. Byers*, 392 S.C. 438, 446, 710 S.E.2d 55, 59 (2011) ("For an admissibility error to be preserved, the objection must include a specific ground 'if the specific ground was not apparent from the context.'" (quoting Rule 103(a)(1), SCRE)); *In re Michael H.*, 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004) ("In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court. In other words, the trial court must be given an opportunity to resolve the issue before it is presented to the appellate court." (citation omitted)).

Even if the issue was preserved, any error in admitting the redacted written statement was harmless. The statement was cumulative and could not have reasonably contributed to the verdict. It did not contradict Miles' earlier statements that he did not know the type of drugs in the box, and added he was paid one-hundred dollars to retrieve it. *See State v. Martucci*, 380 S.C. 232, 261, 669 S.E.2d 598, 614 (Ct. App. 2008) ("The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence."). We cannot imagine the vague references to others involved packed any punch with the jury.

V.

The trial court did not err in its supplemental instruction to the jury that the State was only required to prove Miles knowingly trafficked in a controlled substance. There was sufficient evidence to carry the case to the jury, and even if the *Miranda* issue was preserved, we find no prejudice. Miles' conviction is therefore

AFFIRMED.

GEATHERS and MCDONALD, JJ., concur.

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AUG 23 2017

APPELLATE DEFENSE

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

LANCE L. MILES,

APPELLANT

APPELLATE CASE NO 2015-000308

Appeal from Lexington County

Honorable Thomas A. Russo, Circuit Court Judge

Opinion No. 5511

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant Lance Miles respectfully petitions this Court for a rehearing in the above-captioned matter after a published opinion, dated August 23, 2017, affirmed his conviction for first degree burglary. In support of his petition, Appellant respectfully alleges that this Court overlooked or misapprehended the following arguments:

Issues I & II

Respectfully, this Court's opinion misconstrued the canons of statutory interpretation when concluding that a defendant only needs to know that he is possessing a controlled substance to be guilty of trafficking in heroin under § 44-53-370(e). In so doing, this Court effectively rewrote S.C.

Code Ann. § 44-53-370(e), instead of interpreting the plain language of the subsection in a straightforward manner consistent with the other sections of the Narcotics and Controlled Substances Act.

Rules of Statutory Construction

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct.App.2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct.App.1999) *cert. denied as improvidently granted*, *State v. Hudson*, 346 S.C. 139, 551 S.E.2d 253 (2001).

The legislature's intent should be ascertained primarily from the plain language of the statute. *Morgan* at 366, 574 S.E.2d 203, 547 S.E.2d at 206. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. *Id.* Courts should consider, not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. *Whitner v. State*, 328 S.C. 1, 492 S.E.2d 777 (1997). The terms must be construed in context and their meaning determined by looking at the other terms used in the statute. *Hudson*, 336 S.C. 237, 519 S.E.2d 577.

Finally, penal statutes must be strictly construed against the State and in favor of the defendant. *Hair v. State*, 305 S.C. 77, 406 S.E.2d 332 (1991). Any doubt as to the proper construction should be resolved in favor of the citizen against the state. *State v. Cutler*, 374 S.C.

376, 264 S.E.2d 420 (1980); *see also Yates v. United States*, 135 S.Ct. 1074 (2015) (ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity).

The South Carolina Narcotics and Controlled Substances Act

The Narcotics and Controlled Substances Act ("The Act") is a comprehensive statutory scheme regulating the all aspects of the use and prohibition of controlled substances. In § 44-53-110, the Act defines number of relevant terms. For instance, the Act defines "controlled substance" as a drug, substance, or immediate precursor in Schedules I through V in Sections 44-53-190, 44-53-210, 44-53-230, 44-53-250, and 44-53-270." § 44-53-110(6). The Act also defines specific drugs and narcotics such as marijuana, cocaine base, methamphetamine, and opium. § 44-53-110 (9), (27)-(30).

The Act criminalizes the possession of "a controlled substance." Possession encompasses a broad range of conduct:

Except as authorized by this article it shall be unlawful for any person:

- (1) to manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue;
- (2) to create, distribute, dispense, deliver, or purchase, or aid, abet, attempt, or conspire to create, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, deliver, or purchase a counterfeit substance.

§ 44-53-370(a) (*emphasis added*). Notably, possession of a controlled substance does not require the State to prove a defendant "knowingly" possessed a "controlled substance." *State v. Ferguson*, 302 S.C. 269, 395 S.E.2d 182 (1990) (holding that defendant must be at least criminally negligent when he or she manufactured, distributed, or dispensed a controlled substance under § 44-53-

370(a)). The punishment for unauthorized possession of a "controlled substance," "counterfeit substance," or "controlled substance analogue" varies depending on the which schedule the "controlled substance" falls into. § 44-53-370(b).

The Act also "prohibits any person knowingly or intentionally to possess a **controlled substance** unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article." § 44-53-370(c) (*emphasis added*). A person who violates § 44-53-370(c) is sentenced based on the schedule of drug they possessed and the number of prior convictions. § 44-53-370(d).

Turning to § 44-53-370(e)(3), the structure of this subsection different from that of § 44-53-370(a) and § 44-53-370(c). The trafficking statute does not use the word "**controlled substance**." Rather, South Carolina's trafficking offenses are divided by drug type and then further divided by the amount of the specific drug with sentencing ranges also determined based, in part, on the number of the defendant's prior offenses. § 44-53-370(e)(1)-(8). This structure, when read in a straightforward manner, makes clear that the legislature intended to punish individuals who are "knowingly in actual or constructive possession" of four grams or more of "any morphine, opium, salt, isomer, or salt of an isomer thereof."

Our Supreme Court has held that "knowledge" can to be equated with a defendant having a "firm belief" or awareness of a particular element or fact." *State v. White*, 311 S.C. 276, 44 S.E.2d 741 (1947) (former receipt of stolen goods statute required that State to prove that defendant knew he was receiving stolen goods). It will often be proved by circumstantial evidence. *Id.* Our courts have rejected a definition of "knowledge" that encompasses "willful blindness" as it would improperly "broaden the meaning of knowledge." *Ducworth v. Neely*, 319 S.C. 158, 456 S.E.2d

896 (Ct. App. 1995). Requiring knowledge of the specific drug being trafficked makes sense given the harsh penalties for trafficking and the lesser penalties for the two possession offenses.

In issuing its opinion, this Court failed to consider that § 44-53-370(e) is not the only trafficking statute. Additional standalone trafficking offenses are found in § 44-53-375(c) covering trafficking in methamphetamine and crack cocaine. This statute is worded identically to the trafficking offenses found in § 44-53-370(e):

A person who knowingly sells, manufactures, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, 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 ten grams or more of methamphetamine or cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), is guilty of a felony which is known as "trafficking in methamphetamine or cocaine base" and, upon conviction, must be punished as follows if the quantity involved is:

§ 44-53-375(e).

A plain reading of the § 44-53-370(e)(3) requires the State to prove that Appellant knew he was possessing oxycodone. This Court's opinion inserted the term "controlled substance" into § 44-53-370(e). Injecting the word "controlled substance" into § 44-53-370(e)(3) would create two arbitrary classes of trafficking offenses. Under § 44-53-370(e), a defendant could be guilty of trafficking in one of the enumerated drugs, by virtue of there being evidence that he knew he was dealing with a controlled substance. By contrast, to be guilty of trafficking under § 44-53-375(c), the State would have to prove that a defendant specifically knew he was trafficking in methamphetamine or crack cocaine. This inconsistent outcome among similarly situated defendants could not have been the intent of the legislature.

Likewise, adopting this Court's construction of § 44-53-370(e), requiring only knowledge of a "controlled substance," to § 44-53-375(c) would cause a serious due process problem if because trafficking in methamphetamine and crack cocaine are punished more severely than other kinds of trafficking. *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348 (2000) (holding a hate crime statute unconstitutional because it allowed the trial court to increase a criminal sentence beyond a statutory maximum based on his own finding of an aggravating factor).

Trafficking Statutes in Other States

This Court's opinion also misapprehended the practical effect of requiring the State to prove knowledge of the specific drug being trafficked. Other jurisdictions, with similarly written trafficking statutes require the prosecution prove that a defendant knew what drug he was trafficking. *See Way v. State*, 475 So.2d 239 (Fl. 1987) (trafficking statute requires "knowing" possession of cocaine); *Young v. Commonwealth*, 659 S.E.2d 308 (Va. 2008) (defendant must have knowledge of the nature and character of the substance in his possession); *Calhoun v. State*, 460 So.2d 268 (Al. Ct. Crim. App. 1984) (prosecutors must prove that "the accused knew he was in possession of more than one kilogram of marijuana"); *Wilson v. State*, 718 S.E.2d 31 (Ga. Ct. App. 2011) (cocaine trafficking statute explicitly requires that defendant know substance possessed and know it is cocaine); *State v. Zelina-Torres*, 400 S.W.2d 343 (Mo. Ct. App. WD 2013) (must prove defendant knew methamphetamine was in vehicle and that defendant exercised control over it); *Martin v. Commonwealth*, 409 S.W.2d (Ky. 2013) (defendant must know that substance he possessed was cocaine); *State v. Coleman*, 742 S.E.2d 346 (N.C. Ct. App. 2013) (court erred in failing to give instruction that the State must prove defendant's knowledge of the type of contraband he was carrying); *State v. Dudick*, 213 S.E.2d 458 (W.V. 1975) (must prove beyond a reasonable doubt defendant knew there was marijuana where police found it and that defendant exercised

control over it); *State v. Henry*, 63 P.3 490 (Id. Ct. App. 2003) (trafficking requires defendant to have knowledge that the substance was methamphetamine).

Accordingly, this Court erred in affirming the trial court's instruction to jurors that the State did not need to prove beyond a reasonable that Appellant knowingly possessed oxycodone, rather the State needed only to prove that the Appellant knowingly possessed a controlled substance. This response was a misstatement of the applicable law and based on an improper construction of § 44-53-370(e) and § 44-53-370(e)(3).

As to Issue II, the trial court erred in refusing to grant a directed verdict on Appellant's indictment for trafficking in oxycodone as the State failed to present any evidence that Appellant was "knowingly and intentionally in actual or constructive possession" of oxycodone, as required under § 44-53-370(e)(3); *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011).

Issue III

Respectfully, this Court erred in concluding that the State did not violate Appellant's right against self-incrimination by introducing Appellant's statements to police when the first statement was the product of an interrogation by officers who failed to advise Appellant of his *Miranda*¹ rights and Appellant's subsequent statements were tainted by the initial violation and the product of an involuntary waiver.

The police engaged in an improper interrogation technique. They questioned Appellant without providing *Miranda* warnings. After extracting an incriminating admission, the police then *Mirandized* Appellant and asked him the same questions again, R. 10, l. 4 – 15, l. 12. This issue is preserved for appellate review. Defense counsel objected to the admission of both Appellant's pre-*Miranda* and post-*Miranda* statements. *State ex rel. Wilson v. Ortho-McNeil-Janssen*

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

Pharmaceuticals, Inc., 414 S.C. 33, 777 S.E.2d 176 (2015) (holding counsel is not required to harass the trial judge by making continued objections after an issue has been ruled upon to preserve an issue for appeal.); *Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011); *Malloy v. Thompson*, 409 S.C. 557, 762 S.E.2d 690 (2014).

Admitting Appellant's statements could not have been harmless error as his statements were the only evidence that Appellant knew, under this Court's lower *mens rea* requirement for trafficking, the package he intercepted contained a "controlled substance." *State v. Mitchell*, 286 S.C. 572, 336 S.E.2d 150 (1985) (holding that an error can only be harmless when "it could not reasonably have affected the result of trial."). Without his incriminating admissions, jurors would have had to speculate as to whether Appellant was simply stealing the package – contents unknown – from the front porch of the apartment or whether he believed the package likely contained a "controlled substance." *State v. Bailey*, 298 S.C. 1, 377 S.E.2d 581 (1989) (holding an insubstantial error not affecting the result of the trial is harmless where a defendant's guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.).

Appellant's interrogation mirrors those found improper under *Seibert* and *Navy*. *Missouri v. Seibert*, 542 U.S. 600 (2004); *State v. Navy*, 386 S.C. 294, 688 S.E.2d 838 (2010). Officers interrogated Appellant for an extended period of time prior to advising him of his rights. At the onset of the pre-advisement interrogation, Appellant initially denied knowing the contents of the package. R. 10, ll. 4-25. Unsatisfied with this answer, Agent Edmonson continued to probe Appellant, telling him that he believed there were drugs in the package. *Id.*

Appellant eventually conceded that there were very likely drugs in the package. *Id.* In response to continued questioning, Appellant also allegedly admitted that he had previously picked-up other packages in the past year, and that he did so because he could not find other employment to

support his family. R. 149, ll. 20 - 150, ll. 6. As law enforcement was not forthcoming at trial regarding the extent of its pre-*Miranda* interrogation, the exact contours of the pre-*Miranda* interrogation are unclear.

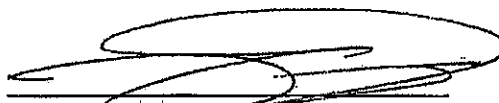
What is clear is that after obtaining a written waiver of Appellant's rights, the same officer, Edmonson, continued to ask Appellant the same questions and Appellant's post-*Miranda* statements were virtually identical to his pre-*Miranda* statements. Moreover, there was no break whatsoever between the unwarned statements and the warned statements as Appellant made his written statement only thirty to forty-five minutes after being tackled and handcuffed by police. R. 176, ll. 8-18; R. 195, ll. 6-15. The setting of the interrogation did not change. The arresting officers did not attempt to cure their error by informing Appellant that his pre-*Miranda* statements could not be used against him.

Accordingly, this Court erred by finding defense counsel failed to preserve his objection to the trial court's admission of Appellant's post-*Miranda* statements. This Court also erred by concluding that the admission of Appellant's statements constituted harmless error.

Conclusion

Based on the foregoing arguments, Appellant Lance L. Miles respectfully requests that this Court this Court issue an order granting a rehearing and, ultimately, reverse his conviction and remand this case to the Lexington County Court of General Sessions (Issues I and III), or in the alternative, issue an Order of acquittal (Issue II).

Respectfully Submitted,



JOHN H. STROM
Appellate Defender

This 7th day of September, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LANCE L. MILES,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Megan Harrigan Jameson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Lance L. Miles, #299857, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 7th day of September, 2017.



John H. Strom
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 7th day of September, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2025

The South Carolina Court of Appeals

The State, Respondent,

v.

Lance Leon Miles, Appellant.

Appellate Case No. 2015-000308

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.

John D. Dester J.

Stephanie P. McBrat J.

D. Harrison J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
John Harrison Strom, Esquire
Megan Harrigan Jameson, Esquire
Samuel R. Hubbard, III, Esquire

FILED

October 19, 2017

RECEIVED

OCT 19 2017

APPELLATE DEFENSE

LD

David A. Spencer, Esquire
The Honorable William P. Keesley

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Thomas A. Russo, Circuit Court Judge

Opinion No. 5511 (S.C. Ct. App. Filed 8/23/2017)

14-GS-32-00603

THE STATE,

RESPONDENT,

V.

LANCE L. MILES,

PETITIONER.

APPELLATE CASE NO. 2015-000308

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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ATTORNEY FOR PETITIONER

INDEX

INDEX.....	i
CERTIFICATE OF COUNSEL.....	1
QUESTIONS PRESENTED.....	2
STATEMENT OF THE CASE.....	3
STATEMENT OF FACTS	4
ARGUMENT	
I.	
The Court of Appeals erred in affirming the trial court's supplemental charge to the jury that the State did not need to prove that Petitioner knew the drugs in the package he possessed were oxycodone; rather, for Petitioner to be guilty of trafficking, the State only needed to prove that Petitioner knew the package contained any illegal drugs.....	12
II.	
The Court of Appeals erred in affirming the trial court's admission of three statements of Petitioner to police because Petitioner's right against self-incrimination as guaranteed by the Fifth and the Fourteenth Amendments to the U.S. Constitution was violated by the introduction of his statements to police where the first statement was the product of an interrogation by officers who failed to advise Petitioner of his <i>Mirandi</i> * rights and his subsequent statements were tainted by the initial violation and the product of an involuntary waiver.....	20
CONCLUSION	25

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on October 19, 2017.

QUESTIONS PRESENTED

- I. The Court of Appeals erred in affirming the trial court's supplemental charge to the jury that the State did not need to prove that Petitioner knew the drugs in the package he possessed were oxycodone; rather, for Petitioner to be guilty of trafficking, the State only needed to prove that Petitioner knew the package contained any illegal drugs.
- II. The Court of Appeals erred in affirming the trial court's admission of three statements of Petitioner to police because Petitioner's right against self-incrimination as guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution was violated by the introduction of his statements to police where the first statement was the product of an interrogation by officers who failed to advise Petitioner of his *Miranda*¹ rights and his subsequent statements were tainted by the initial violation and the product of an involuntary waiver.
- A. The Court of Appeals erred in affirming the trial court's admission of statements made by Petitioner prior to officers advising Petitioner of his *Miranda* rights and obtaining a valid waiver of those rights where Petitioner clearly was in custody based upon the totality of the circumstances.
- B. The Court of Appeals erred in affirming the trial court's admission of statements made by Petitioner subsequent to the officer advising him of his *Miranda* rights and obtaining an involuntary waiver of those rights because the statement was tainted by the initial violation where the same officer questioned Petitioner in the same location with no temporal break between the post-advisement interrogation and the prior, unwarned interrogation.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

STATEMENT OF THE CASE

On March 10, 2014, the Lexington County Grand Jury indicted Petitioner Lance L. Miles for one count of trafficking in illegal drugs. R. 326 – 327.

On February 11-12, 2015, Petitioner proceeded to trial before the Honorable Thomas A. Russo and a jury. Robert “Theo” Williams represented Petitioner, and Assistant Solicitors Micah Caskey and Casey Rankin represented the State.

The jury found Petitioner guilty as charged. R. 314, ll. 2-13. The trial court sentenced Petitioner to twenty-five years imprisonment. R. 321, ll. 1-8.

Petitioner filed a notice of appeal which was perfected by the Division of Appellate Defense in the Commission on Indigent Defense. On August 23, 2017 the Court of Appeals issued an opinion affirming Petitioner Miles’ conviction and sentence. State v. Miles, Op. No. 5511 (Ct. App. August 23, 2017).

Appellate Counsel filed a petition for rehearing which was denied by the Court of Appeals on October 19, 2017. This petition for a writ of certiorari follows.

STATEMENT OF FACTS

On the morning of September 13, 2013, Agent Doug Edmonson of the Lexington County Sheriff's Department was at a FedEx warehouse near the Columbia Metropolitan Airport looking at arriving packages in an effort to determine if they contained drugs. R. 65, ll. 6 – 67, ll. 13. Edmonson would allege that one particular package had “indicators of maybe containing some type of illegal narcotic.” R. 8, ll. 12-19.

According to Edmonson the package was suspicious because: (1) it was “excessively” taped, (2) it was being sent overnight from California, (3) the sender paid in cash; and (4) the sender waived the signature requirement for the recipient. R. 44, ll. 6-23. Edmonson noted the recipient, the address and released the package for delivery. *Id.* He then ran the name of the recipient through a law enforcement database. The name did not match the delivery address. R. 50, ll. 18 – 51, ll. 23.

Based on this information, Edmonson decided to conduct surveillance of the delivery address. Edmonson enlisted the help of Lexington City Police Officer Marc Miramontes and Lexington County Deputy Travis Bass. Miramontes, sitting in an undercover vehicle, observed the package being delivered and witnessed a never-identified black female, who was talking on a cell phone, step out of the apartment where the package was delivered. R. 31, ll. 3 – 32, ll. 14.

The unknown female looked at the package briefly, then went back inside the apartment. Shortly thereafter, Miramontes saw Petitioner walk up to the apartment and pick-up the package. *Id.* Petitioner then began to walk towards the back of the apartment complex. Edmonson and Bass drove into the complex's parking lot to intercept Petitioner. R. 19, ll. 1 – 21, ll. 19.

Both officers exited their vehicles with guns drawn and ordered Petitioner “to the ground.” R. 37, ll. 1 – 38, ll. 13. When Petitioner failed to immediately do so, the officers forced him to the

ground and handcuffed him. Edmonson interrogated Petitioner.² *Id.* Without administering *Miranda* warnings, Edmonson demanded Petitioner explain what he was doing with the package and what Miles thought was in it. R. 10, ll. 4-25.

Petitioner initially denied knowing what was in the package. *Id.* Edmonson posited that he believed the package contained narcotics. *Id.* Still handcuffed, Petitioner conceded that the package might contain drugs. *Id.* At trial Edmonson would recall, “[a]fter he told me that it might have drugs in it, then I *Mirandized*.” *Id.* at ll. 22-25 (*emphasis added*). Edmonson then told Petitioner “I said ‘we need to talk about this . . . I want to talk about this. I want you to tell me everything you know about this.’” R. 12, ll. 19-24. Edmonson alleged that Petitioner still wanted to talk about the package.

Having extracted a confession from the recently tackled and handcuffed Petitioner without administering *Miranda* warnings, Edmonson then reiterated his initial questions asking Petitioner again what did he believe was in the package. R. 11, ll. 10 – 12, ll. 24. Petitioner repeated that he believed the package probably contained drugs. *Id.* Crucially, Petitioner did not know what kind of drugs were in the package. *Id.* There was no evidence that Edmonson explained to Petitioner that his *pre-Miranda* statements were very likely inadmissible.

According to Edmonson, Petitioner then gave permission for police to open the package. However, because he “has no problem going the extra mile,” Edmonson requested that a K-9 unit inspect the package. R. 21, ll. 21 – 22, ll. 21. Once deployed the dog gave a “positive alert” indicating that there may be narcotics in the package. *Id.*

² During trial, the assistant solicitor joked with Edmonson that he must be “the largest physicist in the world,” referencing Edmonson’s undergraduate degree. R. 81, ll. 10-11. Edmonson agreed, adding that he was “one of the strongest ones in the world. That’s a fact.” *Id.* at ll. 12-13.

Then, rather than opening the package, Edmonson called Deputy Dennis Tracy who completed a pre-formatted search warrant and presented it to a magistrate. R. 125, ll. 1 –126, ll. 12. The magistrate signed the search warrant and Edmonson finally opened the package. Inside the package were a tee-shirt, a teddy bear, and a wax candle. R. 131, ll. 8 -24; R. 136, ll. 16-24. Police broke open the wax candle and discovered three hundred tablets of oxycodone, with total drug weight amounting to nine grams of oxycodone. R. 251, ll. 8 – 252, ll. 12.

Approximately, thirty to forty-five minutes after he was seized and interrogated without being given *Miranda* warnings, law enforcement had Petitioner provide written answers to a series of questions regarding the package. R. 176, ll. 8-18; R. 195, ll. 6-15. Edmonson would recall ordering Petitioner, for a third time, to “tell me everything that you know about this and write it down for me.” R. 12, ll. 19-24. Petitioner was then belatedly *Mirandized* for a second time. *Id.* Petitioner’s written statement indicated that he believed there were drugs in the package, but did not know what kind of drugs they were. R. 13, ll. 3 – 15, ll. 12.

At law enforcement’s prompting, Petitioner admitted that he had retrieved packages on three different occasions. R. 25, ll. 8-14. Further, Petitioner stated that he did not know the legal name of the drug dealer that directed him to pick up the package. R. 107, ll. 2-13. In addition, police never asked him where he delivered packages on prior occasions and did not ask him where he was to deliver the package at issue.

Law enforcement never identified the black female located in the apartment and never attempted to contact California law enforcement to determine where the package had been sent from. R. 119, ll. 5 – 121, ll. 4. Police ended their investigation once Petitioner was arrested. *Id.*

Petitioner moved pre-trial to suppress the oral and written statements he made to police at the time of his arrest. The State conceded that Petitioner's pre-*Miranda* oral statements made during custodial interrogation were inadmissible. R. 7, ll. 1-10. However, the State argued that the written statement, which was substantially similar to Petitioner's pre-*Miranda* statements, was freely and voluntarily given. R. 41, ll. 4-19.

In a *Jackson v. Denno*³ hearing, Edmonson, Miramontes, and Bass all testified. The officers agreed that Petitioner gave his written statement approximately thirty to forty-five minutes after he was tackled and handcuffed by law enforcement. R. 176, ll. 8-18; R. 195, ll. 6-9. Edmonson was the only officer able to provide a complete timeline of Petitioner's seizure and interrogation.

He conceded that he first interrogated Petitioner without giving *Miranda* warnings. R. 19, ll. 16 – 21, ll. 19. Edmonson testified that he only *Mirandized* Petitioner after Petitioner stated, in response to Edmonson's questioning, that he believed that the package likely contained drugs. Edmonson then had Petitioner repeat his confession post-*Miranda*. *Id.* Then for a second time Edmonson belatedly re-*Mirandized* Petitioner prior to having him provide written responses to a series of questions - which were virtually identical to his pre-*Miranda* questions. R. 12, ll. 19 – 15, ll. 12.

The trial court ruled that the written statement was "entered into freely and voluntarily without coercion" and that Petitioner had been adequately advised of his rights. R. 42, ll. 16-23. However, the court also ruled that Petitioner's statements regarding other occasions when he had previously picked-up packages must be redacted from the statement before it was submitted to the jury. *Id.*

³ *Jackson v. Denno*, 378 U.S. 368 (1964).

At trial, Edmonson, Miramontes, and Bass all testified for the State. Deputy Ted Xanthakis also testified to the positive alert by the drug dog.⁴ R. 8, ll. 12 – 9, ll. 7.

Trial Testimony of Doug Edmonson

Edmonson was the State's first and most important witness. Edmonson testified as to the factors that made the package suspicious and how he assembled several other police officers to begin surveillance of the delivery address. R. 88, ll. 7-21. Edmonson recalled that after he was notified that Petitioner had taken the package, he and Bass drove up to Petitioner, exited their cars with guns drawn, and "secured" him by forcing him to the ground and handcuffing him. R. 94, ll. 3-19.

Edmonson claimed that he believed Petitioner was going to run and that Petitioner had attempted to discard the package once he saw police. R. 95, ll. 3-13. Edmonson testified that Petitioner confessed that he knew "narcotics" were in the package and that he gave permission for Edmonson to open it. R. 95, ll. 1-19. Edmonson then explained the "extra-mile" that he went to have a dog inspect the package and to call in a search warrant. *Id.*

Over the renewed objection of defense counsel, the State introduced Petitioner's written statement. R. 102, ll. 4 – 106, ll. 16. When reviewing the statement with Edmonson, the State stressed that Petitioner admitted he knew the package contained drugs. R. 106, ll. 24 – 110, ll. 11. However, Petitioner's statement never indicated that Petitioner knew the drugs were oxycodone. *Id.* In fact, Edmonson conceded on cross-examination that even he believed the package contained marijuana. R. 126, ll. 13 – 127, ll. 4. During cross-examination, Edmonson testified that Petitioner initially denied knowing what was in the package. R. 123, ll. 1-12.

⁴ Curiously, Xanthakis testified that the dog was never tested on its ability to identify oxycodone. R. 228, ll. 3-8.

Additional *Voir Dire* Testimony on Petitioner's Pre-Miranda Statements

During a break in questioning, the State argued that the defense had opened the door to all of Petitioner's pre-Miranda statements by asking Edmonson if Petitioner had initially denied knowing the contents of the package. R. 146, ll. 3-21. The State now claimed that Petitioner had apparently made additional, lengthy pre-Miranda statements going beyond simply denying knowledge of the package's contents and then conceding that the package likely contained drugs. *Id.*

Specifically, the State sought to introduce previously undisclosed pre-Miranda statements by Petitioner that he was acting as a "mule" to support his family, that he handled packages before, that he had just been released from prison, and that he could not find a job. R. 149, ll. 20 – 150, ll. 6. On *voir dire*, Edmonson reiterated that Petitioner did not know what types of drugs were in the package. R. 156, ll. 7-12.

The State claimed that they had not disclosed these statements because they had conceded that the all pre-Miranda statement were inadmissible. R. 158, ll. 2-8. However, now that the defense had opened the door on cross-examination, the statements provided proof of trafficking by conspiracy. R. 154, ll. 15 – 155, ll. 25. The trial court voiced concerns that the State could not prove that the other instances were sufficiently close in time to be admissible under the common scheme or plan exception. R. 160, ll. 13 – 161, ll. 7.

Conveniently, Edmonson claimed - for the first time - that Petitioner had told him pre-Miranda that he had picked-up other packages "within that year." R. 161, ll. 18-25. Edmonson helpfully added, also for the first time, that when he interrogates people he always tries to get a timeline "so it won't be so vague." *Id.* Edmonson further alleged, again for the first time, that Petitioner confessed pre-Miranda to having done pick-ups between three and seven times in the past year, rather than the three times recorded in the written statement. R. 162, ll. 2-13.