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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Court of General Sessions

The Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

Israel Mendoza Cervantes,

APPELLANT.

APPELLATE CASE NO. 2022-001214

RECORD ON APPEAL

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1 Thereupon, the following proceedings were had,

2 THE COURT: I think we're ready for the first case.
3 Solicitor, call your case.

4 MS. OPPENHEIMER: Thank you, Your Honor. May it
5 please the Court. The State calls indictment number
6 2019-GS-32-01490, the State versus Israel Mendoza
7 Cervantes indicted for trafficking heroin, 28 grams or
8 more; 2019-GS-32-01491, the State versus Israel Mendoza
9 Cervantes indicted for possession of a weapon during a
10 violent crime; 2022-GS-32-02741, the State versus Israel
11 Mendoza Cervantes indicted for possession with intent to
12 distribute cocaine.

13 THE COURT: All right. Lawyers, approach.

14 (Side bar off the record.)

15 THE COURT: Ladies and gentlemen of the jury, we are
16 about to begin the case, the trial of this case. This is
17 the State of South Carolina versus Israel Mendoza
18 Cervantes. Madam Clerk, if you would swear the jury.
19 I'm sorry. I'm getting ahead of myself. We don't have
20 to swear this panel or we'll get to that part in just a
21 moment.

22 As I instructed you this morning, ladies and
23 gentlemen, the third part of our process is to ask you
24 some specific questions about your fitness to serve as
25 jurors in this case so I ask that you listen very

1 MS. OPPENHEIMER: Yes, Your Honor.

2 THE COURT: Defense ready?

3 MS. WILLIAMS: Yes, Your Honor.

4 THE COURT: All right. We're back on the record in
5 the matter of State versus Israel Mendoza Cervantes,
6 2022-GS-32-2741, possession with intent to distribute
7 cocaine; 2019-GS-32-1490, indictment for trafficking
8 heroin, 28 grams or more; 2019-GS-32-1491, possession of
9 a weapon during the commission of a violent crime. The
10 jury has been selected. They've gone to lunch. They
11 have not been sworn. I was informed last week and again
12 today that there would be a motion. There was a need for
13 a Jackson v. Denno hearing. Is that where we are,
14 Solicitor Martin?

15 MS. MARTIN: It is, Your Honor. The clerk isn't
16 here yet, but if you don't mind swearing the witness, we
17 can certainly go forward.

18 THE COURT: I can do that. Is the defense ready?

19 MS. WILLIAMS: Yes, Your Honor. We're ready to go.

20 THE COURT: Then let's call your first witness.

21 MS. MARTIN: Your Honor, we call Brian Smith.

22 Thereupon,

23 BRIAN SMITH

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

25 THE COURT: We got cranked up a little bit early so

1 we're starting. All right. Solicitor.

2 MS. MARTIN: Thank you, Your Honor. May it please
3 the Court.

4 DIRECT EXAMINATION

5 BY MS. MARTIN:

6 Q. Mr. Smith, where are you employed now?

7 A. With the Federal Bureau of Investigations.

8 Q. Where do you live now?

9 A. I live in Ocala, Florida.

10 Q. And just for purposes of this hearing we're gonna
11 kind of just get right to the meat of the matter. Where were
12 you working in October, specifically October 24th of 2018?

13 A. The Lexington County Sheriff's Department.

14 Q. And what division were you assigned to?

15 A. To the narcotics division.

16 Q. And do you recall if you were called to work the
17 perimeter of a search warrant that was being executed at 220
18 Leica Lane?

19 A. I was.

20 Q. Is that in Lexington County?

21 A. It is.

22 Q. Can you tell us whether or not you had an
23 opportunity to meet this defendant Israel Cervantes?

24 A. I did.

25 Q. Can you tell the Court under what circumstances you

1 first met him?

2 A. I was on the perimeter side of the house on the
3 front and the SWAT team, after they executed the search
4 warrant, they brought him out to me in a pair of handcuffs.

5 Q. You said he was already in handcuffs?

6 A. He was.

7 Q. Do you remember what officer was involved in
8 bringing him to you?

9 A. I don't.

10 Q. If I suggest to you it could have been Officer
11 Stoner, would that refresh your memory?

12 A. It could have been. He was there.

13 Q. Okay. And when he was brought to your, to your
14 presence, I mean, were you in charge of him briefly for a
15 period of time?

16 A. I was.

17 Q. And do you recall where y'all were? Were you in the
18 yard, the driveway, the road?

19 A. We were near the driveway in the front yard.

20 Q. Still at Leica Lane?

21 A. Yes.

22 Q. Okay. And do you recall if anyone else was being
23 detained at that same time?

24 A. There was. There was a juvenile present.

25 Q. Okay. And was he also put in your custody?

1 A. He was.

2 Q. And was he detained?

3 A. He was at the time, yes.

4 Q. Okay. And do you recall how long he was in your
5 presence, the 15 year old?

6 A. We had called one of his parents who came and picked
7 him up so...

8 Q. Okay. And was that person released?

9 A. He was.

10 Q. Do you recall who he was?

11 A. I don't.

12 Q. So as far as this defendant, Mr. Cervantes, what, if
13 anything, did you decide to do when he was in your presence?

14 A. Well, because he was in a pair of handcuffs and
15 there was probably gonna be some questioning while we were
16 standing out there, I went ahead and read him his Miranda
17 Warnings.

18 Q. And when you say you read him his Miranda Warnings,
19 is that something you routinely do?

20 A. I do.

21 Q. And how do you give, how did you give this defendant
22 or any defendant their Miranda Warnings?

23 A. I always use my Miranda Warnings card.

24 Q. Do you have that with you today?

25 A. I do.

1 Q. Can you please tell us exactly what rights you
2 informed Mr. Cervantes using your card?

3 A. Sure. It says on here, you have the right to remain
4 silent. Anything you say can and will be used against you in
5 a court of law. You have the right to consult with an
6 attorney and have an attorney present during questioning. If
7 you cannot afford an attorney, one can be provided to you
8 before questioning at no cost. Do you understand these
9 rights? With these rights in mind do you wish to speak with
10 me now?

11 Q. Did Mr. Cervantes appear to understand what you read
12 to him?

13 A. He did.

14 Q. Did he tell you he understood those rights?

15 A. He did.

16 Q. Let me ask you this: Is there a video that was
17 prepared? Did you have a body cam video?

18 A. I did not.

19 Q. Okay. Is that usual or unusual for a narcotics
20 officer?

21 A. That's usual.

22 Q. The usual way of doing business?

23 A. Correct.

24 Q. Did you have any written materials such as the
25 waiver advisement in writing with you there at the search

1 warrant?

2 A. I did not.

3 Q. Okay. And did you actually interview or question
4 Mr. Cervantes in any way?

5 A. I did not.

6 Q. Did he ever ask you for an attorney?

7 A. No.

8 Q. Did he indicate he was willing to talk to
9 investigators?

10 A. He did.

11 Q. And do you know which investigators spoke with
12 Mr. Cervantes?

13 A. It was Investigator Dabkowski.

14 Q. And did you document that you had given him his
15 rights in a written report?

16 A. I did.

17 Q. Was the report written back in 2018?

18 A. It was.

19 Q. Had you made any threats or applied any pressure to
20 the defendant after you gave him his rights?

21 A. No.

22 Q. Did you promise him anything as to what would happen
23 with his charges?

24 A. No.

25 MS. MARTIN: I think that's all I have, Your

1 Honor.

2 THE COURT: All right. Cross examination.

3 MS. WILLIAMS: May it please the Court.

4 THE COURT: Ms. Williams.

5 CROSS EXAMINATION

6 BY MS. WILLIAMS:

7 Q. Good afternoon, Agent Smith?

8 A. Yes.

9 Q. Nice to meet you. I'm Anna Williams. Around what
10 time did you get Mr. Cervantes in your custody?

11 A. I don't remember the exact time, but it was moments
12 after they had cleared the house and it was secured.

13 Q. So a matter of minutes at most?

14 A. Right.

15 Q. Okay. Approximately how long after he was in your
16 custody did you read him his Miranda Rights?

17 A. Uhm, I mean, it would be within 10 minutes. We were
18 standing around. They were still securing the scene, so as we
19 were standing there I went ahead and did that.

20 Q. Who all was standing there with you?

21 A. Uhm, there may have been another agent around, but I
22 couldn't name anybody in particular.

23 Q. So to the best of your recollection it was you,
24 Mr. Cervantes and then the juvenile?

25 A. Yes.

1 Q. Where was the juvenile in relation to you and Mr.
2 Cervantes?

3 A. He was standing right beside him.

4 Q. Right beside him. And approximately how far were
5 you from the two individuals?

6 A. Normal conversation distance, maybe four or five
7 feet.

8 Q. Okay. Will you read those rights again that you
9 read to Mr. Cervantes?

10 A. Sure. It says, you have the right to remain silent.
11 Anything you say can and will be used against you in a court
12 of law. You have the right to consult an attorney and have an
13 attorney present during questioning. If you cannot afford an
14 attorney, one can be provided to you before questioning at no
15 cost. Do you understand these rights? With these rights in
16 mind do you wish to speak to me now?

17 Q. And you indicated that he understood his rights and
18 that he assented to be spoken with or how did he show
19 assent?

20 A. He told me he understood.

21 Q. Okay. You mentioned that you were not the one who
22 interviewed him?

23 A. Right.

24 Q. How long passed before he left your custody to go
25 with whoever interviewed him?

1 A. It would have been a matter of within 10 or 15
2 minutes.

3 Q. Okay. Was the juvenile still in your custody at
4 that time?

5 A. Uhm, I wouldn't say that he was in my custody. Once
6 we realized he was a juvenile, they made attempts to try and
7 contact his parents and I believe he was taken out of
8 handcuffs at that point.

9 Q. And where was Mr. Cervantes when he was taken out of
10 his handcuffs, when the juvenile was taken out of his
11 handcuffs?

12 A. He would have been standing right there as well. If
13 not, he was already with the investigators so...

14 Q. So he may have already been with the investigators
15 when you released the juvenile?

16 A. Yes. He could have been.

17 Q. But you don't recall?

18 A. No.

19 Q. And was the juvenile present when you read
20 Mr. Cervantes his rights?

21 A. He was.

22 Q. Did you read the juvenile his rights?

23 A. I read them both at the same time and they confirmed
24 they both understood.

25 MS. WILLIAMS: No further questions for this

1 witness.

2 THE COURT: All right. Anything further for this
3 witness?

4 MS. MARTIN: No, sir, Your Honor.

5 THE COURT: Mr. Smith, you can step down.

6 MS. MARTIN: We call David Colwell.

7 Thereupon,

8 DAVID COLWELL

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

10 DIRECT EXAMINATION

11 BY MS. MARTIN:

12 Q. Could you please state your name?

13 A. Sergeant David Colwell, C-o-l-w-e-l-l.

14 Q. Sergeant Colwell, where are you employed?

15 A. I currently work for the Richland County Sheriff's
16 Department.

17 Q. And were you working for the Richland County
18 Sheriff's Department in October of 2018?

19 A. I was.

20 Q. And did you have an occasion to be involved with the
21 execution of a search warrant at 220 Leica Lane here in
22 Lexington County?

23 A. I did.

24 Q. And did you have an occasion to meet the defendant
25 Israel Cervantes on that day?

1 A. I did. Yes, ma'am.

2 Q. Okay. And can you tell us when was the first time
3 you saw Mr. Cervantes on the date of the search warrant?

4 A. Uhm, it was during some pre-surveillance on that
5 date.

6 Q. Okay. All right. Well, I'm just gonna fast forward
7 for purposes of this hearing. Do you recall seeing
8 Mr. Cervantes when he was already in custody?

9 A. I do.

10 Q. Okay. And do you recall having a conversation with
11 this defendant?

12 A. I do.

13 Q. Was he already being detained?

14 A. Yes, ma'am. He was in custody at that time.

15 Q. And who were with when this was going on when you
16 dealt with Mr. Cervantes?

17 A. I was there as an assistant agent with Lexington
18 County and I was specifically with Investigator Dabkowski.

19 Q. Okay. Do you have a body worn camera?

20 A. I don't. I'm not issued that.

21 Q. Are you in the narcotics division in Richland
22 County?

23 A. Yes, ma'am.

24 Q. Do any of your narcotics officers have body worn
25 cameras?

1 A. No, ma'am.

2 Q. When you saw Mr. Cervantes that day, do you know
3 whether or not any of his Miranda Warnings had been given to
4 him?

5 A. I do.

6 Q. And what is that? What knowledge did you have?

7 A. That Investigator Smith had given him Miranda.

8 Q. And did Mr. Cervantes indicate that he wanted to
9 talk to investigators?

10 A. Yes, ma'am.

11 Q. And did y'all, in fact, talk to him?

12 A. Yes, ma'am.

13 Q. Can you tell me where this conversation took
14 place?

15 A. We were in the front yard of 220 Leica Lane.

16 Q. Okay. And this is in the daytime; is that right?

17 A. Yes, ma'am.

18 Q. And did Mr. Cervantes ask you to call an attorney
19 for him or indicate that he wanted an attorney?

20 A. No, ma'am.

21 Q. And did y'all threaten Mr. Cervantes to get him to
22 talk with you?

23 A. No, ma'am.

24 Q. Did y'all promise him what was gonna happen to his
25 charges if he talked to you?

1 A. No, ma'am.

2 Q. Did you offer rewards to him that if he talked to
3 you, law enforcement would go easier on him?

4 A. No, ma'am.

5 Q. And what do you remember, if anything, about the
6 conversation y'all had with Mr. Cervantes on that morning
7 October 24th, 2018?

8 A. We had a brief conversation with him about his
9 activity at 220 Leica Lane and what his belongings were at the
10 location, whatever. He had claimed possession over the items
11 and the drugs within the shed. He stated that him and his
12 partner that we knew as Ace who had been identified as Angel
13 were drug trafficking, making sales from that location.

14 Q. Okay. Did y'all, did you have knowledge of the
15 juvenile that had been in detention there at the house?

16 A. I was advised that there was a juvenile on scene.

17 Q. Do you know whether or not that juvenile was
18 released to his mom?

19 A. He was.

20 Q. Okay. And can you tell us, if you know, would that
21 have been before or after the interview with the defendant?

22 A. That I do not know.

23 Q. Okay. And the drugs that were in the shed, that is
24 something you're saying that the defendant claimed ownership
25 of?

1 A. Correct.

2 Q. And did he indicate that his partner was this Ace,
3 Angel Ibarra?

4 A. Is that who his partner was?

5 Q. Yes. That's my question. I'm sorry.

6 A. Yes, ma'am.

7 MS. MARTIN: Okay. Please answer any defense
8 questions.

9 THE COURT: Thank you. Ms. Williams.

10 CROSS EXAMINATION

11 BY MS. WILLIAMS:

12 Q. Good afternoon, Sergeant Colwell?

13 A. Yes, ma'am.

14 Q. Can you just tell me approximately how long did this
15 interview take place?

16 A. It was fairly brief. I would have to estimate
17 approximately 10 minutes or so.

18 Q. Okay. And I believe the Solicitor covered body worn
19 cameras. Did you have paper statements available for
20 Mr. Cervantes to acknowledge his statement?

21 A. I did not. No, ma'am.

22 MS. WILLIAMS: You did not. No further questions
23 for this witness.

24 THE COURT: All right. Anything further?

25 MS. MARTIN: No, Your Honor. We would ask that he

1 be excused until tomorrow.

2 THE COURT: Sergeant Colwell, you can step down.

3 THE WITNESS: Thank you, sir.

4 THE COURT: All right. Call your next witness.

5 MS. OPPENHEIMER: The State calls Detective Meghan
6 Dabkowski.

7 Thereupon,

8 MEGHAN DABKOWSKI

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

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

12 THE WITNESS: It's Detective Meghan, M-e-g-h-a-n,
13 last name Dabkowski, D-a-b-k-o-w-s-k-i.

14 DIRECT EXAMINATION

15 BY MS. OPPENHEIMER:

16 Q. Detective Dabkowski, were are you employed?

17 A. Lexington County Sheriff's Department.

18 Q. And were you employed there back in 2018?

19 A. I was.

20 Q. In October of 2018 what division were you assigned
21 to?

22 A. Narcotics.

23 Q. And as part of your role as a narcotics officer for
24 Lexington County, did you open an investigation into this
25 defendant Israel Mendoza Cervantes?

1 A. I did.

2 Q. Did you know him by any other names at that time?

3 A. Yes, ma'am. He went by Migo.

4 Q. Was he the sole target of your investigation?

5 A. No. It was him and Angel Ibarra also known as
6 Ace.

7 Q. And as part of your investigation can you tell us
8 whether or not you obtained a search warrant at 220 Leica
9 Lane?

10 A. I did.

11 Q. Is that in Lexington County?

12 A. It is, ma'am.

13 Q. Do you recall when that search warrant was
14 executed?

15 A. October 24th, 2018.

16 Q. Were you present on scene when that search warrant
17 was executed?

18 A. I was.

19 Q. And at some point on that date did you have the
20 opportunity to interview this defendant?

21 A. I did.

22 Q. Okay. Did you personally provide him with his
23 Miranda Warnings at that time?

24 A. I did not.

25 Q. Can you tell us why you didn't?

1 A. Okay. Being the case agent on scene, there was a
2 lot going on so I was doing the initial walk-through of the
3 scene after SWAT secured it, but I was aware that Agent Smith
4 had provided the defendant with his Miranda Warnings.

5 Q. How were you made aware that Agent Smith had
6 provided the defendant with his Miranda Rights?

7 A. I asked him and he informed me that he had provided
8 them to him, and I had asked him while they were standing by
9 with the defendants to provide them, the defendant along with
10 the 15 year old juvenile who we didn't know at the time was a
11 juvenile, with their Miranda Warnings while I was doing other
12 things on scene.

13 Q. Okay. And was the defendant in custody at the time?

14 A. He was.

15 Q. And what about this 15 year old that we've talked
16 about a little bit?

17 A. At the time the 15 year old was being detained, upon
18 learning that he was 15, he was taken out of custody and we
19 called for a parent to come get him to be released.

20 Q. Is that common practice?

21 A. It is and we also had no indication that the 15 year
22 old was involved in the drug operation that we were
23 investigating at the time so there was no reason for us to
24 have any additional contact with him.

25 Q. So you stated that you spoke with this defendant,

1 correct?

2 A. Yes, ma'am.

3 Q. Where were you on that property when you spoke with
4 him?

5 A. So we were on the property in the front yard over to
6 the left a little bit. When you're looking at the front of
7 the house, we had taken them away from everybody else. Myself
8 and Sergeant Colwell did talk to him, but obviously away from
9 everything else that was going on because it was SWAT cleaning
10 up their stuff and the initial search that was going on so
11 just so there was less confusion, that way everybody could
12 understand each other and hear each other without anything
13 else kind of intruding.

14 Q. Before you spoke with Mr. Cervantes, did you
15 reiterate with him that he had been given his Miranda
16 Warnings?

17 A. Yeah. I asked the defendant if he had been given
18 his Miranda Warnings which he did say he was. I confirmed
19 that he understood them and that he still wanted to talk to
20 law enforcement without an attorney present and he said he
21 did.

22 Q. Did he appear to understand what was going on at the
23 time?

24 A. Yes, ma'am.

25 Q. Did he appear under the influence at all?

1 A. No, ma'am.

2 Q. Did he appear to understand everything you were
3 saying to him?

4 A. Yes, ma'am.

5 Q. Did he have any problems communicating with you?

6 A. No, ma'am.

7 Q. About how long did you speak with Mr. Cervantes?

8 A. It was a short conversation, anywhere from 10 to 15
9 minutes. It wasn't an extended interview at all.

10 Q. Was he offered any breaks or denied any comforts
11 during that 10 to 15 minute period?

12 A. In 10 to 15 minutes he wasn't offered a break
13 because it was a short interview. He wasn't denied anything
14 nor did he ask for anything.

15 Q. Did you threaten him in any way to get him to talk
16 to you?

17 A. No, ma'am.

18 Q. Did you threaten anyone else on scene to get
19 Mr. Cervantes to talk to you?

20 A. No, ma'am.

21 Q. Did you make any promises to him?

22 A. No, ma'am.

23 Q. Did you hold out any hope for reward?

24 A. No, ma'am.

25 Q. Did Mr. Cervantes agree to speak with you?

1 A. He did.

2 Q. At any point in time did he ask for a lawyer?

3 A. He did not.

4 Q. At any point in time did he end the conversation?

5 A. He did not. We actually were the ones who ended
6 it.

7 Q. And can you tell us whether or not he provided you
8 with any information?

9 A. He did.

10 Q. And what was that information that he provided to
11 you?

12 A. He informed us himself and the co-defendant in the
13 case Angel Ibarra were running a drug operation out of that
14 location at 220 Leica Lane and that the items located inside
15 the shed belonged to the two of them.

16 Q. Can you tell us whether or not the narcotics and
17 everything else found in the shed had been found at the time
18 you were interviewing Mr. Cervantes?

19 A. They were in the process of searching that shed so
20 while we were interviewing him they were locating those
21 items.

22 Q. Can you tell us whether or not this interview was
23 recorded in any way?

24 A. It was not.

25 Q. Can you explain to us why not?

1 A. Uhm, I'm not issued a body -- When I was in
2 narcotics, we were not issued a body worn camera. Narcotics
3 does not need to have one due to the sensitive nature of
4 information that we obtain during the course of our job. So
5 when we interview people because of the sensitive nature, we
6 don't record it so I did not have one. Also because I'm not
7 assigned one so I didn't have one at all.

8 Q. Okay. But you can tell us that Mr. Cervantes did
9 willingly and freely talk to you that day?

10 A. Yes, ma'am.

11 MS. OPPENHEIMER: No further questions. Please
12 answer any questions that Mr. or Ms. Williams may have
13 for you.

14 THE COURT: Ms. Williams.

15 MS. WILLIAMS: May it please the Court.

16 CROSS EXAMINATION

17 BY MS. WILLIAMS:

18 Q. Good afternoon, Detective Dabkowski.

19 A. Yes, ma'am. Good afternoon.

20 Q. Briefly returning to the juvenile, where was that
21 juvenile found?

22 A. He was inside the house when the defendant was found
23 in the shed so the juvenile was in the house, the defendant
24 was found physically in the shed.

25 Q. And were there drugs around that juvenile when he

1 was found?

2 A. No. There was not.

3 Q. Were there drugs ultimately found in the house?

4 A. In the co-defendant's bedroom. A possession amount
5 in the co-defendant's bedroom.

6 Q. Okay. So why did you ask Agent Smith to Mirandize
7 the juvenile?

8 A. Any time we detain people on a scene while we're
9 sorting things out we do Mirandize them whether we need to --
10 It's an automatic thing. If I'm gonna detain you and put you
11 in handcuffs, I'm limiting your ability to now leave the
12 scene, we're gonna Mirandize you just in case I do have
13 questions for you. It doesn't mean I will, it doesn't mean
14 you're going to jail. It's just an automatic. If we're gonna
15 put you in handcuffs, we're gonna Mirandize you because at
16 that point we are eliminating your ability to leave the
17 scene.

18 Q. How did you all ultimately determine that he was a
19 juvenile?

20 A. He told us he was 15.

21 Q. And do you recall if he had been released to his
22 mother before or after you interviewed Mr. Cervantes?

23 A. I know he was out of handcuffs when we interviewed
24 the defendant. If his mom had made it on scene at that point,
25 I couldn't be a hundred percent sure because again, there was

1 a lot going on so the exact timing of everything, but I know
2 he was, the 15 year old was out of handcuffs at that time. He
3 was simply standing - he was left with Agent Smith simply
4 until we had an adult there to release him to.

5 Q. To the best of your knowledge Agent Smith would have
6 been the one to release the juvenile to his mom?

7 A. I ultimately ended up releasing the juvenile to his
8 mom because I physically am the one who talked to the mom on
9 the phone as well as talk to her in person when she got on
10 scene because it was her property that we had been at so she
11 lived there in the house so I was talking to her about what
12 was going on.

13 Q. So the mom lived there too?

14 A. In the house, yes.

15 Q. Yes. Do you know the relationship of the juvenile
16 and the mom to either the defendant today or to Angel?

17 A. The co-defendant, that's his mom and then his
18 brother. As far as the relationship with your defendant I
19 don't believe they have any kind of connection outside of the
20 fact that the co-defendant and your defendant were selling
21 drugs together.

22 Q. But you have no knowledge of a specific
23 relationship?

24 A. No, ma'am. No knowledge of a specific
25 relationship.

1 Q. And then the Solicitor explored the reason why you
2 don't have a body camera is because you're a narcotics
3 officer?

4 A. Yes, ma'am.

5 Q. Does that sensitive nature of your material keep you
6 from taking written statements from defendants?

7 A. It does not, but it's not always feasible on a scene
8 to take a written statement.

9 MS. WILLIAMS: I believe those are all the questions
10 I have for you. Appreciate it.

11 THE COURT: Any redirect?

12 MS. OPPENHEIMER: Nothing, Your Honor.

13 THE COURT: All right. Ms. Dabkowski, you can step
14 down. Call your next witness.

15 MS. OPPENHEIMER: The State has no further witnesses
16 as to this issue.

17 THE COURT: All right. Thank you. Mr. Williams,
18 Ms. Williams.

19 MS. WILLIAMS: The defense calls defendant Israel
20 Cervantes to the stand.

21 Thereupon,

22 ISRAEL MENDOZA CERVANTES
23 after having been first duly sworn, testified as follows,

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

1 THE WITNESS: My name is Israel Mendoza,
2 M-e-n-d-o-z-a.

3 DIRECT EXAMINATION

4 BY MS. WILLIAMS:

5 Q. Mr. Mendoza, what is your full name?

6 A. Israel Mendoza Cervantes.

7 Q. Thank you. We're just going to cover the incident
8 in question. So from, I guess, starting on that morning when
9 the police arrived at the shed, can you describe to the Court
10 happened?

11 A. Uhm, from the time they arrived, I heard SWAT or I
12 heard some type of SWAT vehicle, you know, some big commotion
13 so I look out the shed window, I put down the controller and I
14 see a bunch of police officers coming from everywhere and so
15 being as that I knew Angel had a bunch of guns, I got on my
16 knees, I put my hands behind my back. I really had things
17 racing through my mind. They kept telling me to come out,
18 come out, and I've seen a lot of scenes. I did not want to
19 come out. I said can you guys please come in. I'm on my
20 knees.

21 So then they came in. They took me out. They took
22 me all the way to the corner of not Leica Lane, but the other
23 property beside it. They took me onto that property, that
24 corner, and it was - I'm sorry. I'm bad with names.
25 Mr. Smith that was there at that corner. At that point

1 they're asking me, what are you doing here? What's going on?
2 Who are you? What's your name? Asking me a bunch of
3 questions between all of them and at that point I think it was
4 Colwell, I just remember him by his blue eyes, at that point
5 he pulls me to the side and starts telling me that, you know,
6 you're about to do a lot of time. You're gonna do more than
7 25 to life, all these drugs, all these guns. Your life is
8 over with. You know, we're gonna take Gustavo. We're gonna
9 take his mother. Everybody's going to jail, and he started
10 telling me a bunch of things like that. I was asking him,
11 why? Why? What's going on? You know, what are they doing?
12 They asked me what I was doing over and over again.

13 Q. I'm gonna pause you right there. You mentioned the
14 name Gustavo. Who is Gustavo?

15 A. Angel's brother.

16 Q. Is he the juvenile that we've heard a little bit
17 about earlier today?

18 A. Yes, ma'am.

19 Q. Okay. So after, it's your understanding from
20 Investigator Colwell that they're gonna take Gustavo. Tell me
21 what happens next.

22 A. Oh, I told him enough. It has nothing to do with
23 him. I told him that it was all me, that it was all between
24 me and Angel, that we were the only ones that had anything to
25 do with that.

1 MS. WILLIAMS: No further questions, Your Honor.

2 THE COURT: Ms. Oppenheimer.

3 CROSS EXAMINATION

4 BY MS. OPPENHEIMER:

5 Q. All right. So you readily admitted to Agent
6 Dabkowski here that this was all between you and Angel; isn't
7 that right?

8 A. I believe it was Agent Colwell I was speaking to at
9 that time.

10 Q. Agent Colwell. Okay. So it's just you and Angel;
11 is that right?

12 A. That's what I told Agent Colwell, yes, ma'am.

13 Q. All right. And you testified that Sergeant Colwell
14 told you that Gustavo was going to jail?

15 A. Yes, ma'am.

16 Q. But he was released to his mom that day, wasn't
17 he?

18 A. Yes, ma'am, he was at the end when I was going,
19 being booked by, it was Smith who took me, I believe, all the
20 way to Lexington County. That's when they released Gustavo to
21 his mom.

22 Q. Okay. So when they say they released him as soon as
23 he found out, they found out he was 15, that wouldn't be
24 correct?

25 A. No, ma'am. So he still stood there handcuffed until

1 his mother arrived, that's when they released him to his
2 mom.

3 Q. Okay. So you're saying that this detective right
4 here is not being truthful when she says that she released him
5 and Agent Smith released Gustavo?

6 MS. WILLIAMS: Objection, Your Honor. Pitting.

7 THE COURT: Sustain the objection.

8 MS. OPPENHEIMER: It's pretrial, Your Honor.

9 THE COURT: Well, I understand the rules and I've
10 heard the evidence. Let's move on.

11 MS. OPPENHEIMER: I'll move on.

12 BY MS. OPPENHEIMER:

13 Q. So Gustavo was not arrested, right?

14 A. At the end, no, ma'am.

15 Q. He was not charged with anything; isn't that
16 right?

17 A. No, ma'am. He was not.

18 Q. And you knew that, correct?

19 A. At the end when I was being taken away, yes, because
20 he got to leave with his parents.

21 Q. And Gustavo wasn't around all of these drugs when
22 they found him; isn't that right?

23 A. Gustavo was in the house, ma'am.

24 Q. He was in the house and you were in the shed; is
25 that right?

1 A. Yes, ma'am.

2 Q. With all the guns; isn't that right? All the guns
3 were around you in the shed?

4 A. Yes, ma'am.

5 Q. And all of the drugs were around you too; isn't that
6 right?

7 A. They were in the shed, yes, ma'am.

8 Q. None of that was in the house; isn't that right?

9 A. That I recall, no, ma'am. I believe there was drugs
10 in the house, but we're speaking about the drugs that were
11 found in the shed. No. They were found in the shed.

12 Q. And you understood your Miranda Rights as Agent
13 Smith read them to you; isn't that right?

14 A. I was never read my Miranda Rights. I was actually
15 -- They were grabbing me back and forth between Meghan
16 Dabkowski and Colwell, so between them both they were pulling
17 me back and then they would take me back to where Smith was,
18 then they would pull me back again and talk to me again. It
19 actually went on for a whole hour, about an hour.

20 Q. Okay. And your position is that these officers left
21 the scene of 220 Leica Lane, walked you what, a block, a
22 mile?

23 A. No, ma'am. They actually took me behind the vehicle
24 so every time I'm guessing they didn't want Gustavo or
25 somebody to hear, they would take me behind the vehicle and

1 then, you know, every time they would be reiterating you're
2 about to do life. You're about to go away for your whole
3 life. You're never gonna see your family because at this --
4 As a matter of fact, I was able to call them to bring my wife,
5 that's how long it was and my wife didn't even live close.

6 Q. Okay. But no one ever documented that your wife was
7 on the scene?

8 A. I - I --

9 Q. If they had brought you around one of their
10 vehicles, that still would have been on 220 Leica Lane's
11 property, wouldn't it have been, or right out front?

12 A. It would have been beside it because the vehicles
13 come to the side of the property, so they took me beside the
14 fence that was beside this property and they will recall.

15 Q. And I'm sure since you allege that you were never
16 provided your Miranda Warnings, certainly you reported Agent
17 Dabkowski to Internal Affairs; isn't that right?

18 A. I have no idea about that, ma'am.

19 Q. Did you report Sergeant Colwell to Internal
20 Affairs?

21 A. I have no idea what that is.

22 Q. What about Agent Smith, did you report him?

23 A. Again, I have no idea what that is.

24 Q. So you allege that four years ago that you were
25 denied your Constitutional Rights and you never told anybody

1 about that?

2 A. I told my lawyer.

3 Q. And did your lawyer file a report?

4 A. I have no idea. He knows what he's doing.

5 Q. Did you ask him to?

6 A. I mean, he knows what the process is. I believe in
7 my lawyer as a person and I believe he knew what he was
8 doing.

9 Q. But you would not be surprised if no report was ever
10 filed with Internal Affairs about any of these officers; isn't
11 that right?

12 A. Ma'am, I have no idea what kind of reports or who to
13 report it to, I have no idea, none of that.

14 Q. But your lawyer does, doesn't he?

15 A. I guess so.

16 MS. WILLIAMS: Objection, Your Honor. Foundation.

17 THE COURT: Sustain the objection.

18 BY MS. OPPENHEIMER:

19 Q. And you admit that you did tell them that you were
20 involved in this drug enterprise with Ace; isn't that right?

21 A. I recall that I was giving them anything to let me
22 go. At this point they were fishing at me. They were telling
23 me this and that, life. I have kids. The only thing I was
24 thinking was trying to get away.

25 MS. OPPENHEIMER: No further questions.

1 THE COURT: Any redirect?

2 MS. WILLIAMS: Just briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. WILLIAMS:

5 Q. Mr. Cervantes or Mr. Mendoza, why were you telling
6 them all of this?

7 A. Because they kept saying Gustavo, his mom, everybody
8 was gonna go to jail and kept telling me I was going to jail
9 for life. I didn't see -- I gave them everything they wanted.
10 They were asking me questions. I was just saying yes.

11 MS. WILLIAMS: No further questions, Your Honor.

12 THE COURT: All right. Thank you. You can step
13 down.

14 MS. WILLIAMS: The defense has no further witnesses,
15 Your Honor.

16 THE COURT: Okay. Be glad to hear your argument.

17 MS. WILLIAMS: Yes, Your Honor. We would move for
18 suppression of any alleged statements made by the
19 defendant in this case. Based on a totality of the
20 circumstances it clearly was got given voluntarily.
21 There was a juvenile on scene, Your Honor, and my client
22 was under the impression that the juvenile was going to
23 be involved in this somehow in a criminal matter. I
24 don't think anyone has denied that a juvenile was there,
25 that a juvenile was handcuffed and next to my client,

1 that a juvenile was even read his Miranda Rights at the
2 same time as reading them to my client all of which would
3 put my client under duress and a desire to protect the
4 juvenile from the proceedings.

5 Regardless of what anyone said, the fact that there
6 was a juvenile present, the fact that he was handcuffed,
7 the fact that he was read his Miranda Rights next to my
8 client, none of that, despite differences in other
9 testimony, has been disputed so we would assert that that
10 would push his statement beyond being voluntary and to
11 being involuntary. He was under duress when he gave the
12 statement and therefore it should be suppressed.

13 THE COURT: All right. Thank you. I'll hear from
14 you, Ms. Oppenheimer.

15 MS. OPPENHEIMER: Thank you, Your Honor. We had
16 three different witnesses come in and testify that the
17 defendant was, in fact, given his Miranda Rights and
18 indicated he understood them and voluntarily spoke to
19 them. As it pertains to Mr. Solozano who was 15 at the
20 time, Detective Dabkowski testified that she was unaware
21 that he was 15 when he was first put in handcuffs. That
22 would have been common practice to put anyone on scene in
23 handcuffs when SWAT hit the house. As soon as they
24 realized he was a juvenile, they released him from
25 custody and they waited for his mother to arrive. They

1 called his mom to arrive.

2 The defendant has asserted no reason as to why he
3 would feel the need to protect Mr. Solozano, the juvenile
4 present, Gustavo. We don't have any connection between
5 the two of them. You've heard Agent Dabkowski and Agent
6 Smith and Sergeant Colwell, none of them threatened
7 anyone on scene, none of them threatened the defendant to
8 get him to talk to them. Certainly didn't coerce him.
9 He never asked for an attorney. Never said he didn't
10 understand. Never said he didn't want to talk to them.
11 We obviously feel and believe we have proven that Miranda
12 was appropriately given in this case given that the
13 defendant was in custody. He voluntarily spoke to the
14 detectives on scene. He never asserted any of his rights
15 and the statement should come in.

16 THE COURT: All right. Thank you. The Court's
17 gonna deny the motion to suppress the statements given by
18 the defendant in this case as being involuntarily made.
19 Certainly the standard in a Jackson v. Denno hearing, the
20 burden is on the State or the prosecution to show that
21 the defendant was read his rights, understood his rights,
22 freely and voluntarily waived his rights and that that
23 standard of proof is by a preponderance of the evidence.
24 I find that based on the officers' testimony, all three
25 officers, that they have met, the State has met the

1 burden of proving that the defendant was read his rights.
2 It's very clear that he was, it was a custodial
3 interrogation and the witness has indicated that that's
4 their practice once the handcuffs are put on that they
5 give their rights. Officer Smith testified that he read
6 him his Miranda Warnings and that he was not in his
7 presence more than 10 or 15 minutes.

8 It appears that the testimony of all the officers
9 involved that there was no threats, no promises, no
10 rewards. He had never, at any point he never asked for a
11 lawyer. Law enforcement, in fact, ended the questioning
12 and there again based on all the surrounding
13 circumstances, the totality of the circumstances I find
14 that the State has met the burden of proving a
15 preponderance of the evidence that the State has elicited
16 from Mr. Cervantes Mendoza were freely, voluntarily,
17 intelligently given and I'll deny the motion to suppress.
18 All right.

19 MS. OPPENHEIMER: Thank you.

20 THE COURT: Anything else?

21 MS. WILLIAMS: Nothing further from the defendant,
22 Your Honor.

23 MS. OPPENHEIMER: Nothing from the State.

24 THE COURT: I believe we had resolved all of the
25 motions in limine. Of course, again, we'll deal with

1 THE COURT: The State ready to proceed?

2 MS. OPPENHEIMER: Yes.

3 THE COURT: Defense ready?

4 MR. WILLIAMS: The defense is ready.

5 THE COURT: Let's bring the jury in. Before we
6 start, is Mr. Cervantes in custody?

7 MR. WILLIAMS: No. He is not yet, Your Honor.

8 THE COURT: All right. Well, he will need to be in
9 custody before we end of today.

10 MS. OPPENHEIMER: Yes, Your Honor.

11 MS. MARTIN: Thank you.

12 THE COURT: All right. Let's bring the jury in.

13 (Whereupon, the jury entered the courtroom at 4:00
14 p.m.)

15 THE COURT: Thank you, ladies and gentlemen. We are
16 ready to resume. State call your next witness.

17 MS. MARTIN: Thank you, Your Honor. We call Brian
18 Smith.

19 Thereupon,

20 BRIAN SMITH

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

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

24 THE WITNESS: Brian Smith, S-m-i-t-h.

25 DIRECT EXAMINATION

1 BY MS. MARTIN:

2 Q. Investigator Smith, where are you from?

3 A. I am from Lexington.

4 Q. Okay. Where are you living now?

5 A. I now live in Ocala, Florida.

6 Q. Can you tell us where you are employed now?

7 A. I am currently employed with the Federal Bureau of
8 Investigation.

9 Q. Can you tell us when you moved down to Florida?

10 A. It would have been June of 2021.

11 Q. And before June of 2021, where were you employed?

12 A. I was employed with the Lexington County Sheriff's
13 Department.

14 Q. And how long did you work for the Lexington County
15 Sheriff's Department. When did you first become employed with
16 them?

17 A. 2008.

18 Q. Was that your first law enforcement job?

19 A. It was.

20 Q. Okay. And what division in the Sheriff's Department
21 did you work?

22 A. Last?

23 Q. Well, just tell me your history with the Sheriff's
24 Department.

25 A. So I started out working on the road as a road

1 patrol deputy working the west region for about three years
2 and then I moved onto property crimes, worked there for quite
3 awhile until I moved over to a task force which is assigned
4 out of the narcotics division.

5 Q. Okay. And that task force was with the narcotics
6 division, is that how you first became doing some work with
7 the FBI?

8 A. Correct. I worked for the joint terrorism task
9 force with the FBI while assigned to the narcotics division.

10 Q. Okay. And back in 2018, were you on the SWAT
11 team?

12 A. I was not.

13 Q. Did you have occasion to learn about a search
14 warrant that was being conducted on October 24th of 2018 at
15 220 Leica Lane?

16 A. Yes.

17 Q. And what was your involvement with that execution of
18 the search warrant?

19 A. My assignment that day was to help out with the
20 perimeter.

21 Q. What does that mean?

22 A. That means that I'm on the outskirts of everything
23 going just to kind of watch the backs of the people who I
24 would say doing work who are out there actually engaging in a
25 lawful action.

1 Q. Okay. And did you have any occasion to go inside
2 the house there?

3 A. I did not.

4 Q. Any occasion to go inside the shed there?

5 A. No.

6 Q. Did you take any photographs?

7 A. I did not.

8 Q. Did you collect any evidence?

9 A. I did not.

10 Q. All right. Tell us whether on that date if you had
11 any interaction with people that became in your custody?

12 A. I did.

13 Q. Can you tell us how that happened?

14 A. So while I was on perimeter, two individuals were
15 escorted out to me. They were already handcuffed at that
16 point and so as I was standing in the driveway of the front
17 yard they were brought to me to my custody.

18 Q. And can you tell us whether or not you learned the
19 names of those individuals or anything about them?

20 A. I did. I was told their names. I didn't know
21 anymore about them.

22 Q. Did you have up to that day, and I guess you were
23 involved in a pre-op meeting?

24 A. That would have been standard practice, yes.

25 Q. Before that, had you had any knowledge of any drug

1 investigation of a drug enterprise going on at Leica Lane?

2 A. I did not.

3 Q. So you didn't know who the targets were?

4 A. No.

5 Q. Can you tell us whether or not you had occasion to
6 meet this defendant Mr. Cervantes?

7 A. I did. That's the individual who was brought out to
8 me.

9 Q. And he was in custody?

10 A. He was.

11 Q. And was the other person that was in custody an
12 adult or a minor?

13 A. It was a juvenile.

14 Q. Can you tell us how you learned that he was a
15 juvenile?

16 A. At some point one of the other agents would have
17 told me or he would have told me.

18 Q. When Mr. Cervantes was in your presence, can you
19 tell us whether or not you felt inclined to advise him of any
20 rights?

21 A. I did. Because both of them at the time were in
22 handcuffs, they were in my custody, there was a lot going on,
23 it's just one of those standard practices I went ahead and
24 read him his Miranda Warnings.

25 Q. Okay. And when you said read him his Miranda

1 Warnings, what are you reading from?

2 A. It was standard practice for me to always use my
3 card, my Miranda Warning card I've had for years.

4 Q. Did you bring it with you today?

5 A. I did.

6 Q. Can you please tell the jury what rights you gave
7 this defendant?

8 A. Sure. This card reads, you have the right to remain
9 silent. Anything you say can and will be used against you in
10 a court of law. You have the right to consult an attorney and
11 have an attorney present during questioning. If you cannot
12 afford an attorney, one can be provided to you before
13 questioning at no cost. Do you understand these rights? With
14 these rights in mind, do you wish to speak with me now?

15 Q. Okay. Did you have a body worn camera when you gave
16 these rights to the defendant?

17 A. I did not.

18 Q. Did you have any way to videotape it?

19 A. No.

20 Q. If you had been at the Sheriff's Department, would
21 it have been a different outcome? Would you have probably had
22 a record of this?

23 A. A record of the recording?

24 Q. Right.

25 A. No. It wasn't standard practice for us to record

1 that.

2 Q. Okay. All right. When you gave Mr. Cervantes his
3 rights, did he appear to be under the influence of alcohol or
4 drugs?

5 A. Not to me.

6 Q. And did he appear to understand the rights you told
7 him?

8 A. He did.

9 Q. Did you tell him that if he talked, you would help
10 him out with his charges?

11 A. No.

12 Q. Did you threaten him in any way?

13 A. No.

14 Q. Did you force him to talk to you?

15 A. No.

16 Q. Did you yourself interview this defendant?

17 A. I did not.

18 Q. Did you ask him any questions other than do you
19 understand these rights as I've read them to you?

20 A. No. I didn't.

21 Q. Okay. Do you know whether or not this defendant had
22 occasion to be interviewed?

23 A. He did later on.

24 Q. Tell me, do you remember who would have interviewed
25 him?

1 A. Yes. Investigator Dabkowski and I believe
2 Investigator Colwell took him from my custody at that point.

3 Q. Okay. When -- They took him out of your custody, is
4 that what you said?

5 A. They stepped off to the side. I wasn't privy to
6 their conversation.

7 Q. Okay. And you weren't listening to what they were
8 saying?

9 A. No.

10 Q. Okay. Let me ask you this: As far as the juvenile
11 that had been in detention, did you threaten the juvenile with
12 anything?

13 A. No. We would have just made small talk. He was out
14 of handcuffs just standing there with us while we were
15 waiting.

16 Q. Waiting on what?

17 A. Waiting on his parents to arrive or whoever picked
18 him up.

19 Q. So he was released from detention?

20 A. Correct.

21 Q. All right. When the investigators took this
22 defendant away, can you tell me about how long they were
23 gone?

24 A. It wasn't a really long time, 10, 15, 20 minutes
25 maybe.

1 Q. Okay. Did they load him up in a car and drive
2 away?

3 A. No.

4 Q. Did they stay on scene?

5 A. They did.

6 Q. All right. Can you tell us who actually transported
7 Mr. Cervantes to the detention center?

8 A. I did.

9 MS. MARTIN: Please answer any questions the defense
10 may have.

11 THE WITNESS: Sure.

12 CROSS EXAMINATION

13 BY MS. WILLIAMS:

14 Q. Good afternoon, Agent Smith. How are you?

15 A. Doing well.

16 Q. Do you recall who you received Mr. Cervantes and the
17 juvenile from, whose custody they were in?

18 A. I don't remember the particular officer. There were
19 several there that day.

20 Q. Okay. So you don't remember who had them so you
21 wouldn't know what had transpired prior to you receiving them
22 into your custody?

23 A. Correct.

24 Q. Okay. The Solicitor used the phrase or the word
25 inclined, did you feel inclined to read anyone their rights.

1 Was it all on your own volition or did someone ask you to read
2 them their rights?

3 A. I don't remember. I don't remember exactly. It
4 could have been either/or, but when the circumstances of the
5 fact that I had two people standing in handcuffs and there's
6 probably going to be some questioning while we're standing
7 there, I just go ahead and make sure they're read.

8 Q. But you don't recall whether it was you or someone
9 else's idea to give them their Miranda Rights specifically?

10 A. Correct.

11 Q. Okay. We also covered that you had no body worn
12 camera, no videotape. And I didn't catch. Did you say it was
13 or wasn't standard practice to record statements at that
14 time?

15 A. It wasn't for narcotics agents usually when we're in
16 that or any kind of operation, it wasn't standard practice for
17 me to wear any body worn camera.

18 Q. Okay.

19 A. In fact, I've never been issued a body worn camera
20 my entire career.

21 Q. Would you have a cell phone on your person?

22 A. Probably.

23 Q. Have you ever used your cell phone to record an
24 interview?

25 A. No.

1 Q. Have you ever taken a written statement?

2 A. I have.

3 Q. Did you take a written statement in this case?

4 A. I did not.

5 Q. Is there a reason for that?

6 A. I wasn't questioning him.

7 Q. Okay. Do you know if he ever gave a written
8 statement?

9 A. I don't.

10 Q. When you read him his Miranda Rights, you indicated
11 that you also read the Miranda Rights to the juvenile; is that
12 correct?

13 A. That is correct.

14 Q. Were they standing next to one another?

15 A. They were.

16 Q. Were they both in handcuffs at the time you read the
17 Miranda Rights?

18 A. At the time I read them, yes.

19 Q. Okay. And when Mr. Cervantes was escorted away from
20 you by Detective Dabkowski, was the juvenile still in
21 handcuffs?

22 A. I don't believe so. Once we found out he was a
23 juvenile, he came out.

24 Q. And when did you find out he was a juvenile?

25 A. It would have been at some point while we were

1 standing there before the interview took place because his
2 parents would have been called or whoever to pick him up
3 because it wasn't long before that individual arrived to take
4 custody of the juvenile.

5 Q. Do you recall how much time passed in between you
6 giving Miranda Rights to Mr. Cervantes and him being escorted
7 away?

8 A. I mean, not exact. I mean, within five or ten
9 minutes. It wasn't long.

10 Q. But you figured that the other individual would have
11 been unhandcuffed at that time?

12 A. Yes.

13 Q. Do you have a specific recollection regarding
14 that?

15 A. Not exactly when he was unhandcuffed. It wasn't --
16 Once I knew he was a juvenile, I'm not gonna keep them in a
17 pair of handcuffs.

18 MS. WILLIAMS: Thank you, Agent Smith. I don't
19 believe I have any more questions.

20 THE COURT: Any redirect?

21 MS. MARTIN: No, Your Honor. We would ask that he
22 be released from his subpoena to go back to Florida.

23 THE COURT: Any objection?

24 MR. WILLIAMS: No objection from the defense.

25 THE COURT: Mr. Smith, you can step down. Thank

1 you. Call your next witness.

2 MS. MARTIN: David Colwell.

3 Thereupon,

4 DAVID COLWELL

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

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

8 THE WITNESS: Sergeant David Colwell,
9 C-o-l-w-e-l-l.

10 DIRECT EXAMINATION

11 BY MS. MARTIN:

12 Q. Sergeant, can you tell us where you're employed
13 now?

14 A. With the Richland County Sheriff's Department.

15 Q. Can you tell us how long have you worked at the
16 Richland County Sheriff's Department?

17 A. It will be 15 years this September.

18 Q. Can you tell us what division you work in in
19 Richland County?

20 A. I'm currently in narcotics.

21 Q. And can you tell us what division you were working
22 in in the fall of 2018?

23 A. I was in narcotics at that time as well.

24 Q. I would ask you to direct your attention over here
25 to this defendant. Did you have an occasion to interact with

1 this defendant?

2 A. I did.

3 Q. And can you tell us what his name is?

4 A. Israel Mendoza Cervantes.

5 Q. Okay. And are you aware that he had a street
6 name?

7 A. I am.

8 Q. And what's the street name?

9 A. Migo.

10 Q. Can you tell us whether or not you had an occasion
11 to speak to Lexington County investigators about Migo?

12 A. I did.

13 Q. Can you tell us which investigators you spoke
14 with?

15 A. I spoke with Investigator Tom Hodges as well as
16 Meghan Dabkowski.

17 Q. Can you tell us whether you and other members of the
18 Richland County Sheriff's Department were involved in a search
19 warrant at 220 Leica Lane here in Lexington County?

20 A. I was.

21 Q. Can you tell us did you have information as to who
22 lived at that home?

23 A. I did have some information, yes.

24 Q. Okay. Can you tell us what was the name of the
25 person that lived at the home?

1 A. Angel Ibarra.

2 Q. And did he have a street name?

3 A. He did.

4 Q. And what was his street name?

5 A. Ace is what he went by.

6 Q. Can you tell us whether or not Richland County
7 Sheriff's Department has a plane that helped with surveillance
8 in the execution of the search warrant?

9 A. We do and they did assist with that as well.

10 Q. Okay. On that date, October 24th, 2018, was Migo
11 there at the property on Leica Lane?

12 A. He was. Yes, ma'am.

13 Q. And was he taken into custody?

14 A. Yes, ma'am. He was.

15 Q. And based on your information he had been found in
16 the shed?

17 A. That was what I was advised of, yes.

18 Q. Okay. Did you have anything else to do with
19 searching of the house?

20 A. I did not.

21 Q. Searching of the shed?

22 A. No, ma'am.

23 Q. Did you take photographs or gather evidence?

24 A. No, ma'am.

25 Q. Who would that have been left up to to direct

1 that?

2 A. That was all done by Lexington County agents. I was
3 just there solely to assist.

4 Q. Okay. And can you tell us whether or not you had an
5 opportunity to meet with Migo that day there still at the
6 property on Leica Lane?

7 A. Yes, ma'am. I did.

8 Q. And can you tell us whether or not anyone else was
9 with you and Migo?

10 A. The lead case agent Investigator Dabkowski.

11 Q. And did you have a body worn camera?

12 A. I don't. I'm not issued a camera.

13 Q. And is there a policy against narcotics officers
14 having body worn cameras?

15 A. I'm not sure that it's an actual policy against it.
16 It's how our department operates. Narcotic agents don't for
17 other safety reasons.

18 Q. So you don't have a body worn camera?

19 A. No, ma'am.

20 Q. When you and Dabkowski met with Migo, did y'all take
21 him away from the property to another location to talk to?

22 A. No, ma'am.

23 Q. Did you stay on the property there?

24 A. Yes. We were in the front of the house just offset
25 from the grass.

1 Q. Okay. And based on what you knew back then, can you
2 tell us whether or not the defendant had been given his
3 Miranda Warnings?

4 A. Yes.

5 Q. Okay. And had he been, based on that knowledge, he
6 had been given; is that right?

7 A. Correct.

8 Q. Okay. I'm sorry. And can you tell us whether or
9 not in your presence Migo asked for an attorney?

10 A. He did not.

11 Q. And was he willing to talk to you and the
12 investigator from Lexington?

13 A. He was.

14 Q. Did y'all threaten him to get him to talk to you?

15 A. No, ma'am.

16 Q. Did y'all force him to talk to you?

17 A. No, ma'am.

18 Q. Let me ask you this: Did you promise him that if he
19 talked to y'all, y'all would go easy on him?

20 A. No, ma'am.

21 Q. Did you offer him any rewards if he talked?

22 A. No, ma'am.

23 Q. Did you tell him that if he talked, y'all would let
24 that juvenile go?

25 A. No, ma'am.

1 Q. Do you know any other information about that
2 Juvenile? Do you know if he had any connection to the case at
3 all?

4 A. Not as far as I know. No, ma'am.

5 Q. Okay. Can you tell us what, if anything, did Migo
6 say about the drugs in the shed?

7 A. He had stated that it was part of an operation that
8 both him and the other defendant Ace were a part of; that it
9 was their drugs and that's where they would bag up the
10 material.

11 Q. And can you tell us whether or not he said anything
12 about the firearms there in the shed?

13 A. That I don't recall.

14 Q. Okay. Can you tell us whether he admitted to being
15 a full partner in this drug enterprise?

16 A. He did.

17 MS. MARTIN: Please answer Ms. Williams questions.

18 CROSS EXAMINATION

19 BY MS. WILLIAMS:

20 Q. Good afternoon, Sergeant Colwell?

21 A. Yes, ma'am.

22 Q. Do you recall approximately how long it was after
23 Mr. Cervantes was read his Miranda Rights that you began
24 interviewing him?

25 A. I don't.

1 Q. Do you recall -- We've had a bunch of discussion
2 regarding the juvenile who was present. Do you recall if that
3 juvenile was still on scene when you were interviewing
4 Mr. Cervantes?

5 A. That I don't recall either.

6 Q. So you would not recall whether or not he was still
7 in handcuffs?

8 A. I actually never even went inside the house, so I
9 was only advised that there was a juvenile on scene so I did
10 not even see him.

11 Q. You never set eyes on the juvenile?

12 A. I did at some point, but I don't remember at what
13 point.

14 Q. Okay. Approximately how long was Mr. Cervantes with
15 you while you were questioning him?

16 A. It was a brief period. Approximately 10 minutes.

17 Q. Okay. No more than 10 minutes?

18 A. About 10 minutes.

19 MS. WILLIAMS: I have no further questions for this
20 witness.

21 THE COURT: Redirect?

22 MS. MARTIN: No, Your Honor. We would ask that he
23 be excused.

24 THE COURT: All right. Thank you. Mr. Colwell, you
25 may step down.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: All right. Lawyers approach.

3 (Side bar off the record.)

4 THE COURT: Ladies and gentlemen, we're gonna -- The
5 next witness we anticipate may be rather lengthy so we're
6 not gonna hold you. We've been instructed and try to
7 conclude testimony in court work around five. That gives
8 people a chance to clean up a lot of stuff that we've
9 done here today. So today we will break and I'm gonna
10 ask that you be back at nine. I'm not sure how long we
11 will go tomorrow afternoon or tomorrow evening. Be back
12 tomorrow morning at 9:00 and we'll be ready to go at
13 9:00.

14 Again, do not discuss the case at all. If you're
15 gonna be sitting around the table at night in the house,
16 the people you live with are gonna want to be talking
17 about the case. Don't do that. You're not allowed to do
18 that. Again, that's for the protection of both the State
19 and the defense because you're not to discuss the case
20 and make any determination about the case until you've
21 heard all of the evidence here in this courtroom and
22 that's applied and combined with the law. Then you can
23 discuss and deliberate about the case. So again, don't
24 discuss it. Don't be using your personal devices to be
25 looking up anything. With that I'm gonna allow you to go

1 for the evening. Be back ready to go at 9:00 in the
2 morning. Everyone else remain seated while this jury is
3 excused.

4 (Whereupon, the jury was excused at 4:20 p.m.)

5 THE COURT: All right. Once the jury is sworn, the
6 bondsman is not obligated any longer and is relieved from
7 the bond. In a particular case like this where this
8 defendant is facing a mandatory minimum of 25 years, it's
9 generally my practice to order that he be taken into
10 custody throughout the remainder of the trial.
11 Mr. Williams, do you have a position?

12 MR. WILLIAMS: I do. I would like to make an
13 attempt to convince the Court of another method of
14 handling it. Your Honor, I have contacted his bonding
15 company and they have agreed to stay on his bond after
16 the beginning, after the jury has been sworn. It's Bad
17 Boys Bonding Company. Judge, I would liken it to just
18 like any other time in Federal Court when a person enters
19 his plea and he's allowed to remain out on bond during
20 that time period.

21 Your Honor, there's actually been a number of cases
22 even in State Court where they've had such as a state
23 wide grand jury will allow somebody even though he's
24 entered his plea to remain out if he has bond coverage on
25 him. So I guess the point of that, Your Honor, is that

1 the bonding company is still liable in the event he does
2 not show back up.

3 THE COURT: Well, if they've agreed to be on the
4 bond, and obviously I have an e-mail that appears that
5 Bad Boys Bonding is agreeing to stay on his bond,
6 however, you know, I understand it's always at the
7 discretion of the Court. In Federal Court most everybody
8 gets personal recognizant bonds most all the time,
9 however, they certainly have the ability to find and
10 locate people and bring them back where they're supposed
11 to be by means which the State doesn't.

12 And again, in this particular case what he's facing
13 again the jury has been sworn, I mean, he needs to be
14 taken into custody. He'll remain in custody throughout
15 the remainder of the trial.

16 MR. WILLIAMS: Thank you, Your Honor.

17 MS. OPPENHEIMER: Thank you, Your Honor.

18 THE COURT: All right. Thank you. Anything else
19 before we break for the evening from the State?

20 MS. OPPENHEIMER: Your Honor, we were just gonna
21 mark some of our photos.

22 THE COURT: That's between y'all and the court
23 reporter. We'll be ready to go at 9:00 in the morning.

24 (Whereupon, court was adjourned for the day at 4:30
25 p.m.)

1 August 23, 2022

2 BAILIFF: All rise. The Honorable Judge Daniel Hall
3 presiding.

4 THE COURT: Thank you. Please be seated. We've got
5 everybody in place. Is the State ready to proceed?

6 MS. OPPENHEIMER: We are, Your Honor.

7 THE COURT: Defense ready?

8 MR. WILLIAMS: The defense is ready, Your Honor.

9 THE COURT: All right. Then let's bring the jury
10 in.

11 (Whereupon, the jury entered the courtroom at 9:05
12 a.m.)

13 THE COURT: Thank you, ladies and gentlemen. I
14 appreciate your promptness. We have an empty chair
15 there. Everybody is here, right? Y'all can spread out
16 as much as you want. I'm used to most courthouses we
17 don't have extra chairs. All right. I think we're ready
18 to proceed. State, call your next witness.

19 MS. OPPENHEIMER: The State calls Detective Meghan
20 Dabkowski.

21 Thereupon,

22 MEGHAN DABKOWSKI

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

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

1 THE WITNESS: My name is Meghan, M-e-g-h-a-n,
2 Dabkowski, D-a-b-k-o-w-s-k-i.

3 DIRECT EXAMINATION

4 BY MS. OPPENHEIMER:

5 Q. Good morning, Detective Dabkowski.

6 A. Good morning, ma'am.

7 Q. Can you tell us where you work?

8 A. Lexington County Sheriff's Department.

9 Q. What unit are you currently assigned to?

10 A. Currently assigned so south region property
11 crimes.

12 Q. Have you been assigned to any other units?

13 A. Yes, ma'am. I have.

14 Q. Which units have you been assigned to?

15 A. I have obviously done my time on patrol, but I was
16 also with the fugitive unit as well as Lexington County
17 narcotics.

18 Q. How long were you a member of the narcotics team?

19 A. Four years, 2017 to 2021.

20 Q. So would you have been assigned to that unit back in
21 2018?

22 A. Yes. I was.

23 Q. What were your primary duties and responsibilities
24 in that role?

25 A. My primary duties and responsibilities were

1 investigating drug operations.

2 Q. All right. How long have you been in law
3 enforcement in your entire career?

4 A. 13 years.

5 Q. Turning your attention to 2018, at some point did
6 you receive information regarding Angel Ibarra and this
7 defendant Israel Mendoza Cervantes?

8 A. I did.

9 Q. And who did you receive that information from?

10 A. So we were contacted by Richland County narcotics,
11 specifically Investigator David Colwell who you all have met
12 earlier as Sergeant Colwell with their narcotics unit who
13 informed us that two targets of their, one of their narcotics
14 investigations the defendant Israel Mendoza Cervantes a/k/a
15 Migo and his co-defendant Angel Ibarra a/k/a Ace had moved
16 into locations in Lexington County.

17 Q. Now, I think you told us their street names, but can
18 you tell us the defendant's street name, what you knew him
19 by?

20 A. Migo.

21 Q. Do you see Migo or Israel Mendoza Cervantes in the
22 courtroom?

23 A. I do. He's sitting at the defense table.

24 MS. OPPENHEIMER: Your Honor, let the record please
25 reflect that she's identified the defendant.

1 THE COURT: All right.

2 BY MS. OPPENHEIMER:

3 Q. Is that the same man who was one of your targets
4 back in 2018?

5 A. He was.

6 Q. And based on the information provided to you by
7 Richland County about this drug enterprise, what did you do?

8 A. We opened a drug investigation into both of the
9 defendants.

10 Q. When you say you opened an investigation, what did
11 you do?

12 A. We started to collect information, run surveillance
13 on locations that the defendants were at.

14 Q. How long did your investigation into Ace and Migo
15 last?

16 A. Weeks.

17 Q. And was there a location that you were primarily
18 surveilling?

19 A. We were. It was 220 Leica Lane which is in the West
20 Columbia area of Lexington County.

21 Q. And why was 220 Leica Lane the center of your
22 investigation?

23 A. Through surveillance based on the activity we
24 observed it was the main location that the drug operation was
25 being run out of.

1 Q. Were you able to determine whose property that
2 was?

3 A. We were able to determine who owned the property or
4 whose residence it was.

5 Q. And whose residence is that?

6 A. Angel Ibarra lived there. It was ultimately his
7 mom's residence, but it was his house where he stayed.

8 Q. Can you tell us whether or not you ever observed the
9 defendant at that home?

10 A. On multiple occasions.

11 Q. Can you tell us whether or not you ever saw the
12 defendant going to and from that location?

13 A. He was going to and from that location, to and from
14 the shed at that location.

15 Q. Okay. Did the defendant live there?

16 A. He did not.

17 Q. Were you able to ascertain where he lived?

18 A. We did. He lived off, on Wayne Street in Gaston.

19 Q. Did you ever conduct surveillance in Gaston at the
20 defendant's home?

21 A. We did, but ended up determining that it was not
22 where the drug operation was being run out of so we
23 concentrated on 220 Leica Lane.

24 Q. Can you tell us whether or not in your experience as
25 a narcotics officer it's common to have one centralized

1 location for a drug enterprise?

2 A. It is.

3 Q. Can you tell us during your weeks of surveillance
4 whether or not you saw the defendant and Angel Ibarra
5 together?

6 A. On numerous occasions.

7 Q. Can you tell us whether or not the defendant and
8 Angel Ibarra were sharing vehicles?

9 A. They were seen in vehicles together. They were seen
10 driving each other's vehicles. One defendant would drive the
11 other defendant's vehicle and vice versa so it didn't seem to
12 matter who owned the car, they would just share them as
13 needed.

14 Q. Can you tell us what vehicle Angel Ibarra was
15 driving on the day of the search warrant October 24th, 2018
16 when he was arrested?

17 A. He was driving a Durango.

18 Q. Do you have information on whose name the insurance
19 on that vehicle was in?

20 A. We do.

21 Q. And whose name was it in?

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

23 THE COURT: I overrule the objection.

24 BY MS. OPPENHEIMER:

25 Q. Whose name was the insurance in?

1 A. It was in the defendant's Israel Mendoza
2 Cervantes.

3 Q. Did you ever observe the defendant by himself going
4 to and from the shed over at 220 Leica Lane?

5 A. Yes, ma'am.

6 Q. Did you ever during your surveillance indicate
7 periods of time where the defendant would be in the shed alone
8 without Ace?

9 A. Yes.

10 Q. All right. I'm going to show you what's already
11 been introduced into evidence as State's Exhibit number 1.
12 All right. Detective Dabkowski, I'm showing you what's been
13 introduced as State's Exhibit number 1. Is this 220 Leica
14 Lane?

15 A. Yes, ma'am. That is the property at 220 Leica
16 Lane.

17 Q. Is this where you conducted the majority of your
18 surveillance into this drug enterprise?

19 A. Yes, ma'am. It is.

20 Q. All right. And did you have information as to any
21 buildings that this drug enterprise was primarily located in
22 on this property 220 Leica Lane?

23 A. Yes, ma'am. The shed.

24 Q. As you were running surveillance on this property
25 for weeks, can you tell us whether or not you were able to

1 determine if the defendant had any means of legitimate
2 employment?

3 A. Not during the course of my investigation. No,
4 ma'am.

5 Q. So would you have observed him during the day,
6 during the week?

7 A. Yes, ma'am.

8 Q. All right. Now, after conducting the surveillance
9 on 220 Leica Lane, what, if anything, did you decide to do?

10 A. Based on the surveillance of the drug operation
11 through the course of several weeks, I applied for and
12 obtained a search warrant for this location looking for items
13 related to a drug operation or drug enterprise which would
14 include drugs, weapons, money, drug paraphernalia, anything
15 used to further the drug operation so packaging bags that
16 drugs could be packaged in as well as papers that could prove
17 ownership or further prove ownership as well as additional
18 information that can be gained through paperwork on the drug
19 enterprise.

20 Q. Kevin Kelly was listed in your search warrant. Can
21 you tell us whether or not during the course of your
22 investigation into Ace and Migo if you were able to determine
23 if Ace and Migo had a relationship with Kevin Kelly?

24 A. They had a minimal relationship with Kevin Kelly.
25 Kevin Kelly was a drug addict that they employed during the

1 course of their drug operation.

2 Q. Was Kevin Kelly one of the main targets of this drug
3 enterprise investigation?

4 A. He was not. It was the defendant and his
5 co-defendant were the main targets of this operation.

6 Q. Now, you indicated that you were looking for guns,
7 money, drugs, paraphernalia, anything that related to a drug
8 enterprise. When you executed that search warrant, were you
9 able to find those items?

10 A. Yes, ma'am. We were.

11 Q. And when did y'all decide to execute the search
12 warrant?

13 A. We executed the search warrant on October 24th,
14 2018.

15 Q. What planning and prep work went into executing the
16 search warrant?

17 A. So several meetings before we execute a search
18 warrant does have to occur. There is several briefings.
19 There's a pre-brief with SWAT where we put together a
20 operational plan. They determine how they're gonna execute a
21 search warrant, then we also had to bring in, make sure we
22 have enough people for everybody's safety, so SWAT was
23 involved, the rest of my unit, the Lexington County narcotics
24 unit. We also had Lexington County crew involved. Richland
25 County was very nice and assisted us due to the fact it was a

1 joint operation that they did bring to us. They even provided
2 their plane as additional surveillance that day when we went
3 to go execute the search warrant.

4 Q. And when you meet prior to executing the search
5 warrant, do you explain to all of your guys who your targets
6 are?

7 A. Yes.

8 Q. And do you explain what activity you personally have
9 observed?

10 A. Yes. So we go forward. I actually have a packet
11 that will be the information of what I have observed as well
12 as pictures of each of the targets in the case.

13 Q. And who did you tell all of these officers assisting
14 you were the main targets of this investigation?

15 A. The defendant and his co-defendant so Israel Mendoza
16 Cervantes and his co-defendant Angel Ibarra.

17 Q. And on October 24th, 2018, did y'all execute that
18 search warrant?

19 A. We did.

20 Q. Do you recall what day of the week it was?

21 A. I do not. I know it was a week day.

22 Q. And was this during the morning hours, nighttime
23 hours?

24 A. It was about midmorning when we executed the search
25 warrant.

1 Q. Now, prior to executing the search warrant, where
2 were you?

3 A. Just down the road from the location.

4 Q. Were you communicating with any other officers
5 involved in this case at the time?

6 A. Yes, ma'am.

7 Q. How were you communicating with other officers?

8 A. We had a radio. I was in the vehicle with Sergeant
9 Colwell from Richland County. That way we could communicate
10 with the plane as well as all the ground units because between
11 the two of us we would have everybody's radio channels that
12 were needed.

13 Q. And based on observations were you able to determine
14 whether or not the defendant was at that home or in the shed
15 on October 24th, 2018?

16 A. We were.

17 Q. Were you able to determine if he left at any point
18 in time?

19 A. He did leave right prior to the execution of the
20 search warrant, but came back to the property and to the
21 shed.

22 Q. Were you able to determine whether or not Angel
23 Ibarra was there on October 24th, 2018?

24 A. He was, but he left prior, just shortly before the
25 execution of the search warrant.

1 Q. All right. Can you tell us what the first thing
2 that happened in executing the search warrant? What's the
3 first thing that officers did?

4 A. So once SWAT goes in and executes the search warrant
5 and they've informed us on the radio that the scene is
6 secured, so nobody else will move up to the scene except
7 covering the perimeter until SWAT has cleared every portion of
8 that property from the house to the shed and any out
9 buildings. Once it's secure we do what we call early initial
10 pictures, so the very first pictures we take responding to the
11 scene prior to any searches being done. That way you can see
12 what something looked like when we first walked into that
13 house.

14 Q. Going back to SWAT hitting the house, were you made
15 aware that anyone was found in the house?

16 A. I was made aware of the individual, a male being
17 found in the house and then an individual being found in the
18 shed.

19 Q. And who was found in the shed?

20 A. The defendant was found in the shed.

21 Q. Did it surprise you to learn that the defendant was
22 found in the shed?

23 A. It did not.

24 Q. And can you tell us whether or not items related to
25 this drug enterprise were found near the defendant in the

1 shed?

2 A. Yes, ma'am. They were.

3 Q. Can you tell us whether or not the individual
4 located in the home, if there were items related to the drug
5 enterprise found near him?

6 A. There were not.

7 MS. OPPENHEIMER: Your Honor, may I approach the
8 witness?

9 THE COURT: Yes. You may.

10 BY MS. OPPENHEIMER:

11 Q. I'm handing you what's been marked as State's
12 Exhibit number 10 through 34. If you can take a look at these
13 and let me know if you recognize those.

14 A. (Witness complies.) Yes, ma'am. I do recognize
15 each and every one of these pictures.

16 Q. What are those photographs of?

17 A. These were initial photographs taken prior to us
18 actually searching the residence, so this was what we would
19 have observed on the scene that day before we did any further
20 searching of the location.

21 Q. Do they appear to be a fair and accurate depiction
22 of the items found in the shed as you observed them on October
23 24th, 2018?

24 A. They are.

25 Q. Do they appear to have been altered in any way?

1 A. They have not.

2 MR. WILLIAMS: I do have a foundation objection,
3 Your Honor.

4 THE COURT: All right. Lawyers approach.
5 (Side bar off the record.)

6 MS. OPPENHEIMER: Your Honor, at this time I move
7 State's Exhibits number 10 through 34 into evidence.

8 MR. WILLIAMS: Subject to my objection.

9 THE COURT: Thank you. I note the objection,
10 however the Court --

11 MR. WILLIAMS: Your Honor, there is -- I'm sorry.
12 There was one other thing we might want to talk about.

13 THE COURT: All right. Is this related to the
14 photos?

15 MR. WILLIAMS: It is.

16 (Side bar off the record.)

17 THE COURT: All right. Note the defense's objection
18 to State's Exhibits 10 through 34, however, the Court
19 admits State's Exhibits 10 through 34 are into
20 evidence.

21 MS. OPPENHEIMER: Permission to publish, Your Honor?

22 THE COURT: Yes. You may.

23 BY MS. OPPENHEIMER:

24 Q. Showing you State's Exhibit number 10, if you can
25 tell us what this picture depicts?

1 A. That's the front door of the residence at 220 Leica
2 Lane.

3 Q. And is a picture like this common to take before
4 every search warrant execution?

5 A. Yes, ma'am. We take -- During the initial photos,
6 we will take pictures of everything on that property, every
7 aspect, every corner of the room just so you can understand
8 the overall view that we had when we walked in the door.

9 Q. I'm showing you State's Exhibit number 11. Can you
10 tell us what this picture is?

11 A. One of the security cameras.

12 Q. During the execution of the search warrant, were you
13 able to ascertain information that there was a surveillance
14 system in this house or shed?

15 A. Yes. There was.

16 Q. Showing you State's Exhibit number 12.

17 A. That would be the other security camera that was on
18 the porch.

19 Q. Showing you State's Exhibit number 13.

20 A. It's the side door into the residence.

21 Q. All right. And that side door would have exited to
22 what part of the yard?

23 A. Into the backyard where the shed was located.

24 Q. Can you tell us whether or not there were any
25 security cameras on this side of the home?

1 A. There were.

2 Q. Where were those cameras faced?

3 A. Pointing into the backyard towards the shed.

4 Q. Okay. So there was a camera pointing towards the
5 shed; is that correct?

6 A. Yes. There was.

7 Q. Showing you State's Exhibit number 14. If you could
8 tell us what's depicted in this photograph.

9 A. That's the inside of the shed.

10 Q. Is there anything of interest in this picture in
11 particular? It might be a little bit difficult to see.

12 A. The gun.

13 Q. Is there a laser pointer up there?

14 A. There is.

15 Q. Can you please indicate to us where you're seeing a
16 gun?

17 A. So there was one located right there.

18 Q. Right there on the couch?

19 A. Yes, ma'am.

20 Q. Is it easily noticeable in your opinion?

21 A. When I walked in, as soon as you walk in you were
22 able to see it. The picture is a little bit further away, but
23 we would have done additional pictures to get a closer picture
24 of the gun.

25 Q. All right. Showing you State's Exhibit number 15,

1 can you tell us what is depicted in this photograph?

2 A. Items that you would find during the course of an
3 investigation or a search warrant for a drug enterprise.

4 Q. And pointing your attention, I believe there's a
5 window AC unit in this photograph. Was that window of any
6 significance or where did that window look out to, I guess?

7 A. If you looked out the window, you would see up
8 towards the front where the fence would close so you would see
9 if anybody was coming towards you from the front of the
10 residence.

11 Q. Showing you State's Exhibit number 16, what's
12 depicted in this photograph?

13 A. More items you would find during the course of a
14 drug enterprise, the scales as well as a cutting agent.

15 Q. What is a cutting agent?

16 A. So a cutting agent is used, and various cutting
17 agents can be used, basically if they have, say, a gram of
18 something, I have a gram of cocaine or a gram of heroin, I
19 will introduce a cutting agent whether it be baby powder, in
20 this case as you can see the inositol powder and to increase
21 the weight so I will make that go from one gram to two grams
22 and then I'm going to split it and sell two grams to make more
23 of a profit.

24 Q. What, if any, significance do digital scales have in
25 a drug enterprise?

1 A. It's used to weigh the product. So when you're
2 packaging it, you're gonna weigh so depending on how much
3 somebody will buy from you, you're gonna weigh that out
4 properly so you don't give them more.

5 Q. I'm showing you State's Exhibit number 17. Can you
6 tell us what's in this photograph?

7 A. So I'm gonna use the pointer. So we're talking
8 about that right there so that was obviously used to help mix
9 everything up and then spoon it out when you're packaging
10 it.

11 Q. So that's the clear glass with the spatula in it?

12 A. Yes, ma'am. Right there.

13 Q. All right. Showing you State's Exhibit number 18,
14 if you could tell us what's depicted in this photograph.

15 A. So again, what we have here is the cutting agent and
16 then it's also gonna be this box right there.

17 Q. All right. And we'll get to that box later. When
18 you're taking before photographs, does anyone touch
19 anything?

20 A. We don't touch anything until those before
21 photographs are taken and then everybody is assigned to a
22 specific room to search so we know who is in what room and who
23 has found what item.

24 Q. And you as the lead agent, would you have been
25 assigned to one room or would you have been over this entire

1 operation?

2 A. No. I'm over the entire operation so at that point
3 I do my initial walk-through, the initial pictures, there when
4 the initial pictures are taken which again occurs immediately
5 after SWAT has said the place is secure, so at that point the
6 only ones who have been inside any of these locations are
7 anybody that we physically located on scene and SWAT who
8 simply goes in, makes sure there's nobody else in there and
9 immediately brings them out. SWAT does not touch anything
10 unless they're looking to where somebody could be hiding.
11 That's essentially it. They wouldn't touch anything else.

12 Q. Showing you State's Exhibit number 19, can you tell
13 us what's depicted in this photograph?

14 A. So we have the balloons right here that are commonly
15 used to package drugs.

16 Q. Showing you State's Exhibit number 20, can you tell
17 us what this picture depicts?

18 A. So again, you've got the big container of the
19 balloons that are used to package drugs, you've got empty
20 balloons right there and you have filled balloons with the
21 substance right there and then you have cash.

22 Q. All right. Can you tell us whether or not in your
23 experience as a narcotics officer whether or not these items
24 are consistent with a drug enterprise?

25 A. Yes. They are very consistent with a drug

1 enterprise.

2 Q. Showing you State's Exhibit number 21, can you tell
3 us what this photograph depicts?

4 A. Again, it's just an additional photo of the cash
5 that was located next to the balloons that had an item
6 inside.

7 Q. State's Exhibit number 22.

8 A. It's an additional close-up picture of those
9 balloons that were located on the table that were seen in
10 plain view.

11 Q. Can you tell us whether or not these balloons appear
12 to be filled with any substance?

13 A. They do appear to be filled with a substance. Yes,
14 ma'am.

15 Q. State's Exhibit number 23.

16 A. That would be a close-up of the currency that was
17 located that was wrapped up.

18 Q. State's Exhibit number 24.

19 A. That would have been the other thing of money that
20 was located on that table. We again, we'll take an overall
21 picture and then we'll get close ups of those items again
22 before we start searching.

23 Q. Can you tell us whether or not these two bundles of
24 cash would have been counted?

25 A. They were. So any time we collect money on scene

1 when we're there, one person counts it and then immediately
2 somebody counts right behind them to verify the amount is
3 correct.

4 Q. Can you tell us the approximate value of the money
5 found on this table? Are you able to?

6 A. If you will just give me just a minute to... It was
7 \$3000.00.

8 Q. And that's indicated in your report I believe?

9 A. It is indicated in my report the exact amount
10 because again we number them separately.

11 Q. Okay. State's Exhibit number 25, if you can tell us
12 what's depicted in this photograph.

13 A. Again, it's the big container of unused balloons,
14 unused balloons out on the table as if they were ready for
15 someone to package them and then again down here in the corner
16 is what appears to be already packaged balloons.

17 Q. Okay. State's Exhibit number 26, what's the picture
18 in this photograph?

19 A. Right there would be a rifle.

20 Q. All right. And where is this rifle in relation to
21 all of the drugs and money?

22 A. So it's a little hard to see, but you can see right
23 there in the corner, that's the table that all of those items,
24 the drugs, the money, the packaging was all located on.

25 Q. And if someone were sitting in this chair, would it

1 have been easily accessible?

2 A. Yes, ma'am.

3 Q. State's Exhibit number 27, what is depicted in this
4 photograph?

5 A. It's a close-up of that same firearm.

6 Q. Has anything been added to the firearm that you can
7 note?

8 A. No, ma'am.

9 Q. Do you know whether or not this firearm was
10 loaded?

11 A. When we went to collect it, we would have been,
12 marked all of that and those would be in additional pictures
13 that we have.

14 Q. So maybe some pictures that we'll see later on?

15 MR. WILLIAMS: Objection, leading.

16 THE COURT: I'll overrule the objection. Go
17 ahead.

18 MS. OPPENHEIMER: Yes, Your Honor.

19 BY MS. OPPENHEIMER:

20 Q. State's Exhibit number 28, what does this photograph
21 depict?

22 A. Another firearm that was located in the shed right
23 next to the TV.

24 Q. All right. State's Exhibit number 29, can you tell
25 us what this photograph is of?

1 A. So that is the photograph of the TV. We do not turn
2 anything off when we first get to the property especially when
3 we know they have a surveillance system because we want to get
4 a picture of where those cameras are pointing. That
5 particular picture at this time, that actually happens to be
6 one of my SWAT operators so when we're taking these pictures
7 of the shed, we look up, we're taking photos of the TV and
8 there goes one of my SWAT operators walking by one of the
9 cameras that were seen on the property.

10 Q. All right. State's Exhibit number 30.

11 A. That would be the futon that they were using to sit
12 in there as well and there is a gun right there.

13 Q. State's Exhibit number 31.

14 A. It's a close-up of it.

15 Q. Can you tell us whether or not from this picture you
16 can tell if that gun is loaded?

17 A. The magazine at least is loaded.

18 Q. All right. State's Exhibit number 32.

19 A. That was the picture, so if bags are open, they
20 would have not manipulated it at all, it simply is a bag
21 that's open and we'll take an overview picture of that bag
22 before any additional searching into that bag occurs. So
23 quickly looking, when you look down into the bag, you can
24 obviously see where there is more cash as well as ammo.

25 Q. State's Exhibit number 33.

1 A. So that would be another gun right there and that
2 would be a gun case.

3 Q. And was this easily accessible in the shed?

4 A. It was.

5 Q. State's Exhibit number 34.

6 A. That's a close-up of the gun and as you can see the
7 magazine does have ammo in it.

8 Q. So after your initial walk-through, what did you
9 do?

10 A. So after the initial walk-through, myself and
11 Sergeant Colwell pulled the defendant aside to interview him
12 after I had already confirmed with Agent Smith that he had
13 been read his Miranda and he had agreed to talk to us.

14 Q. Let's break that down a little bit. You pulled the
15 defendant away to speak with him. Where did you take him?

16 A. So we were still on the property. We just moved a
17 little bit further away due to the fact that there was a lot
18 of people on scene from us agents searching, it can get kind
19 of loud especially when SWAT's still packing up trying to
20 leave, so we just pulled him off to the grass a little bit to
21 the side of the house in view of everybody but not where the
22 conversation could be overheard or somebody can be so loud
23 that we can't hear what's being discussed and we talked to the
24 defendant.

25 Q. Can you tell us whether or not anyone else was with

1 the defendant before you pulled him away?

2 A. There was. We had the 15 year old juvenile that was
3 located inside the residence.

4 Q. Throughout the course of your investigation, were
5 you able to determine whether or not that 15 year old was
6 involved in this drug enterprise?

7 A. I had no knowledge or anything showing that the 15
8 year old was ever involved in the drug operation.

9 Q. And what, if anything, did you do when you learned
10 that this person was actually a juvenile?

11 A. So upon learning he was a juvenile, we immediately
12 took him out of handcuffs and contacted his mom to come take
13 custody of him.

14 Q. Why would he have been put in handcuffs in the first
15 place?

16 A. So any time SWAT goes onto a scene and they're
17 securing the scene and they bring anybody out to us, they're
18 in handcuffs. Short of it being a very small child, he was 15
19 years old. We didn't even know he was 15 until he said it.
20 He's taller than some of the guys I work with so obviously you
21 look at him, think adult male, they put him in handcuffs to
22 secure him, walked him out, they walked him out to Agent
23 Smith. As soon as we learned he was 15, he was taken out of
24 handcuffs.

25 Q. All right. Prior to talking to the defendant, you

1 confirmed with Agent Smith that he had read the defendant his
2 Miranda Warnings?

3 A. I did.

4 Q. Did you confirm with the defendant that he had been
5 read his Miranda Warnings?

6 A. Yes, ma'am. Prior to starting my interview with the
7 defendant, I again confirmed with him that Agent Smith had
8 read him his Miranda. He said he had and that he understood
9 what his Miranda Rights are. He said he did and he at that
10 time was still willing to talk to us.

11 Q. Did he appear to be confused at all by his Miranda
12 Warnings?

13 A. No, ma'am.

14 Q. Did he agree to speak with you?

15 A. He did.

16 Q. Did you tell him he had to speak with you?

17 A. No, ma'am.

18 Q. Did you coerce him in any way?

19 A. No, ma'am.

20 Q. Did you threaten him in any way?

21 A. No, ma'am.

22 Q. Did you threaten anyone else with charges if he
23 didn't speak with you?

24 A. No, ma'am.

25 Q. Did you offer him any promises?

1 A. No, ma'am.

2 Q. Did you offer him any hope of reward?

3 A. No, ma'am.

4 Q. Can you tell us whether or not the defendant agreed
5 to speak with you?

6 A. He did.

7 Q. All right. And what did he tell you?

8 A. The defendant informed us that the items in the shed
9 belonged to him as well as his co-defendant Angel and that him
10 and Angel had those items and were running a drug operation
11 out of the shed at that location.

12 Q. At this point in time had the items been found and
13 collected?

14 A. They had not. We were still in the process of
15 searching when this interview occurred.

16 Q. So you didn't hold up the drugs and say, these are
17 yours, aren't they?

18 A. No, ma'am. I did not.

19 Q. What about with the guns?

20 A. No, ma'am. I did not.

21 Q. And he offered this information to you willingly?

22 A. Yes, ma'am. He did.

23 Q. And can you tell us who he said those items in the
24 shed belonged to?

25 A. They were his and his partner so they were his and

1 that his partner Angel Ibarra's items again all used to, for
2 their drug operation.

3 Q. Can you tell us whether or not this statement is
4 recorded in any way?

5 A. It was not, ma'am.

6 Q. Why not?

7 A. So narcotics is the exception to the body camera.
8 With us we are not required to wear a body camera due to the
9 sensitive nature of the information that we can gather during
10 the course of any of our investigations as swell as when we're
11 interviewing various people and so that information is
12 obtained by us and is not recorded because again, it can be
13 used for other means and it's sensitive and it can at times
14 potentially put that person who provided us that information
15 at risk, their safety at risk.

16 Q. Can you tell us whether or not the same holds true
17 for written statements?

18 A. Yes, ma'am.

19 Q. Had he asked to write a statement, would you have
20 allowed him to?

21 A. Yes, ma'am. We would have.

22 Q. Would you have had to take him to any other location
23 in order to do that?

24 A. Yes, ma'am. We would have. On scene due to the
25 nature of the scene with everything going on we would have

1 transported him up to our headquarters and at that point put
2 him in an interview room and done it there in a much more
3 secure location.

4 Q. Did he ever ask to write a statement?

5 A. No, ma'am. He did not.

6 Q. All right. So after you interviewed the defendant,
7 what, if anything, did you do?

8 A. So upon completion of the interview which was no
9 more than 10 to 15 minutes at the most he was then transported
10 to our jail because he was in custody at that time and then I
11 continued on with the search warrant.

12 Q. Did you transport him to LCDC?

13 A. I did not.

14 Q. That would have been another officer?

15 A. Yes, ma'am. It would have.

16 Q. So you would have continued with the search. Can
17 you tell us whether or not while officers are searching you're
18 made aware of items found?

19 A. Yes, ma'am. So as the case agent, as the lead agent
20 on the case every time an item is found I'm notified and I'll
21 go view where it is, so I'll go look at what was found, where
22 it was found because all of that helps determine who's being
23 charged and what they're being charged with.

24 Q. All right. And were you made aware of anything and
25 everything found in the shed?

1 A. I was.

2 Q. Did you observe everything as it was found prior to
3 it being collected and taken to a centralized location?

4 A. Yes, ma'am. I was.

5 Q. Would anything have been added to any of the items
6 found prior to you seeing anything?

7 A. No, ma'am.

8 Q. Is anything ever added?

9 A. No, ma'am. It is not.

10 Q. What about taken away? Would anything have been
11 taken away from the items found?

12 A. No, ma'am. It would not have.

13 MS. OPPENHEIMER: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes. You may.

16 BY MS. OPPENHEIMER:

17 Q. I'm showing you what's been marked as State's
18 Exhibits numbered 35 through 53. If you can take a look at
19 these photographs and let me know if you recognize them.

20 A. (Witness complies.) Yes, ma'am. I do recognize
21 them.

22 Q. What are those photos of?

23 A. Items of evidence we collected from the scene that
24 day from the shed.

25 Q. Do they appear exactly as you personally observed

1 them on October 24th, 2018?

2 A. Yes, ma'am. They do.

3 Q. And this would have been before anyone collected
4 them?

5 A. Before they were removed from their spot. Yes,
6 ma'am.

7 Q. Do they appear to have been altered in any way?

8 A. No, ma'am. They have not.

9 MR. WILLIAMS: Without objection, Your Honor.

10 THE COURT: State's Exhibit 35 through 53 are into
11 evidence without objection.

12 MS. OPPENHEIMER: Thank you, Your Honor. Permission
13 to publish?

14 THE COURT: Yes. You may.

15 BY MS. OPPENHEIMER:

16 Q. Showing you State's Exhibit number 35, Detective
17 Dabkowski, can you tell us what's depicted in this
18 photograph?

19 A. That is a security camera that was facing out
20 towards the front of the location.

21 Q. State's Exhibit number 36.

22 A. That is another one of the security cameras that
23 were located on the property.

24 MS. OPPENHEIMER: Your Honor, may I approach the
25 witness?

1 THE COURT: Yes. You may.

2 BY MS. OPPENHEIMER:

3 Q. Detective Dabkowski, I'm showing you what's been
4 marked as State's Exhibits number 58 and 59. Can you tell us
5 whether or not you recognize these items?

6 A. Yes, ma'am. I do.

7 Q. And there are two different evidence stickers on
8 those. Can you tell us what color the evidence stickers from
9 today are?

10 A. They're white.

11 Q. And why are there two different stickers on there?

12 A. Because there is a co-defendant in this case.

13 Q. Okay. And that might have been introduced?

14 A. Yes, ma'am.

15 Q. Do these appear to have been altered in any way?

16 A. No, ma'am. They have not.

17 Q. Were you actually the one who collected this item
18 and put it into an evidence bag?

19 A. I was.

20 Q. Did you seal that evidence bag?

21 A. I did because you can see my initials. There's the
22 date I sealed it and then my initials on the seal on the back
23 of the evidence bag.

24 Q. All right. Again, does it appear to be altered in
25 any way from as you collected it on October 24th, 2018?

1 A. No.

2 MS. OPPENHEIMER: Your Honor, at this point I move
3 State's Exhibits number 58 and 59 into evidence.

4 MR. WILLIAMS: Your Honor, we would object to it
5 stating that chain has not been proven sufficiently to
6 indicate that there has been no tampering or any other
7 person who may have been in contact with these particular
8 security devices.

9 THE COURT: I'll overrule the objection. She's
10 testified that they are in the same condition and have
11 not been tampered with. Note your objection. State's 58
12 and 59 are into evidence.

13 BY MS. OPPENHEIMER:

14 Q. Can you tell us what State's 58 is?

15 A. This is one of the security cameras that were
16 located on the property that we had taken that day.

17 Q. And State's Exhibit number 59?

18 A. That is the rest of the security system so that
19 would be the center portion of it and then two more cameras
20 that were located.

21 Q. And can you tell us whether or not you were able to
22 determine where the feed of this security camera went to?

23 A. We were able to determine that at least one of those
24 feeds went into the shed as the previous picture showed one of
25 my SWAT guys on the screen on the TV in the shed.

1 Q. Showing you State's Exhibit number 37, what's
2 depicted in this photograph?

3 A. So that is the same table that you saw in the
4 initial pictures that had everything on it. It's just we had
5 started to number the items. The reason we number the items
6 is because as we take it we do have to, it's called a search
7 warrant return so we do have to put down on that return for
8 the search warrant every item that we take. Just so there's
9 no confusion on those items, we give them a yellow placard
10 starting at one and depending how big the search warrant is,
11 it can go over 50 numbers, it just depends on the case and so
12 then that would mark item number 1 and whatever that item
13 is.

14 Q. Can you tell us based on where SWAT found the
15 defendant how close in proximity would he have been to this
16 table?

17 MR. WILLIAMS: Objection, speculation.

18 THE COURT: Sustain the objection.

19 BY MS. OPPENHEIMER:

20 Q. Where was this table found?

21 A. Inside the shed.

22 Q. And where was the defendant found?

23 A. Inside the shed.

24 Q. How big is that shed?

25 A. The shed's not big at all.

1 Q. Is it as big as this courtroom?

2 A. No, ma'am. Two or three steps and I can walk across
3 the shed.

4 Q. Showing you State's Exhibit number 38, what's
5 depicted in this photograph?

6 A. Some of the money that was located in the shed.

7 Q. You say some of the money. Why not all of the
8 money?

9 A. Because there was money located in another portion
10 of the shed.

11 MS. OPPENHEIMER: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes. You may.

14 BY MS. OPPENHEIMER:

15 Q. Detective Dabkowski, I'm showing you what's been
16 marked as State's Exhibit number 60. Can you tell us whether
17 or not you recognize that item?

18 A. I do, ma'am.

19 Q. And what is it?

20 A. It was the money that was located on the table in
21 the shed.

22 Q. Does that item also have a white and red evidence
23 label on it?

24 A. It does.

25 Q. Does it appear to have been altered in any way?

1 A. No, ma'am.

2 Q. Were you the person who collected that item and put
3 it into an evidence bag and sealed it?

4 A. Yes, ma'am. You can see where again I initialed and
5 dated on the back of it. So when we secure the evidence, we
6 do tape it and then we initial and date it to show the date
7 that that was done, that way if the seal was ever broken, we
8 would have to retape it and initial it and explain why. So as
9 you can see, my initials seal with my initials and date is
10 still on the back of the bag.

11 Q. And what date was that?

12 A. October 24th, 2018.

13 Q. Does it appear to have been tampered with at all?

14 A. No, ma'am. It has not.

15 MS. OPPENHEIMER: Your Honor, at this time I would
16 move State's Exhibit number 60 into evidence.

17 MR. WILLIAMS: Same objection that I argued on prior
18 items, that is there's no foundation, insufficient
19 foundation. There's a question in regards to chain in
20 that there's been no designation as to where this item
21 has been from the point in which it was seized in 2018 up
22 until today's point in time when obviously it has been
23 used at least on another occasion.

24 THE COURT: All right. I note your objection. It
25 is fungible evidence. It's in evidence, entered into

1 evidence.

2 MS. OPPENHEIMER: Thank you.

3 BY MS. OPPENHEIMER:

4 Q. And where was this money collected from?

5 THE COURT: I'm sorry. It is non fungible
6 evidence.

7 MS. OPPENHEIMER: Thank you, Your Honor.

8 BY MS. OPPENHEIMER:

9 Q. Where was this money collected from?

10 A. So this was collected from the shed, the table in
11 the shed that the defendant was located in.

12 Q. And again, about how much cash was this?

13 A. So that particular one is, it's easier, especially
14 with the numbers to compare it to my report, so the total
15 amount in the shed, just a correction from earlier, the total
16 amount of money located in the shed was 3000. Specifically on
17 the photos on the table, what was located on the table which
18 is item number 4 was 2000.

19 Q. Okay. So there would be an additional thousand
20 dollars found in the shed?

21 A. Yes, ma'am. There was.

22 Q. Showing you State's Exhibit number 39, can you tell
23 us what's depicted in this photograph?

24 A. Item number 5 is 29 multi colored balloons with an
25 unknown substance located inside the shed.

1 Q. And did you collect those balloons?

2 A. Yes, ma'am. They were collected from the scene and
3 I placed them into a BEST Kit. A BEST Kit for us is used for
4 evidence so any time we have drug evidence, it's put into a
5 BEST Kit. It's just a specialized bag that we seal drugs into
6 so it can go to be properly tested by our chemist.

7 Q. And with the BEST Kit, what would you have done with
8 that BEST kit?

9 A. So just like the other items of evidence, the BEST
10 Kit again is a specialized sealed bag. I would have put the
11 date these items were taken, the case number and then again
12 would have closed the bag. Again, it's specialized so it has
13 its own way to seal it and then I would have initialed and
14 dated the seal.

15 Q. And would you have submitted those for testing?

16 A. Yes, ma'am. I did.

17 Q. Showing you State's Exhibit number 40, can you tell
18 us what's depicted in this photograph?

19 A. That's just a close-up picture of one of the
20 balloons showing that there is a substance inside the
21 balloon.

22 Q. All right. State's Exhibit number 41, can you tell
23 us what's depicted in this photograph?

24 A. That is going to be, item number 6 is just the multi
25 colored cut balloon tops and a container of balloons so it's

1 just showing that the items that could potentially be used to
2 package drugs.

3 MS. OPPENHEIMER: Your Honor, may I approach the
4 witness?

5 THE COURT: Yes. You may.

6 BY MS. OPPENHEIMER:

7 Q. Showing you what's been marked as State's Exhibit
8 number 61, can you tell me if you recognize that item?

9 A. I do, ma'am.

10 Q. What is that?

11 A. It is the packaging that the, that's shown in that
12 photo is put into.

13 Q. And does it also have a white and a red evidence
14 label?

15 A. It does.

16 Q. Does it appear to have been tampered with in any
17 way?

18 A. No, ma'am.

19 Q. Did you collect that item of evidence?

20 A. Yes, ma'am. I did.

21 Q. Did you put it into an evidence bag?

22 A. I did.

23 Q. Did you seal it and put your initials and date it?

24 A. I did, ma'am.

25 Q. And does that appear to have been altered in any

1 way?

2 A. No, ma'am.

3 MS. OPPENHEIMER: Your Honor, at this point I move
4 State's Exhibit number 61 into evidence.

5 MR. WILLIAMS: Obviously I need to see it first,
6 Your Honor.

7 MS. OPPENHEIMER: I apologize, Mr. Williams.

8 MR. WILLIAMS: Okay. Your Honor, I would renew the
9 objections that I made on the prior two pieces of
10 evidence that were coming in and that is whether or not
11 there's been a proper foundation established whether or
12 not the chain is complete insofar as proven to everyone's
13 satisfaction that nothing has been tampered with and that
14 nothing has been added. I note the Court's notation of
15 fungible. And I also note that on this particular --

16 THE COURT: Hold on. Let's do this. Ladies and
17 gentlemen, y'all have been sitting here about an hour.
18 This is an appropriate time for us to take about a 10, 15
19 minute break. I'm gonna allow you to go back to your
20 jury room. Don't discuss anything about the case at all
21 on the break. We'll have you back here in 15 minutes.
22 Everyone else remain seated while the jury is excused.

23 (Whereupon, the jury entered the jury room at 10:00
24 a.m.)

25 MR. WILLIAMS: Your Honor, I would ask the record to

1 also note that in this particular exhibit there appears
2 to be, the bag is torn and you can see right through it
3 to see the numbers of balloons that are in the bag and
4 even though they may or may not be fungible, they
5 certainly are capable of being lost, so there's been no
6 designation to the number of balloons that are in it and
7 it appears to have been tampered with because the paper
8 is torn, so any balloon could have easily escaped, if it
9 is balloons in here.

10 THE COURT: All right. I'm not gonna allow it in at
11 this point in time, however, Solicitor, I'll allow you to
12 continue asking questions about that particular piece of
13 evidence.

14 MS. OPPENHEIMER: Yes, Your Honor.

15 MR. WILLIAMS: Thank you, Your Honor.

16 MS. OPPENHEIMER: Do you want me to do that now or
17 in front of the jury?

18 THE COURT: Yes. Yes.

19 MS. OPPENHEIMER: I'm sorry. I was confused.

20 THE COURT: Right now.

21 BY MS. OPPENHEIMER:

22 Q. Detective Dabkowski, are you aware where evidence is
23 stored prior to trial?

24 A. Yes, ma'am.

25 Q. And where is that?

1 A. So after I collect the evidence and I put everything
2 in a bag and I seal it with my initials and date, I turn it
3 over to our evidence custodian to keep custody of all of the
4 items of evidence until such time it's deemed it's needed for
5 trial or anything else that we can possibly do with that
6 evidence which is a secure location behind the gates at our
7 headquarters which you have to be either an employee of ours
8 to get back there or be escorted and then the only ones that
9 have the ability to go into the evidence room are evidence
10 custodians.

11 Q. All right. And would that have been done with this
12 particular piece of evidence?

13 A. Yes, ma'am. It would have.

14 Q. And do you recall, was this piece of evidence
15 brought for trial against Angel Ibarra?

16 A. It was.

17 Q. And had it been tampered with then?

18 A. We opened it.

19 Q. We opened it during that trial?

20 A. Yes, ma'am. We opened it during that trial to show
21 that jury.

22 Q. So can you tell us whether or not you were on the
23 witness stand when it was opened?

24 A. Yes, ma'am. I'm the one who opened it.

25 Q. All right. And would it have been resealed

1 afterwards?

2 A. Yes, ma'am. It would have.

3 Q. And would it have been kept in that secured
4 location?

5 A. It would have gone back to our evidence and kept in
6 a secure location until such time it was needed again.

7 Q. Does it appear to have been tampered with since May
8 of 2022 this year when it was opened during trial?

9 A. No, ma'am.

10 MS. OPPENHEIMER: Your Honor, at this time I believe
11 the foundation has been --

12 THE COURT: Let's do this to make sure the record is
13 clear. The jury is out. This is an in camera hearing on
14 the condition of State's Exhibit 61 so I'm gonna allow
15 Mr. Williams if he wants to cross examine her on this
16 particular issue alone, then you will have that
17 opportunity. Mr. Williams.

18 MR. WILLIAMS: All right.

19 CROSS EXAMINATION

20 BY MR. WILLIAMS:

21 Q. All right. Ma'am, you said that it was opened at
22 some point in time. When was it opened?

23 A. It was opened in May of 2022 during the course of
24 the trial for the co-defendant in this case.

25 Q. When in May of 2022 was it opened?

1 A. I would have to look at the exact -- I don't have
2 those exact dates.

3 Q. Because the reason you don't have those is because
4 you turned it over to a different individual who is in charge
5 of that, right?

6 A. When we have items for trial, they come over in the
7 custody of an evidence custodian who physically keeps custody
8 of that, so they bring it over, it's handed it to me, it's
9 then turned back to that same evidence custodian and taken
10 back to a secure location.

11 Q. And in May of 2020 who did you receive it from and
12 who did you turn it back over to?

13 A. It was Candy Kyzer was evidence custodian that was
14 here that day.

15 Q. All right. And do you remember -- So she would be
16 the one who would be able to testify as to the condition of
17 that exhibit when it was returned back to her?

18 A. I was the one who handed it back to her. I was the
19 one involved with handing it back to her so I can attest to
20 how it was that day.

21 Q. Well, clearly the bag is torn, isn't it?

22 A. When items of evidence sit for four years in an
23 evidence locker in a box with other items, it's a paper bag.
24 It's not made to stand up forever.

25 Q. So what you're saying is you don't know when the bag

1 was torn or how it got torn or what cussed the condition of
2 the bag to change, correct?

3 A. It's been a long four years since your defendant was
4 charged in this case.

5 MR. WILLIAMS: Your Honor, I don't believe I need to
6 ask her any more. I still don't believe that's
7 sufficient to introduce this piece of evidence in this
8 trial without going through who could actually establish
9 what the condition of that exhibit was because clearly it
10 could have lost some of the contents of that bag.

11 THE COURT: Well, we haven't gotten there yet about
12 what actually is in the bag. We have been talking about
13 "the bag", a brown paper bag so...

14 MR. WILLIAMS: Again, and relevance, I guess, would
15 probably be a supplemental.

16 MS. OPPENHEIMER: Your Honor, I believe she
17 testified that the item depicted in State's Exhibit
18 number 41 is in that bag. They're empty balloons. I can
19 further flesh that out.

20 THE COURT: All right. I'm gonna allow you to ask
21 more questions.

22 REDIRECT EXAMINATION

23 BY MS. OPPENHEIMER:

24 Q. What is contained in that bag?

25 A. So we put the, we took that plastic container that

1 contains those balloons and placed them into this bag in
2 evidence.

3 Q. Okay. And did those balloons that were collected in
4 this bag, did they contain any suspected narcotics?

5 A. No, ma'am. They did not.

6 Q. Were they filled with anything?

7 A. No, ma'am. They were not. They were all empty.

8 THE COURT: All right. I'm gonna allow State's 61
9 into evidence. The testimony is that the bag has been,
10 it does have some tears in it, however, what it contains
11 is balloons that were taken at the scene that had no
12 contents and what she's testified to is contents of the
13 bag labeled State's Exhibit 61 are those balloons that
14 had nothing in them. So I note your objection, Mr.
15 Williams, however, State's Exhibit 61 is admitted into
16 evidence.

17 MS. OPPENHEIMER: Yes, Your Honor.

18 THE COURT: All right. Then let's take a 10 minute
19 break. Ms. Dabkowski, any time during your testimony, if
20 we take a break, you're still under oath. You're not
21 allowed to discuss your testimony that you've given or
22 any future testimony until after you finish your complete
23 examination. Do you understand that?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Thank you.

1 (Short break.)

2 THE COURT: Okay. Everybody is back. Everybody is
3 ready. Let's bring in the jury.

4 (Whereupon, the jury entered the courtroom at 10:20
5 a.m.)

6 THE COURT: Ladies and gentlemen, thank you again
7 for your promptness. Ms. Oppenheimer, it's your
8 witness.

9 BY MS. OPPENHEIMER:

10 Q. Detective Dabkowski, can you tell us what's
11 contained in that paper bag?

12 A. It would be the plastic container containing the
13 unused balloons.

14 Q. Unused meaning what?

15 A. That there was nothing inside them. They're just
16 empty balloons.

17 Q. All right. And did you open that paper bag as part
18 of your testimony during the co-defendant Angel Ibarra's
19 trial?

20 A. I did.

21 Q. And would it have been taped afterwards?

22 A. Yes, ma'am.

23 Q. And would it have been introduced into evidence
24 during that trial?

25 A. Yes, ma'am. It would have.

1 Q. And can you tell us whether or not it would have
2 been secured in a locked location?

3 A. Yes, ma'am. It was.

4 MS. OPPENHEIMER: Your Honor, at this time I move
5 State's Exhibit number 61 into evidence.

6 MR. WILLIAMS: Subject to the objection that was
7 placed.

8 THE COURT: All right. Thank you. I note your
9 objection. State's 61 is admitted into evidence.

10 BY MS. OPPENHEIMER:

11 Q. Detective Dabkowski, if you can open up that bag
12 again for us.

13 A. (Witness complies.)

14 Q. What is that you pulled out of the bag?

15 A. That is the container shown in the picture right
16 there of the empty balloons and then we have the additional
17 balloons that were located that are all empty inside the bag
18 as well.

19 Q. Can you please take those out and show the jury?

20 A. (Witness complies.)

21 Q. Can you tell us whether or not in your experience as
22 a narcotics officer if balloons are commonly used in drug
23 enterprises?

24 A. Yes, ma'am. They are used to package the illegal
25 narcotics.

1 Q. Showing you State's Exhibit number 42, can you tell
2 us what is depicted in this photograph?

3 A. In that photo is the container right there that's
4 got the little scoop, so as you can see there's also some
5 powder in there.

6 Q. And would that have been collected into evidence?

7 A. Yes, ma'am. It would have.

8 Q. Would that have been placed into a BEST Kit?

9 A. I would have to check my report to see if I had
10 placed it into a BEST Kit.

11 Q. Please go ahead.

12 A. (Witness complies.) Yes, ma'am. That item was
13 placed into a BEST Kit for testing.

14 Q. And would you have sealed that BEST Kit?

15 A. Yes, ma'am. I would have.

16 Q. And would you have put your initials on the seal?

17 A. Yes, ma'am. I would have.

18 Q. Would you have put the date that it was collected on
19 that?

20 A. Yes, ma'am. I would have.

21 Q. Showing you State's Exhibit number 43, can you tell
22 us what this is?

23 A. That is the container containing cut.

24 Q. And what is cut?

25 A. Cut again is used to increase a product so if I have

1 one gram of an illegal narcotic, I would add cut. In this
2 case this particular powder. Other times it could be baby
3 powder. There's different things they use to make that one
4 gram into two grams to then turn around and sell it because
5 I've increased my product and I can make more money that
6 way.

7 MS. OPPENHEIMER: Your Honor, may I approach the
8 witness?

9 THE COURT: Yes. You may.

10 BY MS. OPPENHEIMER:

11 Q. Showing you what's been marked as State's Exhibit
12 number 62, can you tell us what that item is?

13 A. Yes, ma'am. It's the item depicted in that picture
14 which is the bottle of cut that we took during the execution
15 of the search warrant at 220 Leica Lane that was found in the
16 shed.

17 Q. Can you tell us whether or not you collected that
18 item?

19 A. Yes, ma'am.

20 Q. How do you know that?

21 A. Well, one, it's physically in my hand and then two,
22 my date of the execution of the search warrant and then my
23 initials so I am the one who sealed it into this evidence
24 bag.

25 Q. Does it appear to have been tampered with in any

1 way?

2 A. No, ma'am. It does not.

3 Q. And does it also have two evidence label markers on
4 it?

5 A. It does because it was used in the trial in May
6 against the co-defendant in this case.

7 MS. OPPENHEIMER: All right. Your Honor, at this
8 time I move State's Exhibit number 62 into evidence.

9 MR. WILLIAMS: Same objection I've been making all
10 along.

11 THE COURT: I note your objection. State's Exhibit
12 62 is into evidence.

13 BY MS. OPPENHEIMER:

14 Q. All right. So can you tell us whether or not
15 cutting agents are common in drug enterprises?

16 A. Yes, ma'am. It's a way that they can increase their
17 monetary, the money they bring in and how much they sell and
18 the profit they make.

19 Q. Showing you State's Exhibit number 44, what's
20 depicted in this photograph?

21 A. One of the digital scales that were located.

22 Q. And did you collect that item?

23 A. Yes, ma'am. We did.

24 Q. And where was that item located?

25 A. In the shed.

1 Q. And specifically where in the shed was it located?

2 A. On the table in the shed in close proximity to the
3 unpackaged unused balloons as well as the packaged balloons.

4 MS. OPPENHEIMER: Your Honor, may I approach the
5 witness?

6 THE COURT: Yes. You may.

7 BY MS. OPPENHEIMER:

8 Q. Detective, I'm showing you what's been marked as
9 State's Exhibit number 63. Can you tell me if you recognize
10 that item?

11 A. Yes, ma'am. I do.

12 Q. And what is it?

13 A. It's the item depicted in that photo, the digital
14 scale that was located on the table.

15 Q. And did you collect that item?

16 A. Yes, ma'am.

17 Q. Did you place it into an evidence bag and seal it?

18 A. Yes, ma'am. That's the date and then my initials on
19 the seal.

20 Q. Does it appear to have been tampered with in any
21 way?

22 A. No, ma'am.

23 MS. OPPENHEIMER: Your Honor, at this time I move
24 State's Exhibit number 63 into evidence.

25 MR. WILLIAMS: Same objection to chain and

1 foundation, Your Honor.

2 THE COURT: I note your objection. State's 63 is in
3 evidence.

4 BY MS. OPPENHEIMER:

5 Q. All right. Can you tell us whether or not digital
6 scales are commonly used in drug enterprises?

7 A. Yes, ma'am. They are. That's how they, when
8 they're selling the product would weigh it out prior to
9 meeting with the individual they're selling it to.

10 Q. Okay. Showing you State's Exhibit number 45, can
11 you tell us what's depicted in this photograph?

12 A. It's a picture of the metal box.

13 Q. All right. Is there anything else of note in that
14 photograph in your opinion?

15 A. Well --

16 Q. Is there anything in close proximity to this box?

17 A. So you also have the notebook right there as well as
18 the cutting agent.

19 MR. WILLIAMS: Aside from chain and foundation
20 objection, Your Honor, I would have an additional
21 objection which perhaps we can just approach the bench.

22 THE COURT: All right. Lawyers approach.

23 (Side bar off the record.)

24 MS. OPPENHEIMER: May I approach the witness, Your
25 Honor.

1 THE COURT: You may.

2 BY MS. OPPENHEIMER:

3 Q. Showing you what's been marked as State's Exhibit
4 number 64, can you tell me if you recognize that item?

5 A. I do, ma'am.

6 Q. And it has those two evidence labels?

7 A. Yes, ma'am, because it was presented in the trial of
8 the co-defendant in May of this year.

9 Q. Did you open that bag during the co-defendant's
10 trial?

11 A. Yes, ma'am. I did.

12 Q. And would it have been taped closed after the
13 trial?

14 A. Yes, ma'am.

15 Q. And would it have been kept in a secure location
16 after that trial?

17 A. Yes, ma'am.

18 Q. And was it brought here today by the evidence
19 custodian of the Sheriff's Department?

20 A. Yes, ma'am. It was.

21 Q. And did you collect that item of evidence in October
22 of 2018?

23 A. Yes, ma'am. It was collected during the execution
24 of the search warrant and it was located in the shed.

25 Q. And where specifically in the shed was it located?

1 A. On the table.

2 Q. And did you initial and date that bag?

3 A. The initial date that I closed it except for when we
4 reopened it in May, yes, ma'am. It was dated and initialed
5 back in October, the date of the search warrant the day I
6 collected the item.

7 Q. And what does that bag contain?

8 A. It contains the metal container that's depicted in
9 the picture.

10 Q. Other than when you opened it for trial and retaped
11 it, does it appear to have been tampered with in any way?

12 A. No, ma'am.

13 MS. OPPENHEIMER: Your Honor, at this time I move
14 State's Exhibit number 64 into evidence.

15 THE COURT: Mr. Williams?

16 MR. WILLIAMS: Chain, foundation, and I'll use the
17 word description.

18 THE COURT: I note your objection on State's Exhibit
19 64, however, I overrule the objection. State's 64 is in
20 evidence again over the objection of the defense. All
21 right.

22 MS. OPPENHEIMER: Your Honor, may I have her open
23 the bag and show it to the jury?

24 THE COURT: Yes.

25 MS. OPPENHEIMER: Thank you.

1 BY THE WITNESS:

2 A. (Witness complies.)

3 BY MS. OPPENHEIMER:

4 Q. Detective Dabkowski, would that box have been opened
5 during the execution of the search warrant in October of
6 2018?

7 A. Yes, ma'am. We would have opened it to see what was
8 inside of it.

9 Q. Was there anything inside of this box?

10 A. There was.

11 Q. All right. Showing you State's Exhibit number 50,
12 can you tell us what's depicted in this photograph?

13 A. The inside of the box.

14 Q. All right. And would you have pulled the individual
15 items out of this box?

16 A. Yes, ma'am. We would have.

17 Q. And would you have individually photographed
18 those?

19 A. Yes, ma'am. We would have.

20 Q. Showing you State's Exhibit number 51, can you tell
21 us what this photograph depicts?

22 A. It depicts the plastic bags that were located inside
23 of that box.

24 Q. And were those plastic bags empty or were they
25 filled with something?

1 A. They were. We actually gave them a separate item
2 number in the search warrant and it was four plastic bags of a
3 brown like substance.

4 Q. And in your training and experience as a narcotics
5 officer, what does that indicate to you?

6 A. Based on the fact that it was a brown rock substance
7 I believed it to be heroin, but it was, again, put in a BEST
8 Kit for testing because I'm not a chemist.

9 Q. Showing you State's Exhibit number 52, can you tell
10 us what that item is?

11 A. Just an additional picture of one of the brown bags
12 located inside that box.

13 Q. And what was it filled with?

14 A. Again, a brown rock like substance believed to be
15 heroin.

16 Q. Showing you State's Exhibit number 53, can you tell
17 us what this photograph depicts?

18 A. An additional picture of those same items located
19 inside that box that are all believed to be heroin.

20 MS. OPPENHEIMER: Your Honor, may I approach the
21 witness?

22 THE COURT: Yes. You may.

23 BY MS. OPPENHEIMER:

24 Q. Showing you what's been marked as State's Exhibit
25 number 65 for ID only, can you tell us if you recognize this

1 item?

2 A. I do, ma'am.

3 Q. And what is contained in that item?

4 A. So inside this bag is the evidence that I put in to
5 be tested as well as the initial BEST Kit bag that was put in
6 to be tested.

7 Q. What specific items did you collect for testing?

8 A. I just need to refer to my report.

9 Q. Absolutely.

10 A. So I put in three items into the BEST Kit to be
11 tested. Item number 5 from the search warrant which was the
12 29 multi colored balloons with unknown substance. I also put
13 in item number 7 of my search warrant which was the battery
14 powered grinder with an unknown powder residue that was also
15 located in the shed, and then item number 11 which was the
16 four, I just want to read directly from, four plastic bags of
17 a brown rock substance believed to be heroin.

18 Q. And when you submitted that into evidence, would it
19 have been placed in a secure location?

20 A. Yes, ma'am.

21 Q. And who has access to that?

22 A. The evidence custodians.

23 Q. Can you explain to us how a BEST Kit is sealed?
24 When you collect items that are suspected narcotics, how do
25 you seal those items?

1 A. So the BEST Kit is actually a specialized envelope
2 that we put it in. Again, my case number, the person who is
3 submitting it, the person who sealed it signs it on the front,
4 and then they have a strip that you pull off and then you seal
5 the bag itself because it seals so it can't be tampered with
6 and I would initial and date on that seal as well when it gets
7 turned over. This way when the chemist gets it, they can
8 document if something had been wrong with it or not.

9 Q. All right. I'm showing you State's Exhibit number
10 22. Can you tell us whether or not these balloons would have
11 been placed into that BEST Kit?

12 A. Yes, ma'am. That was item number 5 of my search
13 warrant which is 29 multi colored balloons with an unknown
14 substance.

15 Q. Showing you State's Exhibit number 42, can you tell
16 us whether or not those items would have been placed into the
17 BEST Kit?

18 A. Yes, ma'am. In my report it says that was item
19 number 7 from the search warrant. It was placed in the BEST
20 Kit and that's the battery powered grinder with the unknown
21 powder residue.

22 Q. Showing you State's Exhibit number 51, can you tell
23 us whether or not that item would have been sealed into the
24 BEST Kit?

25 A. Yes, ma'am, it was because that is item number 11

1 which is the four plastic bags of the brown like substance I
2 believe to be heroin.

3 Q. State's Exhibit number 52.

4 A. Yes, ma'am. That was placed into the BEST Kit.

5 Q. And what about State's Exhibit number 53?

6 A. Yes, ma'am. It was.

7 Q. And can you tell us where all of these suspected
8 narcotics were found?

9 A. They were all located in the shed.

10 Q. And who was found in the shed?

11 A. The defendant was.

12 Q. Showing you State's Exhibit number 46, if you can
13 tell us what's depicted in this photograph?

14 A. It's a Ruger nine millimeter firearm.

15 Q. And State's Exhibit number 47, can you tell us
16 what's depicted in that photograph?

17 A. So that's when we would take, we take the initial
18 picture of how the firearm was located and then that is us
19 taking the magazine out because we're gonna verify, we're
20 gonna see if it's loaded or not, if there was ammo in the
21 chamber, if there's ammo in the magazine.

22 Q. Can you tell us whether or not on October 24th of
23 2018 during the search if this weapon was loaded?

24 A. It had 15 rounds of nine millimeter rounds were
25 found in the magazine.

1 MS. OPPENHEIMER: Your Honor, may I approach the
2 witness?

3 THE COURT: Yes. You may.

4 BY MS. OPPENHEIMER:

5 Q. Showing you what's been marked as State's Exhibit
6 number 66 and 67, can you tell me whether or not you recognize
7 these items?

8 A. I do.

9 Q. And what are they?

10 A. It's the item that's depicted there, item number 12
11 from my search warrant, the nine millimeter firearm.

12 Q. Did you collect that firearm and that ammunition and
13 place it into evidence?

14 A. I did.

15 Q. Did you seal it into an evidence bag?

16 A. Yes, ma'am. I did.

17 Q. Do you see your initials and the date on that
18 evidence bag?

19 A. Yes, ma'am. I do see my initials and date on the
20 evidence bag.

21 Q. Does it appear to have been tampered with in any
22 way?

23 A. It's in, uhm, so the firearm is no longer in the
24 initial evidence bag because we do test the weapon for a
25 database. That's something done by evidence.

1 Q. And would that weapon have been secured in a secure
2 location while waiting for trial?

3 A. Yes, ma'am.

4 Q. And do you see two evidence labels on that box and
5 the bag?

6 A. Yes, ma'am. I do.

7 Q. And why are there two different colored evidence
8 labels?

9 A. Because both of these items were presented in the
10 case against the co-defendant in May.

11 MS. OPPENHEIMER: Your Honor, at this time I move
12 State's Exhibits number 66 and 67 into evidence.

13 MR. WILLIAMS: Your Honor, we would object under
14 chain, foundation and an additional sustaining ground in
15 regards to all of these items that the initial person who
16 found them pursuant to the return of the search warrant
17 was an Agent Purdy.

18 THE COURT: All right. Thank you. I note your
19 objection. I admit, State's Exhibit 66 and 67 are
20 admitted into evidence.

21 MS. OPPENHEIMER: Your Honor, may I have her open
22 the evidence bag that the firearm is located in?

23 THE COURT: Yes. You may.

24 BY MS. OPPENHEIMER:

25 Q. And, Detective Dabkowski, has the lock or anything

1 been added to that firearm to render it safe?

2 A. Yes, ma'am. It has.

3 Q. And it is not loaded at this time; is that
4 correct?

5 A. No, ma'am. It's not. We don't place any loaded
6 firearms into our evidence just to make sure that no one gets
7 hurt.

8 Q. Was that weapon loaded back on October 24th, 2018?

9 A. Yes, ma'am. There were 15 rounds.

10 Q. Is that the magazine that you're holding up?

11 A. Yes, ma'am. It is.

12 Q. And did you put the ammunition in a separate bag?

13 A. Yes, ma'am. We do not store our weapons with
14 ammunition in evidence again for safety.

15 Q. And where was this weapon found?

16 A. In the shed.

17 Q. Was it easily accessible?

18 A. Yes, ma'am.

19 Q. Showing you State's Exhibit number 48, can you tell
20 us what's depicted in this photograph?

21 A. Item number 13 was a nine millimeter rifle that was
22 located on the futon that was on there with a magazine and 23
23 rounds loaded.

24 MS. OPPENHEIMER: Your Honor, may I approach the
25 witness?

1 THE COURT: Yes. You may.

2 BY MS. OPPENHEIMER:

3 Q. Showing you State's Exhibit number 68, can you tell
4 us if you recognize that item?

5 A. Yes, ma'am. I do.

6 Q. And it has those two evidence labels on it; is that
7 correct?

8 A. Yes, ma'am. It does. Again, it was presented
9 against the co-defendant in the trial that we had in May of
10 this year.

11 Q. All right. And did you collect this piece of item
12 into evidence?

13 A. Yes, ma'am. It has a label on it that has the case,
14 the date that we collected it which was October 24th, the date
15 of the search warrant as well as my initials.

16 Q. Does it appear to have been tampered with in any
17 way?

18 A. No, ma'am. It does not.

19 Q. Was a lock placed on the gun to render it safe?

20 A. Yes, ma'am. It was.

21 Q. All right. And is this item the same as it was back
22 in October of 2018 when you collected it?

23 A. Yes, ma'am. It is.

24 MS. OPPENHEIMER: Your Honor, at this time I move
25 State's Exhibit number 68 into evidence.

1 THE COURT: Mr. Williams.

2 MR. WILLIAMS: Same objection, chain, foundation and
3 Officer Purdy hasn't testified who found all these
4 things.

5 THE COURT: I note your objection. State's Exhibit
6 68 is in evidence.

7 BY MS. OPPENHEIMER:

8 Q. Detective Dabkowski, if you would please take the
9 weapon out and show it to the jury.

10 A. (Witness complies.)

11 Q. And was that weapon loaded when it was found on
12 October 24th, 2018?

13 A. Yes, ma'am. It was.

14 Q. And where was it found?

15 A. It was found in the shed.

16 Q. And was it easily accessible?

17 A. Yes, ma'am. It was.

18 Q. Detective Dabkowski, can you tell us in your
19 training and experience as a narcotics officer whether or not
20 guns are commonly found associated with a drug enterprise?

21 A. Yes, ma'am. They are.

22 Q. Showing you State's Exhibit number 49, can you tell
23 us what, if anything, is depicted in this photograph?

24 A. You've got packaging. Well, you do have a grinder
25 that's there.

1 Q. And is that paraphernalia consistent with a drug
2 enterprise?

3 A. Yes, ma'am. It is.

4 Q. Detective Dabkowski, can you tell us who claimed
5 ownership of all of these items found in the shed?

6 A. The defendant informed us that everything in the
7 shed belonged to him and his co-defendant.

8 Q. Detective Dabkowski, can you tell us whether or not
9 any additional weapons were found and collected from the
10 shed?

11 A. Yes, ma'am.

12 Q. And did you collect those items?

13 A. Yes, ma'am. And these items were collected from the
14 scene by me and transported from the scene by me to the
15 evidence locker where they were then put in a secure location
16 by the evidence custodians.

17 MR. WILLIAMS: Move to strike the last comment for
18 hearsay purposes.

19 THE COURT: I sustain the objection.

20 MS. OPPENHEIMER: Your Honor, may I approach the
21 witness?

22 THE COURT: Yes. You may.

23 BY MS. OPPENHEIMER:

24 Q. Detective, I'm showing you what's been marked as
25 State's Exhibit number 69, can you tell me whether or not you

1 recognize that item?

2 A. Yes, ma'am. I do.

3 Q. And did you collect that item and place it into
4 evidence?

5 A. Yes, ma'am. I did.

6 Q. And what is it?

7 A. It is a Rebel .22 caliber AK-47.

8 Q. Can you tell us where that item was found?

9 A. In the shed during the search warrant at 220 Leica
10 Lane.

11 Q. Does it appear to have been tampered or altered in
12 any way?

13 A. Just the lock we have to secure it.

14 Q. And that lock was just added for security
15 measures?

16 A. Yes, ma'am. It is.

17 Q. And does this have two different evidence labels on
18 it?

19 A. Yes, ma'am. Again, it was presented in the trial in
20 May of the co-defendant.

21 MS. OPPENHEIMER: Your Honor, at this time I move
22 State's Exhibit number 69 into evidence.

23 THE COURT: Mr. Williams.

24 MR. WILLIAMS: Same objection, foundation.

25 THE COURT: Overrule the objection. 69 is in

1 evidence.

2 MS. OPPENHEIMER: Your Honor, may she remove it from
3 the box to show it to the jury?

4 THE COURT: Yes. She may.

5 BY THE WITNESS:

6 A. (Witness complies.)

7 BY MS. OPPENHEIMER:

8 Q. Detective Dabkowski, were those rubber bands on that
9 weapon when you found it on October 24th, 2018?

10 A. Yes, ma'am. They were.

11 Q. And can you tell us whether or not that weapon was
12 loaded when you found it?

13 A. Yes, ma'am.

14 Q. And can you tell us whether or not that weapon was
15 easily accessible within the shed?

16 A. Yes, ma'am. It was.

17 Q. Did you have to really go looking for it?

18 A. No, ma'am. It was in plain view.

19 Q. Showing you State's Exhibit number 70, can you tell
20 us if you recognize this item?

21 A. Yes, ma'am. I do.

22 Q. And did you collect that item in October of 2018?

23 A. Yes, ma'am. I did.

24 Q. Did you put that item in evidence?

25 A. Yes, ma'am. You can see my initials and the date on

1 it.

2 Q. Does it appear to be altered or tampered with in any
3 way?

4 A. Just the security locks we put on to make sure it's
5 unloaded.

6 Q. And where was this item found?

7 A. In the shed during the search warrant at 220 Leica
8 Lane.

9 MS. OPPENHEIMER: Your Honor, at this time I move
10 State's Exhibit number 70 into evidence.

11 MR. WILLIAMS: Objection, chain, foundation and with
12 regards to who found the weapon.

13 THE COURT: I overrule the objection. State's
14 Exhibit 70 is in evidence.

15 MS. OPPENHEIMER: Your Honor, may she take it out of
16 the box to show it to the jury?

17 THE COURT: Yes. She may.

18 BY MS. OPPENHEIMER:

19 Q. Detective Dabkowski, can you tell us whether or not
20 this firearm was easily accessible in the shed?

21 A. Yes, ma'am.

22 Q. And can you tell us where exactly this firearm was
23 found?

24 A. By the table.

25 Q. The table with all the suspected narcotics on it?

1 A. Yes, ma'am.

2 Q. All right. And can you tell us whether or not this
3 weapon was loaded back on October 24th, 2018?

4 A. Yes, ma'am. It was.

5 Q. But it is not loaded now?

6 A. No, ma'am. It is not.

7 Q. What type of weapon is that?

8 A. It's a rifle.

9 Q. Detective Dabkowski, would you have collected all
10 the ammunition found in the shed?

11 A. Yes, ma'am. We would have.

12 Q. Can you tell me approximately how much ammunition
13 was found in the shed?

14 A. There was a lot.

15 MS. OPPENHEIMER: Your Honor, may I approach the
16 witness?

17 THE COURT: Yes. You may.

18 BY MS. OPPENHEIMER:

19 Q. Showing you what's been marked as State's Exhibits
20 number 71 and 74, can you look at those items and tell me if
21 you recognize them?

22 A. Yes, ma'am.

23 Q. And do they have both evidence labels on them?

24 A. Yes, ma'am. Again, they were presented in the trial
25 in May against the co-defendant.

1 Q. Did you collect them into evidence on October 24th,
2 2018?

3 A. Yes, ma'am. My initials is on the seal of both of
4 these bags.

5 Q. so you would have sealed the bags?

6 A. Yes, ma'am.

7 Q. And then placed them into evidence?

8 A. Yes, ma'am.

9 Q. Do they appear to be altered in any way?

10 A. No, ma'am.

11 Q. Do they appear to have been tampered with in any
12 way?

13 A. No, ma'am.

14 MS. OPPENHEIMER: Your Honor, at this time I move
15 State's Exhibits number 71 and 74 into evidence.

16 MR. WILLIAMS: Same objection with regards to chain,
17 foundation and in regards to who actually found those
18 items.

19 THE COURT: I overrule the objection. 71 and 74 are
20 in evidence.

21 BY MS. OPPENHEIMER:

22 Q. Detective Dabkowski, can tell us what caliber
23 ammunition is State's Exhibit number 71?

24 A. So State's Exhibit 71 is 121 rounds of nine
25 millimeter.

1 Q. And what about State's Exhibit number 74?

2 A. 23 .22 caliber rounds.

3 Q. And again, Detective Dabkowski, you would have
4 collected any and all ammunition found in that shed?

5 A. Yes, ma'am.

6 Q. I'm showing you what's been marked as State's
7 Exhibits number 75, 76, 77 and 78. Can you tell me if you
8 recognize those items?

9 A. Yes, ma'am. I do.

10 Q. And what are they?

11 A. They are four bags of different, not different, but
12 ammunition that was found in the shed during the search
13 warrant.

14 Q. And would you have collected those items on October
15 24th, 2018?

16 A. Yes, ma'am. That date is on there as well as my
17 initials on the seal of each of these evidence bags.

18 Q. And would you have sealed the evidence bag and
19 placed it into evidence at the Sheriff's Department?

20 A. Yes, ma'am, which is a secure location.

21 Q. Do you see both of those evidence labels that we've
22 been talking about on those bags as well?

23 A. Yes, ma'am. Each bag has the white and red as we
24 said because again, these were all presented in the trial of
25 the co-defendant in May of this year.

1 Q. Okay. And do they appear to be altered or tampered
2 with in any way?

3 A. No, ma'am.

4 MS. OPPENHEIMER: Your Honor, at this time I move
5 State's Exhibits number 75, 76, 77, and 78 into
6 evidence.

7 THE COURT: Mr. Williams.

8 MR. WILLIAMS: Same objection, chain, foundation and
9 as to who found them.

10 THE COURT: Overrule the objection. 75, 76, 77, 78
11 are in evidence.

12 BY MS. OPPENHEIMER:

13 Q. Detective Dabkowski, can you tell us what caliber
14 ammunition is in State's Exhibit 76?

15 A. 76 is 20 nine millimeter rounds.

16 Q. And what about State's Exhibit 77?

17 A. 77 is two 30-06 rounds.

18 Q. And where were those found?

19 A. This was loaded in the rifle.

20 Q. What about State's Exhibit number 75?

21 A. 75 is 20 nine millimeter rounds that came from the
22 extra magazine or the rifle that was found.

23 Q. And State's Exhibit number 78, what caliber
24 ammunition is in that bag?

25 A. 17 nine millimeter rounds of ammunition.

1 MS. OPPENHEIMER: Your Honor, may I approach the
2 witness?

3 THE COURT: Yes. You may.

4 BY MS. OPPENHEIMER:

5 Q. Showing you what's been marked as State's Exhibit
6 number 73, can you tell us if you recognize that item?

7 A. Yes, ma'am. I do.

8 Q. What is it?

9 A. It was the magazine located inside the shed during
10 the execution of the search warrant on October 24th.

11 Q. And were those collected and placed into evidence by
12 you?

13 A. Yes, ma'am. You can see my initials on the evidence
14 portion where I sealed the bag up.

15 Q. And does that piece of evidence also have two
16 evidence labels on it?

17 A. Yes, ma'am, because again, it was presented during
18 the trial of the co-defendant in May of this year.

19 Q. Does it appear to have been altered or tampered with
20 in any way?

21 A. No, ma'am.

22 MS. OPPENHEIMER. Your Honor, at this time I move
23 State's Exhibit number 73 into evidence.

24 MR. WILLIAMS: Same objection, chain, foundation,
25 who found it.

1 THE COURT: Objection overruled. Admit, State's 73
2 is in evidence.

3 BY MS. OPPENHEIMER:

4 Q. Detective Dabkowski, where were those magazines
5 found?

6 A. In the shed.

7 Q. And can you tell us whether or not they were loaded
8 at the time they were found back in October of 2018?

9 A. They were.

10 Q. And can you tell us what type of gun these magazines
11 go to?

12 A. Just if you give me a minute, I know I have the
13 report exactly which gun those belong to. It's for the .22
14 caliber AK-47.

15 Q. I was going to ask if they were for a long or a
16 short gun.

17 A. Apologize. There's a lot of different items to go
18 through.

19 Q. No worries. Detective Dabkowski, did you collect
20 any and all magazines found in the shed?

21 A. Yes, ma'am.

22 Q. I'm handing you what's been marked as State's
23 Exhibits number 79, 80 and 82. Can you tell me if you
24 recognize those items?

25 A. Yes, ma'am.

1 Q. What are they?

2 A. The additional magazines that were located in the
3 shed during the execution of the search warrant.

4 Q. And were those collected and put into evidence?

5 A. Yes, ma'am. They were.

6 Q. And did you seal them with your initials and date?

7 A. Yes, ma'am.

8 Q. Does it appear to be tampered or altered?

9 A. No, ma'am.

10 Q. And do they have both of those red and white
11 evidence labels on them?

12 A. They do because again, these were presented during
13 the case against the co-defendant in May of this year.

14 MS. OPPENHEIMER: Your Honor, at this time I move
15 State's Exhibit numbers 79, 80 and 82 into evidence.

16 MR. WILLIAMS: Same objection, chain, foundation and
17 who found it.

18 THE COURT: Overrule the objection. 79, 80, 82 are
19 in evidence.

20 BY MS. OPPENHEIMER:

21 Q. All right. And can you tell us what type of weapon
22 those magazines are for?

23 A. So two of the magazines were from one of the rifles
24 that was located and then the other bag contained an
25 additional magazine for, I believe that's gonna be one of the

1 handguns and then two loaded mags as well.

2 MS. OPPENHEIMER: All right. Your Honor, may I
3 approach the witness?

4 THE COURT: Yes. You may.

5 BY MS. OPPENHEIMER:

6 Q. Detective, did you collect any and all items found
7 in the shed that would have been consistent with a drug
8 enterprise?

9 A. Yes, ma'am.

10 Q. And I'm showing you State's Exhibit number 72 and
11 State's Exhibit number 81. Can you tell me if you recognize
12 those items?

13 A. Yes, ma'am. I do.

14 Q. And where were those items found?

15 A. In the shed.

16 Q. And what are they?

17 A. Additional digital scales and a composition
18 notebook.

19 Q. And did you collect those items into evidence?

20 A. Yes, ma'am.

21 Q. Did you place them into an evidence bag and seal
22 them?

23 A. Yes, ma'am. My initials are on the back of them.

24 Q. And did you date them as well?

25 A. Yes, ma'am. I did.

1 Q. Do they also have the two evidence labels on them?

2 A. They do because again, they were presented in the
3 case against the co-defendant in May of this year.

4 MS. OPPENHEIMER: Your Honor, at this time I move
5 State's Exhibits number 81 and 72 into evidence.

6 MR. WILLIAMS: Same objection, chain, foundation and
7 who found it.

8 THE COURT: Overrule the objection.

9 MR. WILLIAMS: And, Your Honor, there's an
10 additional objection to, I guess, the notebook because no
11 one has opened the notebook or testified to the opening
12 of the notebook so we don't know what the contents of the
13 notebook are.

14 THE COURT: Well --

15 MR. WILLIAMS: It may or may not be relevant.

16 THE COURT: -- that was the notebook that was
17 collected at the scene and placed into evidence and --
18 Lawyers approach.

19 (Side bar off the record.)

20 THE COURT: I note the objection. State's Exhibit
21 72 and 81 are admitted into evidence. Solicitor, why
22 don't you show -- Well, we can take care of that later.

23 MS. OPPENHEIMER: Yes, Your Honor.

24 THE COURT: Go ahead.

25 BY MS. OPPENHEIMER:

1 Q. Let's turn first to State's Exhibit number 81. Can
2 you tell us again what those are?

3 A. Three digital scales.

4 Q. And where were those digital scales found?

5 A. Located in the shed.

6 Q. What is the significance of digital scales in a drug
7 enterprise?

8 A. Again, scales are used to weigh out the drugs.

9 Q. And there are three in that package; is that
10 correct?

11 A. Yes, ma'am, as well as the previous one we put into
12 evidence.

13 Q. Turning now to State's Exhibit number 72, can you
14 tell us what, if any, significance that composition notebook
15 might have in a drug enterprise?

16 A. Composition notebooks are notebooks to be kept
17 during a drug enterprise as a ledger to document money owed by
18 people, drugs that they've sold and whatnot.

19 Q. Can you tell us whether or not you looked through
20 that composition notebook?

21 A. Yes, ma'am.

22 Q. And what did it appear to you to be as a narcotics
23 officer?

24 A. A ledger of the drug operation which is why we took
25 it into evidence.

1 Q. And where was it found?

2 A. In the shed.

3 Q. Where specifically in the shed?

4 A. On the table close to the metal box that contained
5 the brown like substance believed to be heroin.

6 MS. OPPENHEIMER: Your Honor, may I approach the
7 witness?

8 THE COURT: Yes. You may.

9 BY MS. OPPENHEIMER:

10 Q. I'm showing you what's been marked as State's
11 Exhibit number 83. Can you tell me if you recognize this
12 item?

13 A. Yes, ma'am. I do.

14 Q. And what is it?

15 A. It was additional currency that was found in the
16 shed.

17 Q. All right. And do you see both of those evidence
18 labels on there?

19 A. Yes, ma'am. Again, it was used against the
20 co-defendant in the trial in May of this year.

21 Q. And did you collect that money into evidence?

22 A. Yes, ma'am. We did.

23 Q. Did you seal it and date it?

24 A. Yes, ma'am. I did.

25 Q. Does it appear to be altered or tampered with in any

1 way?

2 A. No, ma'am. It does not.

3 MS. OPPENHEIMER: Your Honor, at this time I move
4 State's Exhibit number 83 into evidence.

5 THE COURT: Mr. Williams.

6 MR. WILLIAMS: Same objection, chain, foundation,
7 and who found it.

8 THE COURT: All right. I'm gonna overrule the
9 objection. 83 is in evidence.

10 BY MS. OPPENHEIMER:

11 Q. Detective, can you tell us in sum how much money was
12 found in that shed?

13 A. So this was a thousand dollars for a total of three
14 thousand dollars found in the shed.

15 Q. All right. And where were all of these guns,
16 suspected drugs, money and ammunition found?

17 A. In the shed.

18 Q. And who was also found in the shed?

19 A. The defendant was.

20 Q. Detective, there's been mention of an Agent Purdy.
21 Can you tell us whether or not he is an officer with Lexington
22 County Sheriff's Department?

23 A. He is. We were on the narcotics unit together in
24 2018.

25 Q. And anything he found in the shed would have been

1 personally observed by you?

2 A. Yes, ma'am. It would have.

3 Q. And personally collected by you?

4 A. Yes, ma'am.

5 MS. OPPENHEIMER: Thank you. No further questions.

6 Please answer any questions Mr. Williams may have for
7 you.

8 MR. WILLIAMS: May it please the Court.

9 THE COURT: Yes. Thank you.

10 RECROSS EXAMINATION

11 BY MR. WILLIAMS:

12 Q. And this Officer Purdy, do you know what his rank
13 is?

14 A. He's an investigator currently.

15 Q. All right. So he works now with the Lexington
16 County Sheriff's Office?

17 A. Yes, sir. He's still currently employed.

18 Q. So he would be available to testify in regards to
19 when and where he found these items; is that correct?

20 A. Yes, sir.

21 Q. Now, let me take you back to the, in your earlier
22 testimony you were describing essentially your surveillance of
23 this house, this location at 2020 (sic) is it Leica Avenue,
24 Leica Street, Leica Lane?

25 A. It's 220 Leica Lane in the West Columbia area of

1 Lexington County, but it was surveillance on that address as
2 well as the defendant and his co-defendant.

3 Q. All right. And in surveilling that I would assume
4 that you watch that location on how many occasions?

5 A. This was a several week long operation, surveillance
6 operation.

7 Q. How many other people did you see go inside that
8 storage room?

9 A. The defendant and the co-defendant and their
10 employee Kevin Kelly.

11 Q. Do you have an employment slip or something that
12 they filed with the government to indicate that he was paid as
13 an employee or something like that?

14 A. No, sir, but during the course of our investigation
15 he was used as an employee by them of the drug operation.

16 Q. Let me ask you this: Who was the owner of the
17 property there?

18 A. Angel Ibarra's mother owns the property.

19 Q. All right. And the other individual, what's his
20 name? Was it Gustavo? Do you remember, do you recall his
21 name?

22 A. That would have been Angel's 15 year old brother.

23 Q. And his name is Gustavo Soloronza, right?

24 A. I would have to look in my report.

25 Q. The other person that was handcuffed that day.

1 A. Yes, sir.

2 Q. So his name is what?

3 A. Gustavo and the last name, I'm not even gonna try to
4 butcher that, is S-o-l-o-r-o-n-z-a.

5 Q. All right. Now, he resided at that residence also,
6 didn't he?

7 A. Yes, sir.

8 Q. So it was the mama and the two sons that resided at
9 the residence, right?

10 A. And then some younger children.

11 Q. And some younger children?

12 A. Yes, sir.

13 Q. How many younger children were there?

14 A. I'm not sure. There were several bedrooms for
15 younger children as well, but we never had any contact with
16 the younger children at the location.

17 Q. Did you see the younger children out in the yard?

18 A. Not during our surveillance. No.

19 Q. So when was your surveillance done only at night or
20 was it during the daytime also?

21 A. During the day, night. It varies. It was again
22 during several weeks.

23 Q. Do you know how many children actually resided
24 there?

25 A. The total amount? No, sir.

1 Q. Did you ever see people, any neighbors coming over
2 there?

3 A. There wasn't a lot of traffic at that house.

4 Q. So is your answer you didn't see anybody else come
5 over to the house?

6 A. Not during the course of our surveillance, sir, but
7 we weren't out there 24/7.

8 Q. All right. So one of the descriptions that was used
9 by one of the officers is a heavy set Mexican gentleman who
10 came to the door or at least scene there. Can you tell me if
11 Ibarra is Mexican?

12 A. He is of Hispanic decent, sir.

13 Q. Is he heavy?

14 A. He is heavy.

15 Q. Is he actually heavier than my client?

16 A. Yes, sir, but that testimony was given the day of
17 when we executed the search warrant to describe the male scene
18 in the shed and Mr. Ibarra was not on scene at that time.

19 Q. Okay. So if I understand correctly, you saw the
20 other gentleman in the shed and you did not see my client in
21 the shed on that morning?

22 A. No, sir. That's not what I said at all.

23 Q. Okay.

24 A. The testimony that you are referring to is the SWAT
25 Officer Nick Uveges who described the male he saw in the shed

1 on the day of the execution of the search warrant as a heavy
2 set Hispanic male. That heavy set Hispanic male that was
3 located in the shed during the execution of the search warrant
4 was your client.

5 Q. Okay. So basically you're interpreting who he
6 described as being my client versus the other gentleman; is
7 that right?

8 A. On the day of the search warrant, sir, yes, because
9 he was, your client was the one located in the shed.

10 Q. So you also heard or I think you made the comment
11 that you checked around in regards to where he was working
12 talking about where my client was working?

13 A. We did not see any indication of legitimate
14 employment based on our surveillance and the times they were
15 surveilled.

16 Q. Did you ever check the Secretary of State to see if
17 there was anybody who was a registered owner for a corporation
18 where they did painting and construction?

19 A. No, sir.

20 Q. Well, if I were to tell you that there is a
21 gentleman who is charged, my client, would be listed as the
22 registered owner of Deluxe Roofing, LLC which is a roofing
23 company as of May the 15th of 2017, you wouldn't disagree with
24 that, right?

25 A. I would have to see paperwork.

1 Q. Which means you would have to check to see if he
2 actually had a registration, right?

3 A. We didn't check with the state. Again, during the
4 time of our surveillance nothing indicated that he was
5 actually working.

6 Q. But as you say, that was hit or miss. There were
7 only periodic times that you actually observed anybody going
8 on the property?

9 A. Over several weeks, yes, sir.

10 Q. So he could have had a job working full time, had
11 many of the employees that he had there, but you just didn't
12 see it because y'all weren't looking at him at that time; is
13 that correct?

14 A. No. We were looking at him and the co-defendant at
15 220 Leica Lane, but nothing of his behavior during that course
16 of surveillance indicated that he had a job.

17 Q. Let me ask you about the search warrant that y'all
18 got. You got a search warrant and the search warrant was for
19 that Leica Lane address?

20 A. Yes, sir.

21 Q. There was absolutely no reference to my client in
22 that search warrant, was there?

23 A. No. There was not.

24 Q. So you went to the trouble of getting a search
25 warrant so that you could search a location and there was no

1 reference to my client, only two other individuals. And who
2 were those individuals?

3 A. The surveillance, the information obtained during
4 surveillance that was used to obtain the search warrant was
5 used and those two were named, but during the pre-brief and
6 during the briefing prior to the execution of the search
7 warrant your client was a target given to SWAT as well as
8 everybody else on scene and he was at SWAT during the entire
9 course of the inves - he was a target during the course of the
10 entire investigation.

11 Q. Okay. So did you, you knew where my client lived,
12 didn't you?

13 A. Yes, sir.

14 Q. You went to his house, didn't you?

15 A. We surveilled his location and the drug operation
16 was not being run out of his location. They were using the
17 220 Leica Lane for it.

18 Q. So you didn't think it necessary to go ahead and get
19 a search warrant and search his house also to see if there's
20 something about drugs or something of that nature at his
21 house, right?

22 A. There was nothing for me to indicate that the drug
23 operation was being run out of his residence, just that they
24 were running it out of 220 Leica Lane out of the shed.

25 Q. Are you saying that if you have a suspect that you

1 suspect is in a drug operation, that you would never approach
2 a Magistrate to get a search warrant for any residences that
3 he owns?

4 A. I would have to have probable cause and nothing I
5 had during the course of my surveillance indicated that any of
6 the drug operation was being run out of the defendant's house,
7 just that the defendant was involved in the drug operation.

8 Q. So you chose to get a search warrant for Ibarra who
9 you knew was involved in it?

10 A. I had probable cause for the search warrant, sir, at
11 220 Leica Lane.

12 Q. So when you went in there, you go in and you try to
13 document everything that's in that shed because in essence the
14 charges that he's facing today involved those items that were
15 in the shed, right?

16 A. Yes, sir. They are.

17 Q. And when you document everything that's in the shed,
18 you're looking for to maintain the best evidence and what
19 happened and what goes on during that search and everything
20 that happened that day, correct?

21 A. It's our intention, yes, sir.

22 Q. As a matter of fact, with law enforcement when you
23 have a SWAT team that comes in, they actually fill out SWAT
24 reports that indicates exactly what they did, when they did
25 it, and then you go, since you're in charge, you go over all

1 that too, don't you?

2 A. No, sir. I'm not privy to SWAT'S reports.

3 Q. So even though you're the person in charge of it,
4 you don't go over those people who actually came inside the
5 shed and what they saw and what they did?

6 A. They'll talk to us about what they seen and indicate
7 where they have noticed stuff so if they notice a gun, they'll
8 tell us it's there. If they notice drugs, they'll tell us
9 it's there, but they don't touch those items.

10 Q. After the issuance of the search warrant, you're
11 required to file a return with the Magistrate, aren't you?

12 A. Yes, sir.

13 Q. And in that return you have to list every item that
14 was found during the search warrant, don't you?

15 A. Yes, sir. I do.

16 Q. And on the return the person who actually finds
17 those items has to be the person who signs off on the return,
18 don't they?

19 A. No, sir. It's anybody that's at the search warrant
20 during the execution of it that can return it.

21 Q. Do you remember who was listed as the person who
22 found those items in room number 10 which happens to be the
23 shed?

24 A. The majority of the evidence were found by Agent
25 Purdy, but collected from the scene by me.

1 Q. So did you sign the return on the search warrant?

2 A. It is standard practice for us to have somebody else
3 return the search warrant so if I am the one who obtained the
4 search warrant, then we get somebody else that was on scene
5 that was privy to the items found to return it.

6 Q. What items did you find in the shed that Purdy
7 didn't find?

8 A. I would have to look at the return. If you just
9 bear with me. I believe Purdy found the evidence in the shed
10 but again, I'm the one who collected them from the scene and
11 took them from the scene to evidence which is a secured
12 location.

13 Q. I'm sorry.

14 A. Purdy found them.

15 Q. The Solicitor was talking to me. I was trying to
16 answer her question.

17 A. Okay. Purdy found everything in the shed, but
18 ultimately everything while physically still on scene after I
19 observed where it was at was turned over to me and I
20 physically collected it from the scene, took it from the scene
21 after I had observed where it initially was before it was
22 taken up and taken to our secure evidence room at our
23 headquarters.

24 Q. Let's see. State's Exhibit number 70. Let's see.
25 73. Maybe it's a gun. Let's see. Referring to State's

1 Exhibit number 70.

2 A. Yes, sir.

3 Q. Which is a long gun.

4 A. Yes, sir.

5 Q. Your last statement you just made was that Purdy
6 found everything, that you just took it in; is that correct?

7 A. I physically observed it when they found it so I'm
8 called as the case agent, as they find stuff on scene I'm
9 notified. I would then go view where it is at the location,
10 but obviously I'm not the one who finds it because I can't be,
11 I can't search an entire house by myself.

12 Q. But you were in the shed on this particular day.
13 You were not in the house searching for anything.

14 A. I was in the shed if they found nothing. I was in
15 the residence if they found something.

16 Q. So on State's Exhibit number 70 who does it indicate
17 was the person who found the long gun?

18 A. So this was found by Agent Purdy in the shed but
19 again, I was notified, viewed where it was at and it was in
20 plain view when I did my initial walk-through of the location,
21 and then again, I'm the one who physically took it from the
22 scene and placed it into evidence.

23 Q. Well, on this particular one you indicate that you
24 were the one that found 70, didn't you? Didn't you write on
25 here that you found it?

1 A. So what you're talking about here which is the case
2 number, the date and my initials is I'm the one who put it
3 into evidence. We mark everything as it goes into evidence,
4 not who found it. So our bags do have who find the items, but
5 ultimately I collect it, especially when it's my search
6 warrant, I collect every piece of item from the scene, it
7 stays with me until it's turned over to evidence whether it be
8 an evidence custodian or a secure locker at our secured
9 evidence at headquarters.

10 Q. So actually what happens is when you go and y'all
11 make a raid or something like that and you find items, you
12 don't write on those bags or those items who finds it, you
13 wait until you go to evidence and you note when you go to
14 evidence who found it, is that what you're saying?

15 A. No, sir. That's not what I said. So we fill out
16 the return while we're still on scene and we will document.
17 Now, there is no place on that gun to write who found it, but
18 it's put in the search warrant return who found it because
19 again, we put those markers with it. It says what item number
20 it was during the course of the search warrant, what the item
21 is, who located it and what location in the search warrant it
22 was located. That's all not gonna fit on the barrel of the
23 gun.

24 Q. And what item number was number 70 that's been
25 placed into evidence?

1 A. That would be number 16. Item number - sorry. Item
2 number 17, the Ruger 30-06 loaded with two rounds of one
3 magazine, but that was found per my report in room 10 in the
4 shed where your defendant was located by Agent Purdy.

5 Q. So I'm sorry. Which item are you referring to, 16
6 or 17?

7 A. No. I apologize. I did correct myself and said
8 number 17. The one you just handed to me is item number 17 on
9 the report.

10 Q. So you said when you turned the return into the
11 Magistrate, you put the designation of the individual who
12 found it on the return. Isn't that what you just testified
13 to?

14 A. Yes, sir. I do apologize. I've reviewed the search
15 warrant return and they didn't document it on the return, but
16 it is in my report because we do make sure we know who's found
17 what item.

18 Q. So when your return was turned into the Magistrate,
19 there was no designation of who actually found the gun, but on
20 the gun itself you actually wrote your name when it was turned
21 into evidence; is that correct?

22 A. That is, the name that goes on there is the person
23 who's physically taking custody of it and turning it into
24 evidence. I do apologize. Out of 44 items that were taken
25 during that search warrant on the return that appears to be

1 the only one we forgot to put who found it so I do apologize
2 about that.

3 Q. So mistakes happen?

4 A. Yes, sir, but not where they were found and who
5 collected them from the scene nor who.

6 Q. Let me ask you, on these items, on all of the items
7 really, all of the other items that were found, each and every
8 one of them have Purdy's name on them, don't they?

9 A. Again, I can't be everywhere during a search warrant
10 when you're the case agent so I have to utilize my team which
11 is why we're a unit, they find it, they notify me what they
12 found, I come observe it and I'm the one who physically
13 collects it from the scene, so it was collected by me, they
14 were placed into the evidence bags, those evidence bags were
15 sealed by me which is why the date and the initials are on
16 there and I'm the one who physically turned them into our
17 evidence custodian.

18 Q. Let me ask you about the timing of everything. You
19 indicated that you were down the road with another officer
20 from Richland County; is that correct?

21 A. Yes, sir. Myself and Sergeant Colwell from Richland
22 County narcotics were just down the road from the residence.

23 Q. I'm sorry. What does "just" mean?

24 A. I could see the residence.

25 Q. All right. And what type of vehicle were you in?

1 A. An undercover Richland County unmarked car.

2 Q. All right. And when is it that the two of y'all
3 came to the scene?

4 A. When narcotics -- I'm sorry. I apologize. When
5 SWAT secured the scene, we started -- When SWAT arrived on
6 scene, we started to pull up to the location. We got out of
7 the car when SWAT informed us that the scene was secure.

8 Q. So you didn't actually arrive on scene until after
9 everything had occurred at the shed where the individual came
10 out of the shed and someone had gone through the shed and the
11 residence had been secured, that's when you arrived on scene;
12 is that correct?

13 A. I arrived on scene after SWAT secured it. They were
14 simply going in there to place anybody in detention that was
15 found on custody. As far as going through the shed, they were
16 only looking for bodies. They weren't searching for
17 anything.

18 Q. I'm not trying to be tricky. I'm just saying that
19 you and this other officer were away from the scene until you
20 received some sort of communication --

21 A. I was sitting in the --

22 Q. If I could complete my question.

23 A. I'm sorry. I apologize.

24 Q. You stayed away from the scene until after all these
25 other officers had secured the location and had already

1 escorted my client out of the shed; is that correct?

2 A. I was sitting in front of the residence when they
3 were securing it. I got out of my car, the car I was in, once
4 they informed us on the radio it's secured. It is our
5 procedure not to get in the way of SWAT due to the fact that I
6 don't train with them so we don't want to put anybody at risk.
7 That's why we have SWAT hit it and we wait until it's
8 secured.

9 Q. So just down the road would be not down the road,
10 but it would have been in front of the residence?

11 A. We were just down the road prior to SWAT rolling up
12 on scene, sir. When SWAT was rolling up on scene, meaning
13 they were pulling up onto the property, we were pulling up and
14 we were at the roadway in front of the residence waiting for
15 them to do their operational procedures and once it was
16 secured, that's when I got out of the vehicle.

17 Q. Do you have your pointer?

18 A. Yes, I do, sir.

19 Q. So designate, if you don't mind, on State's Exhibit
20 number 1 where SWAT was located.

21 A. I could not tell you exactly where SWAT's vehicles
22 were located. I know where I was located when I pulled out.
23 The exact location of SWAT's vehicles I do not recall.

24 Q. Can you tell me the location of the BearCat when you
25 arrived?

1 A. No, sir. The exact location? I know the BearCat
2 and the other vehicle that was carrying the four man team
3 would have been in front of the residence. We were parked --
4 It's a little hard to see. There it goes. So -- And I keep
5 losing it. Right there. Can I step down --

6 Q. Sure.

7 A. -- and point on there, Your Honor?

8 THE COURT: Yes.

9 MR. WILLIAMS: I'm sorry. I shouldn't have said
10 that. You asked the right person. You asked the Judge.
11 I'm sorry, Your Honor.

12 BY THE WITNESS:

13 A. So SWAT would have pulled up to the house however
14 they deemed whether thay were in the BearCat or the four man
15 team, they would have pulled up. Again, they determine their
16 approach when they come. I don't determine that. They would
17 have been somewhere here in the front of the residence. We
18 pulled up as they were pulling in because they were coming
19 from this way. We were down this way, pulled up, they pulled
20 in, we pulled to right here on the grass.

21 BY MR. WILLIAMS:

22 Q. Okay. So SWAT was not actually located right here
23 at the time?

24 A. If they were, they would have pulled further in. We
25 stayed on the grass right there at the roadway so we would

1 have been at the most like two tires on the grass in front of
2 the residence because again, we don't want to get in SWAT's
3 way. These guys are trained. They spend a ton of time
4 training on the right ways to execute search warrants as well
5 as entering houses so we obviously don't want to be in their
6 way because I don't receive the same amount of training that
7 they do.

8 Q. So did you observe what transpired when SWAT was
9 there?

10 A. What they did inside the house?

11 Q. Did you observe them approach the shed?

12 A. No, sir. I would have been back from that because
13 again, I'm not gonna interfere with their operational
14 procedures.

15 Q. So you would not have observed anybody that would
16 have lifted up a blind and looked through there, right?

17 A. No, sir, but I'm not testifying to that.

18 Q. Now, referring to State's Exhibit number 37, you see
19 that, right?

20 A. Yes, sir.

21 Q. And at the time that you came into the shed these
22 items were displayed on this table just as they are in this
23 photograph, right?

24 A. Minus the numbers.

25 Q. Okay. So this is not a picture of how they were

1 when you got in there?

2 A. You would have to go to the before pictures of the
3 search which had been entered into evidence.

4 Q. I'm not really worried about the numbers. Actually
5 I'm more concerned about something else. You see this table
6 here? What is this on the side? Is that a chair? Right
7 here.

8 A. Right behind the door?

9 Q. Yes.

10 A. Sorry. You're talking about that right there?

11 Q. Yes. What is that?

12 A. It appears to be a chair.

13 Q. All right. And is this table pushed all the way to
14 the wall?

15 A. Yes, sir. It appears to be.

16 Q. How big a table is that?

17 A. I'm not sure, sir.

18 Q. Well, from looking at it it clearly is big enough to
19 hold all those items that we're looking at, right?

20 A. Yes, sir.

21 Q. So did you measure it?

22 A. No, sir. We did not.

23 Q. You certainly would say it's over two feet in width
24 going up there, right?

25 A. I'm not gonna guess, sir.

1 Q. Well, I guess what I'm asking is that there was some
2 testimony about there's a window over this air conditioner,
3 right?

4 A. Yes, sir.

5 Q. And there are blinds over this air conditioner,
6 right?

7 A. There's the curtain, yes, sir.

8 Q. All right. And you were in court and you heard,
9 even though maybe you didn't see it, you heard that there was
10 some movement of the blinds?

11 A. Yes, sir, of the curtain.

12 Q. I'm sorry. Curtain --

13 A. He testified to the curtain.

14 Q. All right. But this table has not been moved, has
15 it?

16 A. Doesn't appear to be, sir. No.

17 Q. Is there any way to get to the blinds and get to the
18 curtain without moving the table?

19 A. You could stand on the table. I'm not gonna guess
20 how somebody would look out a window, sir.

21 Q. Well, let's talk about when you use the word look
22 out a window, let's talk about the television. There clearly
23 are two video recording or two surveillance items at this
24 location, one which shows the shed and one which points out
25 what, in the front yard?

1 A. There's three.

2 Q. All right. There's three. And I think the
3 testimony that you gave was that there was one which you could
4 actually see one of the officers later on come in front of a
5 TV; is that right?

6 A. On the TV screen, yes, sir, that was in the shed.

7 Q. So if somebody was in the shed looking at the
8 surveillance equipment, there would be no reason for him to
9 look out a drape or a curtain or anything like that?

10 MS. OPPENHEIMER: Objection, Your Honor. Calls for
11 speculation. She can't testify to what anyone --

12 MR. WILLIAMS: I withdraw the question.

13 THE COURT: Sustain the objection.

14 BY MR. WILLIAMS:

15 Q. Did you check into the surveillance equipment?

16 A. Check-in how?

17 Q. Well, surveillance equipment, obviously you can see
18 what it observes, what the camera observes and there's
19 probably some procedure in which those things could be
20 recorded?

21 A. Could be. There might be a live feed only though.
22 But no, we didn't do any further.

23 Q. Well, now, if you were checking into a drug location
24 to determine those individuals like a search warrant because
25 when you use a search warrant, I think you put in the search

1 warrant you're coming upon information that you can use to
2 determine those individuals that are involved in a drug
3 operation. That's why you have a search warrant, find the
4 names, find the items, and all the other stuff, right?

5 A. Yes, sir.

6 Q. So if you have a surveillance system which may or
7 may not possess the ability to show recorded, recorded
8 information of those individuals who have been inside that
9 shed, why wouldn't you secure that information to see who all
10 came inside the shed and what they were doing?

11 A. None of those cameras were pointed directly at the
12 shed so it wouldn't have recorded who was going in and out of
13 the shed anyway. None of the cameras showed who was
14 physically going in and out of the shed.

15 Q. Well, clearly, clearly those cameras show who came
16 up in the yard?

17 A. On the property, yes. It does not mean it's gonna
18 physically show who went into the shed.

19 Q. Remember you were talking about how often you looked
20 at the location and the only persons that you ever saw at that
21 location was this juvenile, the mama, the alleged co-defendant
22 and my client, that would have shown you who else was on the
23 scene and who else came to that location, right?

24 A. Could possibly.

25 Q. But you didn't check that out to see who those

1 individuals would have come up there and what they were doing.
2 If they were hauling, if they were hauling drugs into the
3 shed, you would have been able to see that, wouldn't you, if
4 it was recording and if it was showing something, wouldn't
5 it?

6 A. It would be the first time I had a drug operation
7 record themselves doing that where it could be used against
8 them. I find it hard to believe that they're going to record
9 themselves taking drugs in and out of that shed.

10 Q. Well, maybe they were recording, maybe they would
11 have been recording who was observing them and who came on
12 their property so that they would know if somebody was
13 surveilling them?

14 A. That's what surveillance is used for so they have
15 the ability to protect themselves if somebody wants to, say,
16 break in and steal their drugs and money and also to protect
17 themselves if somebody is coming, yes, sir.

18 Q. So it could have had a recording system?

19 A. It could have had recordings, but we did not see the
20 need to get a search warrant for the recordings.

21 Q. So there were recordings but you just didn't get a
22 search warrant?

23 A. I don't know if there are recordings. We didn't
24 think additional investigations into the surveillance system
25 was warranted with the fact that we had enough information on

1 the drug operation, the defendant was found in the shed as
2 well as his co-defendant was placed at the shed.

3 Q. So you have already used all these drugs one time
4 against one individual and you got to use it again against my
5 client, you didn't feel the need to go any further down the
6 list in using these drugs; is that right?

7 A. Again, weeks of surveillance into the drug operation
8 showed your defendant as well as his co-defendant being the
9 leaders of this drug enterprise that was being run out of the
10 shed at 220 Leica Lane. We didn't see that there was any
11 additional information to gather on who was running the
12 organization because we already had who was running the
13 organization.

14 Q. Let me ask you about these. All of these items that
15 you placed into evidence, the guns, the alleged drugs, all of
16 these items that are on this table right here, did you invite
17 forensics to come down there and take any fingerprints off of
18 guns, containers, any of these items that might indicate that
19 somebody else had touched those items?

20 A. We did not feel the need to fingerprint any of the
21 items. No, sir.

22 Q. Because you had the two you were looking for?

23 A. Because again, your client was found in the shed
24 with all of these items as well as the co-defendant was seen
25 in the shed prior to the execution of the search warrant where

1 all these items were located.

2 Q. Do you know whether or not his mama had ever been in
3 the shed?

4 A. She was not seen. I don't know who his mom is, but
5 again, the individuals we saw coming to and from the shed on
6 multiple occasions during our surveillance was your defendant
7 as well as the co-defendant in this case.

8 Q. Do you remember the juvenile that was handcuffed and
9 was released to his mother? Do you remember that?

10 A. That was temporarily handcuffed until we realized he
11 was 15. Yes, sir. I do.

12 Q. So his mother would have been Ibarra's mother,
13 correct?

14 A. Yes, sir.

15 Q. So when I referenced the person who owned the
16 property, then that would have been her, right?

17 A. Yes, sir.

18 Q. So you didn't check that out in terms of what her
19 role was? It was her property.

20 A. Again, weeks of surveillance on this drug operation
21 indicated your client along with his co-defendant that was
22 tried in May were the, ran the drug operation out of the shed
23 at 220 Leica Lane.

24 Q. So you didn't do any fingerprint testing. Did you
25 do any DNA testing?

1 A. No, sir.

2 Q. So essentially anything that you could use to
3 designate who actually had contact with these items, you
4 didn't use that method to test it?

5 A. No, sir.

6 Q. Now, I would like to talk a minute about this
7 alleged statement, confession, what have you, that my client
8 allegedly made on that day.

9 A. The post Miranda confession. Sure.

10 Q. He was out in the yard handcuffed along with the
11 juvenile, right?

12 A. Initially, yes, sir.

13 Q. And where were you when the two of them were brought
14 out handcuffed?

15 A. When they were turned over to Agent Smith?

16 Q. Because remember you told us that SWAT and narcotics
17 does their thing and then you come up and then you --

18 A. Well, I'm part of narcotics so narcotics did my
19 thing. SWAT secured the location. When Agent Smith was given
20 custody to hold on to your defendant as well as the 15 year
21 old, once it was secure, I was doing my initial walk-through
22 and I was informed that they were in custody. At that time we
23 went to interview the defendant.

24 Q. So when you say you were doing your walk-through,
25 where were you walking through?

1 A. The residence and the shed doing the initial
2 walk-through taking the initial pictures.

3 Q. So this would have been a period of time after SWAT
4 had already cleared everything out, right?

5 A. Five, ten minutes at the most.

6 Q. So do you remember if you were in the shed or if you
7 were in the house at the time?

8 A. Again, I was doing initial pictures doing my initial
9 walk-through so where could I tell you exactly that second,
10 no, but I was on the property.

11 Q. Okay. You said taking your -- Would you have been
12 taking pictures of the inside of the residence and the shed or
13 somebody else does that?

14 A. The initial pictures?

15 Q. Yes.

16 A. I took.

17 Q. So you took all of the initial pictures?

18 A. Yes, sir, during my walk-through before anybody else
19 came in and searched right after SWAT walked out.

20 Q. So you went through the residence first and took
21 your pictures?

22 A. I couldn't tell you the exact order I took those
23 pictures, but normally we do an overview so we would have done
24 the overview of the entire property and then worked our way
25 in. Whether I did the shed first or the house first, I

1 couldn't tell you exactly. Again, it was four years ago.

2 Q. Isn't that why we make notes of what we do so that
3 we know what we can testify to or did four years ago? We make
4 notes and that's why you have all those reports and stuff,
5 right?

6 A. Notes of who took a picture, not what order I took
7 the pictures in.

8 Q. So it doesn't matter to you what order you do your
9 search is what you're telling me, right?

10 A. Not per se, but I would have to look at the initial
11 picture, but I believe the initial pictures that were provided
12 to me by the Solicitor showed the front door so I would have
13 done the front door of the location and probably did the
14 residence and it ended with the shed.

15 Q. So after SWAT comes in there and does their search
16 and brings the individuals out and it's safe, then you first
17 go through the residence and take pictures inside the
18 residence and then you go to the shed; is that correct?

19 A. More likely than not the order I did it, yes, sir.

20 Q. Tell me how big that residence is?

21 A. A couple bedrooms, a living room, kitchen.

22 Q. Two bedrooms?

23 A. I believe it might have had more than that. Maybe
24 three.

25 Q. Well, it's important the number of bedrooms are in

1 the house, right? I mean, it tells the number of people who
2 might have been able to stay there.

3 A. All of my pictures would have had that in there
4 because we number the rooms.

5 Q. Okay. So you first would have gone through each and
6 every room in that house taking pictures of everything. After
7 you completed that, then you would have gone to the shed and
8 done that, taken pictures of everything that was in the shed,
9 then you had a conversation with the two individuals who had
10 been out there in the yard handcuffed; is that right?

11 A. Yes, sir. No more than ten minutes from the time
12 that they were handcuffed to the time that was completed
13 though it does not take long to do initial pictures. Again,
14 we're not doing any searching or anything like that. It's
15 just the initial pictures to show the way the rooms were prior
16 to us searching.

17 Q. And when you came out, both individuals were
18 handcuffed?

19 A. When I came out, I learned that the juvenile was 15
20 and he was immediately taken out of handcuffs because again,
21 we do not handcuff, we do not leave juveniles in handcuffs.
22 When SWAT executes a search warrant though, everybody except
23 small children will end up in handcuffs due to safety until we
24 can determine who they are and their age.

25 Q. I'm not trying to be tricky. I'm just trying to

1 figure out when you came out there, both of them are still
2 handcuffed? That's all I want to know.

3 A. Again, he probably was and when I found out prior to
4 interviewing your client, he was taken out of handcuffs. The
5 15 year old was taken out of handcuffs because his mom was
6 called to come get him.

7 Q. Okay. So you came over with the officer from
8 Richland County, somebody told you that it was a juvenile, so
9 did you direct that the juvenile have the handcuffs taken
10 off?

11 A. We he took the handcuffs off the juvenile, yes,
12 sir.

13 Q. Was that before or after the officer Mirandized my
14 client and before or after my client made any statements?

15 A. It was after your client and the 15 year old were
16 Mirandized because again, we didn't know at the time we had
17 him in handcuffs and Mirandized him, we didn't know he was 15.
18 No one asked your client any questions until after the 15 year
19 old was out of handcuffs and his mom was called to come get
20 him.

21 Q. As I understand what you said, or maybe you can
22 repeat to me exactly what he said. What were his exact words
23 about what was in the shed and who owned it?

24 A. Your defendant claimed ownership of the items in the
25 shed and that him and Angel, the co-defendant, were running a

1 drug operation out of that shed and that the items located
2 inside the shed belonged to your defendant and the
3 co-defendant.

4 Q. So he just came right out and used those words and
5 description of just whatever is in the shed, right? Is that
6 what he said? Whatever is in the shed.

7 A. That the items connected to the drug operation in
8 the shed belonged to him, yes, sir.

9 Q. Now, we talked a little bit about recording. You
10 said you did not record any statements because it's important
11 for security and you don't want -- As a matter of fact, when
12 you take these individuals for their statements, you take them
13 away from what, everybody else, right?

14 A. A short distance, yes, sir.

15 Q. So nobody else can hear what they're saying or what
16 you're saying, right?

17 A. Yes, sir. It was myself and Sergeant Colwell and
18 the defendant.

19 Q. So which one of the police officers who works for
20 Lexington County are you concerned about in regards to what
21 you're saying to the defendant? Which one are you concerned
22 about them overhearing what you ask or what they say?

23 A. I'm not concerned about them overhearing but again,
24 we take the defendant away because it's not - not everybody
25 needs to be privy to the information found. I'm not concerned

1 that they're gonna repeat what's said but again, not everybody
2 needs to be privy to every piece of intel a narcotics officer
3 locates during the course of an interview. I don't know every
4 interview that my -- When I was in narcotics for four years, I
5 couldn't tell you every interview the individuals I worked
6 with did nor what was obtained during every interview.

7 Q. At the Sheriff's Department you actually maintain a
8 recording system in the Sheriff's Department with an interview
9 room where you can record that individual as well as take down
10 anything that they say in regards to whatever questioning you
11 give, right?

12 A. Yes, sir. But again, narcotics is exempt from
13 having to use that system.

14 Q. And they're exempt from having to have their
15 interviews recorded why?

16 A. When we gather information from people who are
17 willing to talk to us, they are normally giving information,
18 additional intel maybe who they are getting their drugs from
19 or who is supplying them and it is a safety precaution for
20 that person because if somebody finds out they've provided it,
21 potentially their safety could be at risk.

22 Q. And what type of statement did my client make that
23 was protecting his safety in regards to where he was getting
24 the drugs or anything like that? Where - the statement about
25 they're all mine in the storage building. Exactly what super

1 secret is that that they're protecting?

2 MS. OPPENHEIMER: Your Honor, may we briefly
3 approach?

4 THE COURT: Yes. You may.

5 (Side bar off the record.)

6 BY MR. WILLIAMS:

7 Q. So the short answer of what you do when you record,
8 or when you get information, is you don't record anything and
9 you don't have to write down anything, right?

10 A. Depending on the circumstances and the information
11 being provided, yes, sir. We might not record it and we might
12 not write it down.

13 Q. In this particular situation --

14 A. No. It was not recorded or written down in this
15 case.

16 Q. And he could have written that down if he wanted
17 to?

18 A. If he had asked, yes, but he never indicated he
19 wanted to write that information down.

20 Q. So you're expecting the person who is charged to ask
21 you can I write down a statement saying I'm guilty of
22 something, right?

23 A. Some people actually do, but in this case he did
24 not.

25 Q. Did you say that law enforcement called Gustavo's

1 mom?

2 A. I did.

3 Q. You called Gustavo's mom?

4 A. Yes, sir.

5 Q. Okay. Do you have her number?

6 A. I don't have it.

7 Q. You had it then?

8 A. Yes, sir. I did.

9 Q. You do recognize State's Exhibit number 8, don't

10 you?

11 A. Yes, sir. It's the outside pictures. If you're

12 standing at the doorway looking into the shed, that's one of

13 the first pictures we took.

14 Q. Is that the chair?

15 A. It's hard to tell from that picture.

16 Q. You can't tell if that's a chair? Let me move this.

17 A. I was about -- The angle is a little --

18 Q. Do you need to come up a little closure to look at

19 it?

20 A. Yes, sir. If you don't mind.

21 Q. No. No objection.

22 THE WITNESS: I'm sorry, Your Honor. May I?

23 THE COURT: You may step down.

24 THE WITNESS: The lighting is not the best.

25 THE COURT: Yeah. Let's dim the lights, if we can,

1 madam clerk. It might help.

2 BY THE WITNESS:

3 A. Yes, sir. That's one of the chairs that was in
4 there.

5 BY MR. WILLIAMS:

6 Q. How many chairs were in there?

7 A. There was the one that's right behind the door, then
8 you have the, if you look up there, that's gonna be the futon
9 that I guess they use as a couch.

10 Q. Where is the table in this picture?

11 A. So the table is gonna, so the door opened on this
12 side in and the table is gonna be on the other inside of the
13 door. That's why we go through and take pictures from all
14 angles and from all corners of a room so we can have a whole
15 overview.

16 Q. Do you have the little marker?

17 A. Yes. I can grab it.

18 Q. So where is the table?

19 A. So, the door, you're not gonna see it from this
20 angle, so the door went in this way, the table is gonna be off
21 to that side.

22 Q. Can you hold the red light on where the table is
23 please?

24 A. Here.

25 Q. So you can't see the table?

1 A. Not from this initial picture. Again, that's why we
2 do a whole 360 view of everything.

3 Q. So what is this right here? Yeah. Right there.
4 What is that right there? That long straight item right
5 there, what is that?

6 A. I would have to look at additional pictures. It's
7 hard to tell from that picture.

8 Q. Well, how about State's Exhibit number 9.

9 A. Okay. So that's where you can see the door opens
10 up, the table is right behind the door.

11 Q. Right. So from there to there, where is the
12 table?

13 A. Again, over here because the door opens in, it's
14 behind the table because on this side of this picture extended
15 out if it was further back, you could see the window that has
16 the AC unit in it.

17 Q. So and how many chairs were in there?

18 A. Well, now that I'm reviewing the pictures you showed
19 me, we have the one that was in that picture, the one that was
20 pulled out away from the table and the one that was behind the
21 door, so at least three including the futon.

22 Q. Well, there's actually one.

23 A. So there's the one here that you pointed out
24 earlier, that one.

25 Q. You see the legs.

1 A. Then the one you saw in the other picture --

2 Q. Right?

3 A. -- that you pointed out and then the futon so at
4 least three chairs.

5 Q. Where is the window in State's Exhibit number 9?

6 A. Right there.

7 Q. Covered up?

8 A. With the curtain, yeah, because if you're running a
9 drug operation out of a shed, you're not gonna want people to
10 be able to look in a window and see what's going on.

11 MR. WILLIAMS: Move to strike that, Your Honor. It
12 wasn't called for. I didn't ask a question.

13 THE COURT: All right. I overrule the objection.

14 BY MR. WILLIAMS:

15 Q. You can have your seat. Thank you.

16 A. (Witness complies.)

17 Q. And I know this sounds silly, but this inositol
18 which you referenced as being cut?

19 A. Yes, sir.

20 Q. And you said that sometimes things are cut with baby
21 powder, right?

22 A. Is another common one that's used, yes, sir.

23 Q. Well, baby powder will hurt you if you swallow it,
24 won't it?

25 A. Drugs will hurt you if you swallow them.

1 Q. Some of them.

2 A. Some of them, yes. The illegal kind will hurt you
3 if you swallow them so people are not exactly concerned about
4 what they use as cut.

5 Q. So this is a dietary supplement, isn't it?

6 A. Yes, sir.

7 Q. Have you ever used it?

8 A. No, sir.

9 Q. Do you know what it does?

10 A. Everything it does? No, sir.

11 Q. Now, you took the pictures before you put all the
12 markers out, then after you had the markers, you took the
13 pictures and after you took the pictures is when you took all
14 these items and put them in plastic bags or various bags like
15 that and wrote on the bags what they were; is that correct?

16 A. So I took the initial photos. As people found
17 items, the item number was put there. I was not the one who
18 took the photos of each individual items, but I was called as
19 they were found because I only said I took the initial photos
20 so as each item was found, I was notified, then a picture was
21 taken, then I collected everything from the scene, they were
22 placed into evidence bags. I then sealed them all which is
23 why my initials and the date of October 24th is on them and
24 then placed them into the secure lockers at our evidence which
25 is at our headquarters.

1 Q. On State's Exhibit number 66, it appears to have
2 some sort of testing like someone tested the handle to
3 determine fingerprints. Do you know if anything was
4 fingerprinted?

5 A. I did not request fingerprints so they would not
6 have fingerprinted unless I requested them and I did not.

7 Q. You did do ballistics testing?

8 A. I did not do the ballisitc testing.

9 Q. You asked that ballistic testing be done?

10 A. I don't ask that ballistic testing be done. It's
11 standard procedure for the guns that come into our evidence
12 that they be ballistic, they have ballistic testify done.

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

14 THE COURT: Lawyers approach.

15 (Side bar off the record.)

16 THE COURT: Solicitor, redirect.

17 REDIRECT EXAMINATION CONTINUED

18 BY MS. OPPENHEIMER:

19 Q. Detective Dabkowski, can you tell us whether or not
20 it's common to take fingerprints from items when a defendant
21 has claimed ownership of those items and found within inches
22 or feet of those items?

23 A. No, ma'am. It is not.

24 Q. What about DNA?

25 A. It is not.

1 Q. All right. And can you tell us, I believe the
2 defense asked you about State's Exhibit number 70. Here is a
3 picture of it. Can you show in State's Exhibit 27, can you
4 tell us about how long it took for you to observe that item?

5 A. Within seconds of walking in the shed during my
6 initial walk-through and initial photos.

7 Q. And isn't it true that multiple SWAT officers
8 reported to you that they saw firearms in that shed?

9 A. Yes, ma'am. They did.

10 Q. And does SWAT actually search anywhere?

11 A. No. They do not.

12 Q. Let's look at State's Exhibit number 9. Looking at
13 that table, can you tell us if those items were that way when
14 you did your initial walk through?

15 A. Yes, ma'am. They were.

16 Q. And how long did it take you to realize those
17 items?

18 A. Not long at all.

19 Q. Seconds? Minutes?

20 A. Seconds if that long.

21 Q. Can you observe those items from anywhere in the
22 shed?

23 A. Yes, ma'am. You can.

24 Q. And that window that we've talked about a little
25 bit, is that the only window in the shed?

1 A. Yes, ma'am. It is.

2 Q. Now, can you tell us whether or not, or who were the
3 main targets of this investigation?

4 A. The defendant Israel Mendoza Cervantes a/k/a Migo
5 and his co-defendant who we tried in May, Angel Ibarra a/k/a
6 Ace.

7 Q. And was there any indication that Angel's 15 year
8 old brother was involved?

9 A. There was no indication that anybody else at that
10 residence during the course of our surveillance into the drug
11 operation was involved in the drug operation or the running of
12 the drug operation.

13 Q. Was there any indication that Angel's mother was
14 involved in that drug operation?

15 A. No, ma'am. There was not.

16 MS. OPPENHEIMER: I have no further questions.

17 MR. WILLIAMS: Briefly, Your Honor.

18 THE COURT: Brief recross.

19 RECROSS EXAMINATION CONTINUED

20 BY MR. WILLIAMS:

21 Q. You're the agent in charge of this entire operation,
22 right?

23 A. Yes, sir.

24 Q. Which means that Purdy would have been working for
25 you basically?

1 A. Yes, sir.

2 Q. Could I ask you to review one item for me please.

3 A. Yes, sir. (Witness complies.)

4 Q. Does that case supplement refresh your memory
5 in regards to who took the photographs?

6 A. I know I was there when the initial photos were
7 being taken and the initial walk-through.

8 Q. Does it refresh your memory in regards to who was
9 taking pictures?

10 MS. OPPENHEIMER: Your Honor, at this point I'd
11 object. There's no foundation that she wrote this
12 report. He's asking her about a report that she herself
13 did not write.

14 THE COURT: Well, I'll overrule the objection. He's
15 asking about a case supplement asking if it refreshes her
16 memory and we'll see what her answer is.

17 MS. OPPENHEIMER: Yes, Your Honor.

18 BY THE WITNESS:

19 A. It's a supplement done by Purdy, but I remember
20 taking the initial pictures during my walk-through. It does
21 not mean additional pictures were taken by somebody else as
22 the before pictures especially when we added room numbers to
23 each room.

24 MR. WILLIAMS: That's all the questions I have, Your
25 Honor.

1 THE COURT: Thank you, Detective Dabkowski. You may
2 step down. Ladies and gentlemen, this is a good point
3 for us to take our lunch break. We've been at it since
4 nine this morning. Let's be back in your jury room ready
5 to go at 2:00. 2:00. That should give you enough time
6 to get out, get away, get lunch. Be back ready to go at
7 2:00. Do not discuss the case among yourselves in the
8 jury room or with anybody else while you're out. Don't
9 be using your electronic devices. Don't look up anything
10 that would be remotely related to this case. With that,
11 I'll allow you to go to your jury room. Be back at 2:00.
12 Everyone else remain seated. I'm sorry. If y'all would
13 elect a foreperson from among yourselves. You're the
14 foreperson?

15 BRANTLEY HODGES: Correct.

16 THE COURT: And your number?

17 BRANTLEY HODGES: 82.

18 THE COURT: 82. Okay, great. Thank you.

19 (Whereupon, the jury was released for lunch break at
20 12:15 p.m.)

21 THE COURT: Anything else from the State before we
22 break for lunch?

23 MS. OPPENHEIMER: Nothing from the State, Your
24 Honor.

25 THE COURT: From the defense?

1 MR. WILLIAMS: Nothing from the defendant, Your
2 Honor.

3 THE COURT: All right. Be back and ready to go at
4 2:00.

5 MR. WILLIAMS: Your Honor, the Solicitor is asking
6 me if I need to put my full objection in reference to you
7 said something about putting a full objection in
8 reference to one of the --

9 THE COURT: I'll leave that up to you however you
10 feel like you need to do that. If you need to do that,
11 it's your call. We'll do that before - if you decide
12 you want to do that, you can do that before 2:00.

13 MR. WILLIAMS: Thank you, Your Honor.

14 (Lunch break.)

15 BAILIFF: All rise.

16 THE COURT: Thank you. Please be seated. The State
17 ready to proceed?

18 MS. OPPENHEIMER: Yes, Your Honor.

19 THE COURT: Defense ready?

20 MR. WILLIAMS: Your Honor, I did decide I would like
21 to place that motion on the record.

22 THE COURT: All right. I'll be glad to hear you.

23 MR. WILLIAMS: Your Honor, in hopes of clarifying it
24 as opposed to complicating what I was saying throughout
25 the whole thing, Your Honor, I think I basically said

1 that I objected to the introduction of those items that
2 were received in the first trial of Mr. Ibarra and then
3 reused, if you will, in this particular case. My
4 argument, I think, as I was arguing it, was based on
5 foundation meaning that they had not gone through the
6 litany of people who had touched those items as well as
7 chain and that was emphasized by the fact that it was the
8 detective or the officer in charge of the case who was
9 the person who brought all of those items into evidence.

10 There was no testimony from Purdy who would have
11 been the person who found them and as her testimony was
12 elicited, we learned that these items were found by and
13 photographed by other persons. I think that was fairly
14 clear after the question came about who actually took all
15 the photographs of it at the end of the testimony of the
16 investigating officer.

17 The other and more major problem that I think we
18 have in this case and I didn't realize it beginning early
19 on and I think it became clear the more we looked into
20 this is, is that this, an additional case that was tried
21 against his co-defendant, in that case all of this
22 evidence was introduced in that case. They, we assume,
23 because I wasn't there, we assume that they set forth all
24 of the chain persons found it, testified to the condition
25 of it, noted what the condition of it, marked on the bag

1 what the condition of it was in terms of the amounts, in
2 terms of the color, in terms of an identification number
3 and then at some point in time in that first trial those
4 pieces of evidence would have been offered into evidence
5 and whoever the trial Judge was, I believe it was Judge
6 McCaslin, but I don't know because I wasn't here, she
7 would have ruled on that evidence as coming in against
8 that particular co-defendant.

9 Once that was introduced into that trial, then as we
10 all know as we try cases it was placed on a table just
11 like this and at some point in time there would have been
12 a trial of Mr. Ibarra and during that time span the jury,
13 the jury who was the triers of fact in that case had the
14 opportunity to handle the evidence, they had the
15 opportunity to essentially do anything with that evidence
16 that they wanted to do with it. So there was no chain,
17 there was no guarantee as to what transpired with those
18 pieces of evidence that they had.

19 Worse than that, Your Honor, that was more than just
20 a one day trial and I think that is brought out by the
21 fact one of the Solicitor's said that the investigating
22 officer was on the stand for six hours. All of that
23 information had to be taken over by the Clerk of Court
24 and it had to be secured because once it's placed into
25 evidence, the Clerk of Court has to secure that evidence.

1 We don't have that covered. We don't have anything to
2 provide the leap from when it was handled then to when it
3 went to the Clerk of Court who is not an officer in terms
4 of trained in securing evidence, but she has a certain
5 amount of, she has authority because it's her
6 responsibility to take care of it. They go overnight,
7 they come back, we don't know exactly where it's been
8 stored and then they use it in the completion of the
9 trial and then at some point in time we're left to assume
10 that that same evidence is taken over by evidence and
11 taken back to the Sheriff's Department, provided some
12 sort of location where it is.

13 Your Honor, I would suggest that this whole method
14 of using evidence twice as it has been used in these two
15 cases is subject to error because there's no way that we
16 can see that anyone can prove that this evidence that was
17 used in the last trial has not been tampered with because
18 there's no notation in regards to when it was opened in
19 the last trial, when it was closed, when it was handed to
20 the clerk. Did the clerk sign something that said that
21 she didn't tamper with it? I don't expect that she did
22 but, and you're talking about -- And I know one of the
23 arguments that Solicitors always use about certain types
24 of evidence is fungible versus non fungible.

25 THE COURT: Well, I think that's what the law is.

1 MR. WILLIAMS: I don't mean that as derogatory.

2 THE COURT: Right.

3 MR. WILLIAMS: But fungible versus non fungible, but
4 an item such as drugs.

5 THE COURT: We haven't gotten to the drugs yet. I
6 mean, you're making an argument on what's been admitted
7 so far and I'll hear you on that. There has been, at
8 least according to my notes, there's been no introduction
9 of any actual drugs at this point.

10 MR. WILLIAMS: Your Honor, all of the items that
11 have been introduced are subject to some sort of, I
12 guess, tampering or some sort of altercation meaning, I
13 guess, maybe the number of the balloons could have been
14 tampered with. But I guess the question is we don't
15 know, because I guess it doesn't matter how we look at it
16 in terms of whether or not it's that important or not,
17 whether it's important to have 12 balloons versus 50
18 balloons or if the same balloons that matters, but it's
19 more of a scientific thing.

20 THE COURT: Would you be arguing against the
21 admission of all the evidence if Mr. Ibarra wins an
22 appeal and his case is reversed and it has to be retried
23 again?

24 MR. WILLIAMS: Well, that's a good question because
25 the question --

1 THE COURT: That often happens, doesn't it?

2 MR. WILLIAMS: It does happen.

3 THE COURT: In drug cases.

4 MR. WILLIAMS: It does. It does. So it appears
5 that what we're doing though is we're using whatever
6 rulings that were made in the first case to make a
7 determination in regards to what we introduce into
8 evidence because we don't even know how they introduced
9 it.

10 THE COURT: I understand completely. Just because
11 it was admitted, foundation is laid at a prior trial does
12 not necessarily make it admissible in a subsequent trial
13 or in this case a related trial. All right. Anything
14 else you want to say on that?

15 MR. WILLIAMS: Not on that, but I would ask the
16 Court to that at some point in time when they attempt to
17 actually introduce the drugs, that I be allowed either to
18 repeat that argument that I did in reference to the drugs
19 or at least make some sort of short notation in regards
20 to what my objections are in regards to that.

21 THE COURT: Well, we'll see where we are with the
22 drugs and how they intend to introduce them. Do y'all
23 wish to be heard on Mr. Williams' argument on what has
24 been introduced so far? I think he indicated he wanted
25 to make sure that he preserved his argument. I note that

1 he has. My ruling is the same on everything that's been
2 admitted up to this point. Anything you want to add to
3 that?

4 MS. OPPENHEIMER: Your Honor, I would just very
5 briefly state for the record that we're not required to
6 prove every single link of the chain. We are required to
7 prove a substantial portion of the chain to show that it
8 hasn't been tampered with in any way. We definitely laid
9 that foundation through Detective Dabkowski that she was
10 the one who bagged and tagged every single item that was
11 taken from the shed and the home on that day and that it
12 was sealed and if she did open something during the trial
13 of the co-defendant Angel Ibarra, she was the one who did
14 it. We have laid that foundation as Your Honor has
15 found.

16 There was further testimony that the evidence
17 remained in a secure location after it was introduced in
18 the trial. Certainly Mr. Williams could have gotten the
19 transcript from Mr. Ibarra's trial to see exactly what
20 parts of the chain we presented and what parts we didn't
21 and certainly he could have asked for filed orders in
22 this case where the Clerk of Court, myself, and the
23 evidence custodian went through all of the evidence that
24 was introduced during Angel Ibarra's trial and then it
25 was taken immediately from the courthouse by the evidence

1 custodian and there is a signed order by our Chief
2 Administrative Judge to that effect, Your Honor.

3 THE COURT: All right. I'm gonna, I stand by the
4 rulings of the Court earlier. I will note that for this
5 particular case the witness testified that the items that
6 had come into, all the items that have come into evidence
7 so far she testified that she saw those in the places
8 where they were in the shed and that she, admittedly she
9 was not necessarily the individual who then picked those
10 items up, but she was the individual who did place them
11 all into evidence, placed them in the evidence bags and
12 that what has been presented so far here in court at this
13 trial they're in the same condition that they were in
14 when she saw them the first time she saw them when she
15 went into the shed. So I believe that again as far as a
16 necessity of a complete chain on this type of evidence
17 that has come in so far there's not a requirement of that
18 type of chain so again I stand by the ruling of the
19 Court. All right. Anything else we need to put on the
20 record before we get started?

21 MS. OPPENHEIMER: Nothing from the State.

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

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

25 (Whereupon, the jury entered the courtroom at 2:10

1 p.m.)

2 THE COURT: All right. Thank you, ladies and
3 gentlemen. Appreciate your promptness. Solicitor, call
4 your next witness.

5 MS. MARTIN: Your Honor, the State calls Meg Walker.
6 Thereupon,

7 MARGARET WALKER

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

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

11 THE WITNESS: My name is Margaret Walker,
12 W-a-l-k-e-r.

13 DIRECT EXAMINATION

14 BY MS. MARTIN:

15 Q. Hi, Meg. How are you?

16 A. I'm good. How are you?

17 Q. Good. Can you tell us where do you work?

18 A. I work for the Lexington County Sheriff's
19 Department.

20 Q. How long have you worked for the Sheriff's
21 Department?

22 A. Six years.

23 Q. All right. And in what division do you work at the
24 Sheriff's Department?

25 A. I work in evidence and major crimes.

1 Q. Can you tell us what is your occupation within the
2 Sheriff's Department?

3 A. I'm a chemist.

4 Q. And can you tell me a little bit about your
5 background? What is your educational background?

6 A. I have a degree in forensic chemistry and a minor in
7 criminal justice from York College of Pennsylvania, and I have
8 training from the South Carolina Law Enforcement Division
9 commonly known as SLED for about three months.

10 Q. Are you a member of any professional organization?

11 A. I'm part of a group called CLIC which is Clandestine
12 Laboratory Investigating Chemists group.

13 Q. And as far as being a chemist at the Sheriff's
14 Department, do you have to comply with the competency
15 testing?

16 A. I do competency testing once a year.

17 Q. Have you had it yet for 2022?

18 A. No, ma'am.

19 Q. Let me ask you this: In your capacity as a chemist
20 at the Sheriff's Department, have you had occasion to testify
21 in trials here in this courtroom?

22 A. Yes. I have.

23 Q. And have you testified in the past as an expert in
24 chemistry and the chemical analysis or identifying of
25 narcotics?

1 A. Yes, ma'am.

2 Q. Can you tell us about how many times you have
3 testified as an expert?

4 A. Nine times.

5 Q. Would this be your tenth?

6 A. Yes, ma'am.

7 MS. MARTIN: Your Honor, that's all I've got as far
8 as her education and training. We would offer her at
9 this time as an expert in the chemical analysis and the
10 identification of narcotics.

11 THE COURT: Ms. Williams.

12 MS. WILLIAMS: Without objection, Your Honor.

13 THE COURT: All right. I find that Ms. Walker is
14 qualified to testify as an expert in the area of chemical
15 analysis, drug analysis. Hold on just a second. Ladies
16 and gentlemen, normally a person cannot give opinion
17 testimony. Normally when a person testifies, they must
18 testify to what they either saw, heard or sensed by smell
19 or something of that nature. However, there's an
20 exception when someone is qualified because of education
21 or experience, they're permitted to give their opinion in
22 certain areas if the Court qualifies them that way. This
23 witness is qualified in the area of drug analysis and for
24 her to give an opinion in that area. It does not mean
25 that you must accept the opinion, but it is evidence for

1 you to use in any way you see fit and give the weight and
2 credibility you believe is appropriate. All right.
3 Solicitor.

4 MS. MARTIN: Thank you, Your Honor.

5 BY MS. MARTIN:

6 Q. Ms. Walker, can you tell us, were you working at the
7 Sheriff's Department in 2018?

8 A. Yes. I was.

9 Q. Were you a chemist at the Sheriff's Department
10 during that time?

11 A. Yes, ma'am.

12 Q. Can you tell me whether based on your training and
13 your experience as a chemist at the Sheriff's Department if
14 you can explain to us what a BEST Kit is?

15 A. A BEST Kit stands for best evidence sample testing.
16 It's evidence of suspected narcotics that are brought in by
17 our deputies and they're placed into a tamper proof bag in
18 which it's stored in evidence and then given to me.

19 Q. When you say it's a tamper proof bag, can you expand
20 upon that a little bit please?

21 A. So on the bag itself it has a design on the sides of
22 the bag and also on the seal, so if you try to pull it or once
23 the seal has already been completed, you can't really open the
24 bag without some form of deformity of the design or any
25 indication that, it would be obvious that it's been opened.

1 Q. Okay. In regards to this case, did you have an
2 occasion to examine a BEST Kit in regards to Mr. Mendoza
3 Cervantes?

4 THE WITNESS: May I refer to my notes?

5 THE COURT: Yes. You may.

6 BY THE WITNESS:

7 A. Yes. I did.

8 BY MS. MARTIN:

9 Q. Do you recall or using your notes, could you tell us
10 what is the BEST Kit number?

11 A. The BEST Kit number is C023221.

12 Q. Can you tell us through a review of your paperwork
13 when this BEST Kit came into evidence at the Sheriff's
14 Department?

15 A. It was submitted on October 24th, 2018.

16 Q. And do you know who submitted it?

17 A. Deputy Dabkowski.

18 Q. Can you tell us when did you first yourself lay
19 hands upon this BEST Kit?

20 A. I first - I received it from Candy Kyzer on July
21 17th, 2019.

22 Q. Who is Candy Kyzer?

23 A. She is one of our evidence custodians.

24 Q. And how did you receive it from Ms. Kyzer?

25 A. It's a hand to hand exchange with me signing, we're

1 both signing off saying that we actually handed it to each
2 other.

3 Q. And when you received it in July of that year, what
4 did you do with it next?

5 A. I then brought it into my drug laboratory in which I
6 placed it into a safe until I was able to do the analysis on
7 it.

8 Q. Is that a secure and locked location within the
9 lab?

10 A. Yes, ma'am.

11 Q. And is the area that Investigator Dabkowski put this
12 BEST Kit, is that a secure location at the Sheriff's
13 Department?

14 A. Are you talking about evidence?

15 Q. Yes. The evidence locker.

16 A. Yes. It is.

17 Q. Okay. Would anybody off the street be able to come
18 in there and tamper with the evidence that is dropped there?

19 A. No, ma'am.

20 Q. Can you tell us, when is the first time you opened
21 or you first started working on what was within that evidence
22 kit?

23 A. I started working on it October 1st, 2019.

24 Q. And that BEST Kit, can you tell us whether or not it
25 appeared to be still intact when you opened it?

1 A. It was.

2 Q. Okay. And was that something you were looking
3 for?

4 A. Yes. Part of the process when I receive the BEST
5 Kit is to make sure that everything is still intact and make
6 sure it wasn't tampered with and it's noted on my worksheet.

7 Q. And would Investigator Dabkowski's initials have
8 been on that BEST Kit?

9 A. Yes.

10 Q. And if -- Let me back up. So you didn't notice
11 anything to your visual eye, any problem with the BEST Kit
12 itself?

13 A. No, ma'am.

14 Q. And if you had, what would you have done?

15 A. I would immediately take it back to evidence and
16 then I would contact my direct supervisor to figure out the
17 next steps within our policy on how to handle it.

18 MS. MARTIN: Your Honor, may I approach the witness?

19 THE COURT: Yes. You may.

20 BY MS. MARTIN:

21 Q. If I may show you what's been marked for ID at this
22 time as State's Exhibit 65. Can you take a moment. You
23 probably want to put on gloves. I should have put on my
24 gloves, but tell us if you recognize this. Can you tell us
25 based on your training and experience why we're putting on

1 gloves?

2 A. We're dealing with a C1 substance which has a
3 potential for high abuse and it also is very harmful. It has
4 no medical accepted use for it.

5 Q. Can you tell us if you recognize State's 65 for ID
6 only?

7 A. Yes. I do.

8 Q. What is within that package?

9 A. It contains the substances that were found in BEST
10 Kit C023221.

11 Q. Can you tell us whether or not these items have two
12 State's identifications on them, the white one?

13 A. Yes, ma'am.

14 Q. And then the red one. Can you tell us the
15 significance of the prior State's Exhibit number?

16 A. This was used in a prior case for another
17 defendant.

18 Q. Okay. And do you know when that was?

19 A. I believe it was the end of May, I believe the week
20 of the 25th.

21 Q. Of what year?

22 A. 2021. Or 2022. I'm sorry.

23 Q. This year?

24 A. Yes, ma'am.

25 Q. So can you tell us whether or not you opened the

1 BEST Kit back in May of 2022?

2 A. I was.

3 Q. You were the one who opened it?

4 A. Yes, ma'am.

5 Q. And are your markings within that exhibit that you
6 have there?

7 A. Yes, ma'am.

8 MS. MARTIN: Your Honor, at this time we would ask
9 that State's Exhibit number 65 be moved into evidence and
10 she be allowed to open it.

11 MS. WILLIAMS: Your Honor, we're gonna object on the
12 grounds of chain.

13 THE COURT: Let's do this. Ladies and gentlemen of
14 the jury, we need to take up a matter outside of your
15 presence. Take about 15 minutes. I'll ask that you go
16 back to your jury room. Do not discuss the case.
17 Everyone remain seated.

18 (Whereupon, the jury entered the jury room at 2:20
19 p.m.)

20 THE COURT: All right. I'll hear your argument.

21 MS. WILLIAMS: Yes, Your Honor. We object on the
22 grounds of chain for two reasons. The first of which I'm
23 sure Your Honor anticipates is the fact that the drugs
24 were in a previous trial. We're not sure who she handed
25 them to when she returned them to a previous Solicitor at

1 that point once she closed them up in the previous trial.
2 We're not sure where those drugs were situated on this
3 evidence table or what attorneys had touched them at that
4 trial. As Your Honor is well aware, attorneys go up and
5 move things, clerks move things, the court reporter will
6 move things, different bits of evidence around.
7 Sometimes even the Judge's law clerk will help move
8 evidence around or to count to make sure everything is
9 okay. So we have no knowledge of who has dealt with
10 those drugs since Ms. Walker opened them in the previous
11 trial.

12 In addition to the arguments that my dad previously
13 made regarding it going back into the jury room, it
14 coming back out, Hope taking it. Hope isn't here to
15 testify. I believe she was the Clerk of Court during
16 that trial or she's the evidence custodian anyway. You
17 know, Ms. Sandy hasn't testified about receiving the
18 evidence from Hope so kind of the drugs stop and end with
19 Ms. Walker opening them as far as I can tell in
20 Mr. Ibarra's trial so there are multiple issues with
21 regard to that chain.

22 Furthermore, and let's pretend that other trial
23 never even happened, my understanding is that Agent
24 Dabkowski placed those items into an evidence locker and
25 that on the other side of that evidence locker the person

1 who received them has yet to testify. Her name is Candy
2 Kyzer so we have a missing link in the chain and no one
3 has testified to that, that she's the one that took them
4 out of there. I'm going off what I have, what's been
5 turned over in discovery, Your Honor, so without Ms.
6 Kyzer here to identify what she obtained from the
7 evidence locker and then stored and then handed over, it
8 has been testified to that she handed them to her, but
9 there is a missing link in that chain between Dabkowski
10 and the hand off of the drugs to Ms. Walker.

11 As the Solicitors have stated earlier, they don't
12 need to have, proof of chain of custody need not negate
13 all possibility of tampering so long as the chain of
14 possession is complete. That's State v. Carter. The
15 important part of that, Your Honor, is that so long as
16 the chain of possession is complete, in applying this
17 rule we have found evidence inadmissible only where there
18 is a missing link in the chain of possession because the
19 identity of those who handled the substance was not
20 established at least as far as practicable and that is --

21 THE COURT: Well, let me make sure where we are
22 right now is the individuals who - the missing - you're
23 calling it a missing link. The identity is known except
24 the argument is what happened while it was in evidence,
25 admitted into evidence and in trial and then I believe as

1 I'm hearing you right, your argument is that may be, that
2 your argument may be the missing link?

3 MS. WILLIAMS: Your Honor, I believe that --

4 THE COURT: I mean, missing link argument applies
5 when you don't know who the people were, not that they're
6 required to come to the courtroom, where you don't know
7 who they are.

8 MS. WILLIAMS: Yes, Your Honor. So with regard to
9 the first part pretending there was no other trial, as
10 far as the jury knows there is a missing link and I am
11 not conceding that they can prove that missing link or
12 establish who that is. There's been no testimony
13 regarding that missing link in this trial other than what
14 I have just offered which is in evidence. And then
15 regarding the second portion there are a whole bunch of
16 missing links once Ms. Walker hands that bag back to the
17 Solicitor in the previous trial. We don't know.

18 THE COURT: All right. Solicitor, I'll be glad to
19 hear you.

20 MS. MARTIN: Thank you, Your Honor. Your Honor,
21 doing these drug cases here in Lexington County, we don't
22 prove every person that touched the BEST Kit.

23 THE COURT: Let's don't make Lexington County the
24 standard, but what the law is.

25 MS. MARTIN: Right.

1 THE COURT: I'm not bound by tradition.

2 MS. MARTIN: Right. Your Honor, we don't have to
3 prove every person's hands who touched this. That's
4 established under the case law. As long as the chemist
5 who I think she has done that today says that when she
6 received - that it went into evidence, that the
7 investigator dropped it off on this date, that Candy
8 Kyzer moved it to an evidence area that was secure and
9 that she received it from Candy Kyzer on this date and
10 that BEST Kit which is tamper proof, that it was still
11 intact, it didn't have any damage to it, it looked
12 complete and I think that that's all we need as far as
13 the chain on the drugs as far as their first argument.

14 THE COURT: All right. Go ahead.

15 MS. MARTIN: And then the second argument or the
16 second issue is evidence being used in prior trials.
17 Certainly, Judge, like you said before, cases are
18 overturned on appeal and evidence is sent back and then
19 it's reintroduced. Judge, it doesn't really matter what
20 happened to the drugs after they were analyzed and a
21 report was issued. It really doesn't matter I don't
22 think because the chain after the analysis shouldn't
23 matter. What's important is what was received, what was
24 analyzed and what was it to be.

25 THE COURT: All right. Ms. Williams.

1 MS. WILLIAMS: Your Honor, if I may elaborate
2 briefly on the Solicitor's arguments. She so far has,
3 Ms. Walker has not, because she cannot, testify that Ms.
4 Kyzer obtained the drugs from the evidence locker. That
5 came from my mouth. I don't believe that came from Ms.
6 Walker's mouth. I could be wrong, but I don't think she
7 said that. And then if the chain, Your Honor, if the
8 chain doesn't matter after it's been analyzed, I'm not
9 sure why the case law says that you must establish the
10 chain and the identity of those who handled it as far as
11 practical. They don't expound upon after it's been
12 analyzed. They say the chain must be established. The
13 identity of those who handled it needs to be established
14 at least as far as practicable. We haven't established
15 even -- It would be practical to find out that Hope took
16 them from the evidence room and gave them to Sandy who
17 then took it to, I guess, the Solicitor. That's
18 practical. We could even find out that there were 12
19 jurors or we could find out the identity of the attorneys
20 who were involved in the previous case. Those are all
21 easily doable things that I would argue are within the
22 realm of possibility and practicality in order to
23 establish a clear chain. The case law doesn't say until
24 it's analyzed. It says the chain.

25 THE COURT: All right. I'll give you the last

1 word.

2 MS. MARTIN: Just, Your Honor, that Ms. Walker has
3 said that she received the drugs from Candy Kyzer from
4 hand to hand and I thought she had said that they had
5 been moved by Candy Kyzer to a secure location and I
6 think that everybody who's testified before Ms. Walker
7 about the previous trial have all said that the evidence
8 was in a secure location. Judge, this is a little bit of
9 an unusual situation being that co-defendants lots of
10 times are tried together, but when they're not, what do
11 you do? Because in a trafficking case specific to this
12 case it's an ongoing enterprise and conspiracy between
13 two people so obviously the same drugs, the same
14 firearms, the same ammunition, and the same money would
15 be used against this defendant just like it was against
16 the co-defendant. Anything that Mr. Ibarra was charged
17 with that this defendant was not charged with we've left
18 out appropriately. We would not want to do anything like
19 that.

20 THE COURT: All right. I'm going to, I overrule the
21 objection to the admissibility of State's Exhibit 65.
22 I'm reading State v. Foley which is the most recent
23 Supreme Court case, 2018, that deals with chain of
24 custody and they cite State v. Hatcher. This Court has
25 long held that a party offering into evidence fungible

1 items such as drugs or blood samples must establish a
2 complete chain of custody as far as practicable, and then
3 they go through how proof of chain of custody need not
4 negate all possibility of tampering so long as chain of
5 possession is complete. We have State v. Carter, and
6 then in applying this rule we have found evidence
7 inadmissible only where there is a missing link in the
8 chain of possession because of the identify of those who
9 handled the substance not established at least as far as
10 practicable.

11 I find that in this particular case the evidence
12 that has been presented so far is that Agent Dabkowski
13 indicated that she saw the drugs in the container in the
14 shed, those drugs, I believe she indicated that she took
15 the drugs out of the container at some point and then put
16 them in the BEST bag and sealed them, those were then,
17 the chain was then they were taken into evidence, the
18 evidence custodian then handed those to the chemist who
19 analyzed and issued a report on those. The chemist has
20 testified that she placed them back into the BEST bag,
21 resealed the bag which remained in evidence, they were
22 produced at the trial of the co-defendant, they had been
23 in the possession of the Clerk of Court since March or
24 May -- When did y'all have the trial?

25 MS. MARTIN: The week of May 25th of this year.

1 THE COURT: May of 2022. This defendant, the
2 co-defendant is now on trial in August of 2022, and has
3 now been produced at trial. Again, that evidence was
4 admitted into evidence in the prior trial and I find that
5 as far as practicable the chain has been established and
6 the identity of these who handled it has been established
7 as far as practicable. I do note, I haven't had to deal
8 with this before, but it's an interesting issue about
9 chain of custody when evidence, fungible evidence remains
10 in the custody of the Clerk of Court for some period of
11 time. We had that discussion earlier.

12 Certainly there's many cases, drug cases that where
13 an individual is convicted at trial, that evidence, that
14 fungible evidence remains in the custody of the Clerk of
15 Court and, in fact, if that trial or that conviction is
16 subsequently reversed by the Appellate Court, then that
17 evidence then has to be brought out from the Clerk of
18 Court's Office as evidence that was admitted to then be
19 used in a subsequent trial. That certainly would not be
20 unusual. So based on that practicality as far as what's
21 practicable, I find that sufficient chain has been
22 established so I'll allow it into evidence.

23 MS. MARTIN: Thank you, Your Honor.

24 THE COURT: Anything else y'all want to say?

25 MS. WILLIAMS: No. Thank you, Your Honor.

1 THE COURT: All right. Y'all want to take a quick
2 break before we bring the jury back in? Let's do five
3 minutes.

4 MS. MARTIN: Yes, sir.

5 (Short break.)

6 THE COURT: State ready to proceed?

7 MS. MARTIN: Yes, Your Honor.

8 THE COURT: Defense ready?

9 MS. WILLIAMS: Yes, Your Honor.

10 THE COURT: Bring the jury in.

11 (Whereupon, the jury entered the courtroom at 2:40
12 p.m.)

13 THE COURT: Solicitor.

14 MS. MARTIN: Thank you, Your Honor. We had moved
15 State's Exhibit 65 that was ID only moved into
16 evidence.

17 THE COURT: That has been noted, the objection of
18 the defense and that has been admitted into evidence.

19 MS. MARTIN: Thank you, Your Honor. May she open
20 and publish it?

21 THE COURT: Yes. She may.

22 BY MS. MARTIN:

23 Q. If you could open the document and remove what's
24 within there.

25 A. (Witness complies.)

1 Q. Can you tell us what you're doing here?

2 A. I am initialing and dating for my opening this
3 packet.

4 Q. Thank you. And everything that's within that bag,
5 can you tell us whether or not it was all contained within
6 that first BEST Kit that had been submitted by Detective
7 Dabkowski?

8 A. I'm sorry. Can you repeat the question?

9 Q. The items that are within that large bag, can you
10 tell us whether or not they were all contained within the BEST
11 Kit, 23221 that was submitted by the investigator in this
12 case?

13 A. One moment.

14 Q. Okay.

15 A. Yes, ma'am.

16 Q. Okay. So, when you first opened the BEST Kit and
17 began your work, what date was that in October I think you
18 said?

19 A. October 1st, 2019.

20 Q. Okay. And would you have laid all the items within
21 that BEST Kit, would you have laid it out just like you've
22 done today?

23 A. Yes, ma'am.

24 Q. And can you tell us what procedures that you used to
25 document what you removed from the BEST Kit to what you began

1 working on? Is there a numbering system, a lettering system?
2 How do you document the items within the BEST Kit?

3 A. I basically pull everything out and then I label it
4 based off of the level of packaging and then taking that into
5 consideration and then I go by, I guess start with an item and
6 then I go 1.1 and I continue on. If it has packaging, I'm
7 continuing with an extra decimal point and number as well.

8 Q. Okay. And in preparation for court today, have you
9 had an opportunity to review any report you may have written
10 on this case?

11 A. Yes. I have.

12 Q. And would it help you to refer to that as we go
13 through this evidence?

14 A. Yes, ma'am.

15 Q. Okay. Can you tell us, what was the first numbered
16 item that you documented in your report?

17 A. It was item 1.1, zip lock bag containing.

18 Q. And was any analysis performed on it?

19 A. No, ma'am.

20 Q. Can you tell us what the next item would have
21 been?

22 A. The next item was 1.1.1, three plastic sandwich
23 bags, bag containing, plastic sandwich bag containing rock
24 substance.

25 MS. MARTIN: Your honor, may I approach the witness

1 please?

2 THE COURT: Yes. You may.

3 BY MS. MARTIN:

4 Q. Show us the 1.1 with the three bags.

5 A. (Witness complies.)

6 Q. And are your initials on here?

7 A. Yes, ma'am.

8 Q. And your numbers on here?

9 A. Yes, ma'am.

10 Q. Let's go through identifying the items and then
11 we'll talk about the testing procedure. What would have been
12 the next number?

13 A. It would be item 1.1.2, zip lock bag containing rock
14 substance.

15 Q. Does it have your initials on it?

16 A. Yes, ma'am.

17 Q. Next item.

18 A. It would be item 1.1.3, pink balloon containing
19 orange balloon containing a piece of plastic containing powder
20 substance.

21 Q. This was removed again from the BEST Kit?

22 A. Yes, ma'am.

23 Q. And does this document have your writing on it?

24 A. Yes, ma'am.

25 Q. And the number 1.1.3. What else was in the BEST

1 Kit?

2 A. Item 1.2, zip lock bag containing metal spatula and
3 hand grinder containing residue.

4 Q. Do we have that?

5 A. (Proffering.)

6 Q. And was any analysis performed on these two sub
7 items?

8 A. Just on the grinder.

9 Q. And which is the grinder by color?

10 A. The red item.

11 Q. All right. Anything else within that kit?

12 A. Uhm, item 1.3, zip lock bag containing 29 multi
13 colored balloons containing powder substance.

14 Q. All right. Did you subdivide these out or --

15 A. I only tested one out of 29.

16 Q. Okay. And would that be the small one?

17 A. Yes, ma'am. I'm sorry.

18 Q. That's okay.

19 A. There are three items tested. I apologize.

20 Q. And what is the third item?

21 A. Two other items within that item were tested. I
22 apologize. They were stuck in the bag.

23 Q. All right. And what number were they given?

24 A. Part of 1.1. Or 1.3. I apologize.

25 Q. Do these have your initials on them?

1 A. Yes, ma'am.

2 Q. If I can show you this blue and white bag, can you
3 tell me what this is that's within State's 65?

4 A. That is the BEST Kit that was turned into me.

5 Q. And what's the date it says it was sealed?

6 A. The date sealed was October 24th, 2018.

7 Q. So this is what the BEST Kit really looked like?

8 A. Yes, ma'am.

9 Q. All right. So let's talk about the testing
10 procedure itself. As far as item 1.1.1, the three plastic
11 sandwich bags, can you tell us what testing procedure you used
12 on these items?

13 A. The process I start is I open up each item and then
14 do a weight of each item and then I do an indicative test
15 which will either give me a color so it would be like a color
16 test, for example, and once I do that I will be able to have
17 an estimate of what it could be and then I take a smaller
18 sample to then do an analysis on the gas chromatography mass
19 spectrometer scan.

20 Q. Okay. So, let's take it one step at a time. What
21 would the indicative test have shown on those items there?

22 A. For item 1.1 it would give me a purple color.

23 Q. And then after the indicative test, can you tell us
24 what type of confirmatory process you use as a chemist at the
25 Sheriff's Department?

1 A. It's the gas chromatography mass spectrometer
2 commonly known as the GCMS.

3 Q. That equipment, is that equipment commonly used for
4 the testing of narcotics in South Carolina?

5 A. Yes, ma'am.

6 Q. It's used throughout the State?

7 A. Yes, ma'am.

8 Q. And you've used that machine ever since you've been
9 at the Sheriff's Department, correct?

10 A. Yes, ma'am.

11 Q. On that day can you tell us, did you have any
12 concerns at all the way the equipment was operating?

13 A. No, ma'am.

14 Q. Okay. And if you had had problems with the machine,
15 would you have documented that in your report?

16 A. I would have not run the sample on the instrument
17 itself.

18 Q. Can you tell us since, about how many items a day do
19 you test? Can you even give us a guesstimate?

20 A. It ranges based off the case. It can be as simple
21 as 20 items to one case I had over 50.

22 Q. Can you tell us that before you run a test, is there
23 some way to zero out or balance out or clean out that mass
24 spec so there's not any residual carry over from one test to
25 the next?

1 A. Between each sample there is what's called a blank.
2 It's to make sure there is no carry over between samples and
3 making sure that nothing is cross contamination between the
4 samples.

5 Q. And was that done on the testing of those items
6 there?

7 A. Yes, ma'am.

8 Q. And can you tell us if this subject that you had
9 already done the indicative test and you said it was purple --
10 Let me ask you this. I meant to ask. What does purple tell
11 you, if anything?

12 A. Purple is indicative to heroin.

13 Q. Okay. So when you ran the test, were you able to
14 obtain a result?

15 A. Yes, ma'am.

16 Q. And can you tell us, was that material found to be a
17 legal or an illegal narcotic?

18 A. Illegal narcotic.

19 Q. Okay. And we'll talk about the weight in a minute.
20 Can you tell us the next item that was tested, 1.1.2, what was
21 that?

22 A. It came back as --

23 Q. Did you do the indicative test on it?

24 A. Yes. I did.

25 Q. Okay. And the color test, what color did you

1 receive?

2 A. Purple.

3 Q. Once again, that's indicative of what?

4 A. Heroin.

5 Q. And did you run the mass spectrometer test on it?

6 A. Yes, ma'am.

7 Q. Did you have any problems with the equipment?

8 A. No, ma'am.

9 Q. Any concerns that it wasn't working properly?

10 A. No, ma'am.

11 Q. And were you able to obtain a result?

12 A. Yes, ma'am.

13 Q. Was that subject material legal or illegal

14 narcotic?

15 A. Illegal.

16 Q. Okay. What about item 1.1.3?

17 A. Yes, ma'am.

18 Q. Did you do a color test on this?

19 A. Yes. I did.

20 Q. And what color did you receive, if any?

21 A. I received a blue blue reaction.

22 Q. All right. So that's something different. What
23 does blue lead you to believe the subject material would be?

24 A. With this substance it's to tell the difference
25 between cocaine base and cocaine.

1 Q. And did you run the indicative test on it?

2 A. Yes.

3 Q. Do you use the same machine for cocaine as the
4 heroin?

5 A. Yes, ma'am.

6 Q. Okay. And were you able to obtain a result for
7 that?

8 A. Yes, ma'am.

9 Q. And was that material legal or illegal?

10 A. Illegal.

11 Q. Okay. What was done to item 1.2?

12 A. It was tested in the same fashion as the other three
13 items.

14 Q. Okay. And was anything really found on it?

15 A. Yes, ma'am.

16 Q. Okay. What was found?

17 A. An illegal substance was found on the grinder.

18 Q. All right. What about item 1.3.

19 A. It was, it went through the same process as the four
20 other items and it came back as an illegal substance for
21 three. I tested three within this item.

22 Q. And what color had shown on the indicative test?

23 A. Purple.

24 Q. And that's again heroin?

25 A. Yes, ma'am.

1 Q. And did you use the same equipment?

2 A. Yes, ma'am.

3 Q. All right. So, we've talked a little bit about your
4 report. You do prepare a written report; is that correct? A
5 written report of your findings?

6 A. Yes.

7 Q. Okay. If I can show you what's been marked as
8 State's Exhibit 84, and if you can tell us if you recognize
9 this document?

10 A. I do.

11 Q. And what is that document?

12 A. That is my typed report.

13 Q. Okay. And after you have typed your report and
14 prepared your findings, do you share that data compilation
15 with anyone else?

16 A. It goes through a peer review process.

17 Q. Okay. Can you explain to the jury what is a peer
18 review?

19 A. A peer review is having another person review your
20 work, kind of like it was in high school when you had somebody
21 read over your essays, they are looking over my report to make
22 sure I did not miss anything, misspelled any names or mistyped
23 numbers.

24 Q. Okay. And did any errors come up in your report?

25 A. No, ma'am.

1 Q. And did you, in fact, prepare that report and send
2 it out to the Sheriff's Department officers and the
3 Solicitor's Office?

4 A. Yes, ma'am.

5 MS. MARTIN: Your Honor, I would move State's
6 Exhibit number 84 into evidence.

7 THE COURT: Defense?

8 MS. WILLIAMS: Without objection, Your Honor.

9 THE COURT: State's Exhibit 84 is in evidence.

10 MS. MARTIN: May I publish, Your Honor?

11 THE COURT: Yes. You may.

12 BY MS. MARTIN:

13 Q. Okay. Let's take a minute. What is the BEST Kit
14 number involved on this report?

15 A. It is C023221.

16 Q. Okay. Can you use the pointer that's up there to
17 show us where on your report is the BEST Kit number?

18 A. (Indicating.)

19 Q. Okay. And who are the subjects listed there?

20 A. Mr. Angel Ibarra and Mr. Israel Cervantes.

21 Q. Okay. And what is the date of your analysis?

22 A. The date of the report was done on October 10th,
23 2019.

24 Q. Okay. As far as item 1.1.1, the heroin, what is the
25 weight there?

1 A. Total net weight 83.78 grams, 1292.92 grains.

2 Q. Okay. Item 1.1.2, the heroin found there, can you
3 tell us the weight of that?

4 A. That weight is 12.64 grams, 195.06 grains.

5 Q. Okay. If we can move to the second page of the
6 report, 1.3, what was the weight of that heroin?

7 A. Total net weight 1.16 grams, 17.90 grains.

8 Q. Okay. And what does the last sentence, the gross
9 weight?

10 A. The maximum attainable statutory threshold has been
11 met for the substance gross weight including inner most
12 packaging of the remaining substance is 6.63 grams.

13 Q. Okay. And so if we add that to the total weight,
14 did you add all of this up yourself?

15 A. No, ma'am.

16 Q. Okay. If I told you it was 103.05, does that sound
17 right? It certainly can be done?

18 A. Yes, ma'am.

19 Q. All right. Let go back to item 1.1.3, where cocaine
20 was found. What was the weight of that?

21 A. Net weight 7.58 grams, 116.97 grains.

22 Q. Okay. So this cocaine and heroin that has been
23 found, are those legal or illegal narcotics?

24 A. Illegal.

25 MS. MARTIN: Okay. Please answer any questions Ms.

1 MS. MARTIN: Yes, sir.

2 THE COURT: All right. Bring the jury in.

3 (Whereupon, the jury entered the courtroom at 9:40
4 a.m.)

5 THE COURT: Good morning, ladies and gentlemen.
6 Appreciate your promptness. We're now at the point of
7 the trial where the defense has an opportunity to present
8 their case so at this time I'll ask Mr. Williams if you
9 will call your first witness.

10 MR. WILLIAMS: Your Honor, the defense rests.

11 THE COURT: All right. Ladies and gentlemen, what
12 that means is that the defense is not going to put up any
13 evidence in the case. They have exercised that right to
14 do that which means we're now at the point of the trial
15 where procedurally what will happen next is the lawyers
16 will give their closing arguments to you and then I'm
17 gonna instruct you on the law. I'll talk about that a
18 little bit later on. That simply means I will be reading
19 the law to you that applies in this case. That's gonna
20 take us just a little bit of time to rearrange ourselves
21 in the courtroom to get to that process and for the
22 attorneys to get everything organized for their closing
23 so you come in for a very short period of time. Now
24 you're gonna have to go back to your jury room, but
25 that's the nature of our system. That's the way things

1 oftentimes play out.

2 So I'm gonna send you back to your jury room. It
3 will take us about 20 or 30 minutes to get ready for this
4 last stage of the trial. I do again instruct you even
5 though you have now heard all of the evidence in the
6 case, you're still not allowed to discuss the case even
7 in the jury room among yourselves at this time. Under
8 our law you wait until you hear the closing arguments and
9 I charge you on the law. Then that's the appropriate
10 time to discuss among yourselves this case. So with
11 that, I'm gonna allow you to go back to your jury room.
12 We'll have you out here hopefully in 20 or 30 minutes and
13 we'll hopefully be able to conclude the trial shortly
14 after that. Everyone remain seated while this jury panel
15 is excused.

16 (Whereupon, the jury entered the jury room at 9:45
17 a.m.)

18 THE COURT: All right. Give me an email address
19 where you can get these. If y'all come up to the bench.
20 I've got the verdict form.

21 MR. WILLIAMS: My lawyers' gonna speak on all the
22 legal stuff, Judge.

23 THE COURT: Any qualms or objections to the verdict
24 form? We're gonna go through the charge page by page in
25 just a moment.

1 MS. WILLIAMS: There is something I'm checking, Your
2 Honor, I apologize, before I look at the verdict form.

3 THE COURT: If you're looking for mere presence, I
4 have a line in the possession that mere presence -- We'll
5 talk about it in the charge. I do not have a separate
6 charge for mere presence, but I do have, we'll talk about
7 that in just a moment. How about the verdict form? Any
8 objections from the State or the defense? Actually he
9 needs to add, I only have one indictment number on the
10 verdict form at the top. We need to be sure of all three
11 indictment numbers. Any objection to the jury form from
12 the State?

13 MS. OPPENHEIMER: Nothing from the State. Just add
14 the additional indictment numbers.

15 THE COURT: I'll be sure they're on there. Anything
16 from the defense as far as the verdict form?

17 MR. WILLIAMS: No, Your Honor.

18 THE COURT: All right. Then let's go through the
19 charge.

20 MR. WILLIAMS: Your Honor, I take that back, and I
21 realize why she was in a query, on the trafficking, the
22 amount of the grams, obviously he could be found guilty
23 of a lesser included amount or a different amount of
24 trafficking.

25 THE COURT: State wish to be heard?

1 MS. MARTIN: Yes, Your Honor. I don't think there's
2 any lesser included proper charge. There's been only
3 testimony of 105 grams so there's nothing in the record
4 that would be okay to convict him of a lesser.

5 THE COURT: Yes, Ms. Williams.

6 MS. WILLIAMS: Thank you, Your Honor. I was
7 checking to see, we're only charging on trafficking
8 heroin 28 grams or more, is that correct, Your Honor?

9 THE COURT: That's correct.

10 MS. WILLIAMS: Do you send a copy of your jury
11 instructions back with the jury?

12 THE COURT: No. I have done that. Some of my
13 colleagues have an opinion that's different than mine on
14 that. Sometimes I do, sometimes I don't. I'm not gonna
15 send it back.

16 MS. WILLIAMS: Your Honor, in that case we would
17 object to the inclusion of 28 grams or more only be
18 instructed on one type of trafficking heroin. I think
19 that it's an improper emphasis on the amount in a way
20 that they would have to be - they're supposed to recall
21 your instructions from their memory and they certainly
22 are welcome to come back out and ask for your
23 instructions, but I think the inclusion of the 28 grams
24 or more puts undo emphasis on, I guess -- I'm trying to
25 think of what the term is, Your Honor -- I guess on the

1 State. I think it could be seen as burden shifting.

2 THE COURT: All right. Well, I note your objection.
3 I'm not gonna charge anything else other than trafficking
4 in 28 grams or more. The verdict form clearly has the
5 only option is 28 grams or more. The only evidence
6 that's been presented is that there's 105 grams of heroin
7 so there was no evidence presented other than that there
8 was 105 grams.

9 MS. MARTIN: And also, Your Honor, just for the
10 record, it's on the indictment and it's also an element
11 of the offense that we would have to prove is the
12 weight.

13 THE COURT: Right. All right. Okay. So let's look
14 at the charge, just the general parts on page 1 and 2.
15 General duties of the jury and Judge. Page 3 is, we need
16 to, I need to include, I will include the other two
17 indictments as well. Let me see that. The indictments
18 charge the defendant with trafficking heroin 28 grams or
19 more and possession of a weapon during the commission of
20 a violent crime and possession with intent to distribute
21 crack cocaine. Well, I guess it's just cocaine. The
22 evidence that it was a powder form; isn't that correct?

23 MR. WILLIAMS: That's correct.

24 THE COURT: The cocaine. PWID cocaine. And the
25 rest of that is just about the indictment.

1 MS. MARTIN: Your Honor, could we go back to the
2 trafficking? In the law when you read the law, will you
3 also tell them that it is classified as a violent crime?

4 THE COURT: Yeah. We'll get to that.

5 MS. MARTIN: I'm sorry. I thought it was right
6 there. I'm sorry. I apologize.

7 THE COURT: I think we deal with it.

8 MS. MARTIN: Okay.

9 THE COURT: All right. Then page 4, presumption of
10 innocence and it goes to page 5. Page 6 and 7 are
11 reasonable doubt charge. Page 8 and 9, direct and
12 circumstantial evidence, credibility of witnesses. Page
13 10, expert witness. Page 11 and 12 the right defendant
14 not to testify. On page 13, statements of the defendant.
15 Page 14 goes through, you know, the State has the burden
16 of proof, voluntariness of it. That goes through page
17 16. Intent, 17 and 18. Then the trafficking in 28 grams
18 or more heroin is page 19. Page 20 is to have knowledge
19 of a controlled substance, and page 21 continue under
20 knowledge that the State does not need to prove that the
21 defendant knew the weight of the drugs. And then 22,
22 possession with intent to distribute, and that's a
23 standard charge possession of a weapon. On page 25, your
24 concerns, Ms. Martin, it should say at the end of the
25 third paragraph a violent crime or attempting to commit a

1 violent crime. In this particular case I will say
2 trafficking in heroin is defined as a violent crime. And
3 then we deal with possession. He's charged with
4 possession with intent to distribute. I need to charge
5 on what the definition of possession. At the bottom of
6 page 26 I do have one line, mere presence at the scene
7 where the drugs or weapons were found is not enough to
8 prove possession. I have had a little more specific
9 charge on mere presence what Mr. Williams --

10 MR. WILLIAMS: Yes, sir. We would appreciate that
11 because when you lock it into possession with intent to
12 distribute, the jury may not realize that actually
13 applies to any criminal offense that he's charged with
14 where possession is involved and there's a trafficking
15 charge for that.

16 THE COURT: Does the State wish to be heard on mere
17 presence?

18 MS. MARTIN: Yes, Your Honor. We don't think
19 there's anything in the record that would justify a full
20 charge of that. If you're gonna leave just that one
21 sentence, we would withdraw our objection, but if you're
22 gonna give a full blown one, under State v. Dennis, 468
23 Southeastern Second 674, I just don't think it would be
24 appropriate from what's in the record. There's nothing
25 in the record that he was merely there. Everything in

1 the record is that he was working in the drug enterprise.

2 THE COURT: Ms. Williams.

3 MS. WILLIAMS: Your Honor, I apologize. The
4 standard for a requested jury instruction is if there is
5 any evidence in the record from which a juror could
6 reasonably infer. I think that there is the standard -
7 it's the same low threshold as a directed verdict motion
8 and since there is any evidence in the record from which
9 a juror could reasonably infer that he was merely present
10 on the scene, I think it's a proper request.

11 THE COURT: Hold on a minute. Let me pull it up.
12 All right. I'm gonna take that line out in the
13 possession with intent to distribute. I'm gonna under
14 that possession, but I will charge mere presence at the
15 scene is not sufficient to prove someone guilty of a
16 crime. A defendant's presence where a crime is being
17 committed or mere association with a person who commits a
18 crime does not make a defendant an accomplice or an aider
19 or an abettor of the person committing the crime. The
20 burden is on the State to prove every element of the
21 crime charged. If you find after viewing all of the
22 evidence that the State have proved that the defendant
23 was only present at the scene of the crime and if they
24 have not proved beyond a reasonable doubt any other
25 participation in the crime, then you must find the

1 defendant not guilty. The law is that proof at the scene
2 of the crime is not sufficient to find someone guilty. I
3 am gonna charge that particular charge.

4 MS. MARTIN: Do you know where you're gonna put it?

5 THE COURT: I will put it -- Well, I'll put it after
6 the possession charge on page 27. It will begin at the
7 end of that paragraph.

8 MS. MARTIN: Okay.

9 THE COURT: All right. Any objections to the
10 charge?

11 MS. MARTIN: No, Your Honor.

12 THE COURT: Ms. Williams?

13 MS. WILLIAMS: Yes, Your Honor. With regard to the
14 PWID charge, it is, the Supreme Court found in 2021 that
15 it's not proper to charge regarding the inference when a
16 substance is found on the property under the defendant's
17 control. They say that while the jury certainly could
18 infer that and that's what their previous case law had
19 indicated that it's not proper for a Judge to instruct
20 the jury regarding that particular inference and I have
21 --

22 THE COURT: All right. Show me. Where is that in
23 my charge?

24 MS. WILLIAMS: Sure. It's page 23, I believe. The
25 defendant's knowledge and possession may be inferred when

1 a substance is found on the property under the
2 defendant's control. Any language about that inference
3 was found improper pursuant to Justice Few's opinion in
4 State v. Stuart if. I may approach, Your Honor, I have
5 the case.

6 THE COURT: Yeah. I'm aware of that. You're
7 correct. So you're proposing that I just take out
8 beginning at the top of page 23, six lines, the rest of
9 that paragraph?

10 MS. WILLIAMS: Yes, Your Honor, beginning again at
11 two or more persons.

12 THE COURT: All right. And that is correct. That's
13 what -- So I'm gonna take out, in essence I'm taking out
14 every line on the top of page 23 beginning with the
15 defendant's knowledge down through you've decided should
16 have, and then I'll begin with two or more persons may
17 have possession and control.

18 MS. WILLIAMS: Thank you, Your Honor.

19 THE COURT: Anything else?

20 MS. WILLIAMS: Nothing from the defendant. Oh, Your
21 Honor, I apologize. Knowledge of the controlled
22 substance, page 20, in order to prove that the defendant
23 knowingly possessed or trafficked any controlled
24 substance, the State is not required to prove that the
25 defendant knew the particular type of controlled

1 substance that was in his possession, only that he
2 possessed some type of controlled substance, and I would
3 argue knowingly possessed, put the word knowingly in
4 front of the word possessed, otherwise it negates itself
5 and is confusing.

6 MS. MARTIN: Your Honor, I think the case law
7 suggests that he doesn't have to know what type of drug
8 it is or even the weight of it.

9 MS. WILLIAMS: I agree, Your Honor.

10 THE COURT: Well, I think that, in other words, only
11 that he knowingly possessed some type of controlled
12 substance. That's what you're asking?

13 MS. WILLIAMS: Yes, Your Honor.

14 THE COURT: Yeah. I'll add that. All right.
15 Anything else?

16 MS. WILLIAMS: Not from the defense, Your Honor.

17 THE COURT: All right. Let's take five minutes.
18 Y'all get set up and ready to go. How long do you
19 anticipate you will argue, Mr. Williams?

20 MR. WILLIAMS: Your Honor, there are some issues
21 perhaps with the demonstrative charts that are gonna be
22 used by the State. And I can -- Actually I'll just --
23 Well, the line was you don't have to be really --

24 THE COURT: Don't tell me what's not in there.

25 MR. WILLIAMS: It's out. It's gone.

1 THE COURT: I'm a pretty simple guy and if it's not
2 something I've got to deal with, don't tell me.

3 MR. WILLIAMS: Okay.

4 MS. WILLIAMS: And, Your Honor, if we could just
5 briefly renew our previous motions for directed verdict
6 and any and all motions and objections made during the
7 trial at this time.

8 THE COURT: All right. Thank you. I note your
9 objections. I stand by the Court's prior rulings.

10 MS. WILLIAMS: Thank you, Your Honor.

11 THE COURT: All right. Let's take five minutes.
12 Y'all refresh yourselves. We will be ready to go in five
13 minutes.

14 (Short break.)

15 BAILIFF: All rise.

16 THE COURT: Thank you. Please be seated. State
17 ready to proceed?

18 MS. OPPENHEIMER: We are, Your Honor.

19 THE COURT: Defense ready to proceed?

20 MR. WILLIAMS: Defense is ready, Your Honor.

21 THE COURT: Let's bring the jury in.

22 (Whereupon, the jury entered the courtroom at 10:25
23 a.m.)

24 THE COURT: Thank you, ladies and gentlemen. We are
25 now ready to start closing argument. I remind you the

1 arguments are the contention of the various parties.
2 They are not evidence in the case. Please give your
3 close attention to both the State and the defense. Ms.
4 Oppenheimer.

5 MS. OPPENHEIMER: Thank you, Your honor. May it
6 please the Court.

7 Guns, money, drugs and ammo. Guns, money, drugs and
8 ammo. This is a drug enterprise. All of these guns, all
9 of these drugs, all of this money, all of this ammo,
10 found within feet of the defendant Israel Mendoza
11 Cervantes. Maybe even inches. He was surrounded by this
12 drug enterprise. He's face down when SWAT hits that shed
13 with his arms out. Why? Because he knows this was his
14 drug enterprise. He knows he's been caught. He's right
15 there in the midst of it, all of these guns, drugs, money
16 and ammo. Everyone here agrees this is a drug
17 enterprise. The only question is, was the defendant
18 involved. No question that he was. No question at all.

19 Everyone knows that a drug enterprise is more than
20 just one person, more than Angel Ibarra, more than just
21 Ace. Ace and Migo, Migo and Ace. Remember, Detective
22 Dabkowski told you that this investigation started with
23 two people, Ace and Migo. Migo is the defendant. Ace is
24 Angel Ibarra. Ace and Migo, Migo and Ace. Remember
25 Sergeant Colwell from Richland County? Richland County

1 called Lexington County about two targets, Angel Ibarra
2 and the defendant Israel Cervantes. It was always the
3 two of them together. Ace and Migo, Migo and Ace.

4 And why would Richland County call Lexington County
5 about two people, Ace and Migo, if they didn't have
6 evidence that Migo was some how involved in this drug
7 enterprise? It doesn't matter that all of these drugs,
8 all of these guns, all of this money, and all of this
9 ammo was found in Angel Ibarra's home. It doesn't matter
10 that it was found in the shed which is where it was.
11 Angel Ibarra trusted the defendant to leave him alone
12 with all of their guns, their money, their drugs, and
13 their ammunition. He trusted him to leave him alone with
14 105 grams of heroin, \$3000.00 in cash. It's always been
15 the two of them.

16 Now, remember what Angela told you at the beginning
17 of this trial on Monday afternoon. You bring your common
18 sense into that jury box with you and remember her three
19 l's, look at the evidence, listen to the testimony, and
20 follow the law. So let's talk about the law a little
21 bit. The defendant is charged with trafficking heroin 28
22 grams or more. What does that mean? He must knowingly
23 sell, manufacture, cultivate, deliver, purchase or bring
24 into this state. Well, what does that mean? Look at
25 this table, all of these packaging materials on it, all

1 of the drugs, money, cutting agent, scales. This was all
2 within inches of the defendant, all within the
3 defendant's reach. To me it looks like someone was
4 packaging those balloons right before SWAT hits.
5 Knowingly selling, manufacturing, cultivating,
6 delivering, purchasing or bringing into this state.

7 He's sitting there packaging balloons right before
8 SWAT hits. You can't possibly tell me that you don't
9 know that this is there when you're peeking out the
10 window looking at SWAT, when you see SWAT come through on
11 the live feed of that television screen. You don't have
12 time to hide everything. So what do you do? You know
13 you're caught. You lay down on the ground and you put
14 your hands out. Not what law enforcement told you to do,
15 but it's what you did anyway. He's actively packaging
16 these balloons for sale. You heard all of the narcotics
17 officers testify that balloons are commonly used to
18 distribute drugs. They're commonly used to distribute
19 heroin. He knows about it. How could he not?

20 Or, you're guilty of trafficking heroin if you
21 provide financial assistance or otherwise aid, abet or
22 attempt. You're providing your time. You're there while
23 Angel Ibarra is not there, probably packaging balloons.
24 It certainly looks like someone was in the middle of
25 doing it and got interrupted. You're providing your

1 time, your labor. This is a drug enterprise. Israel
2 Cervantes, the defendant, was left there to package
3 balloons for further sale. Angel Ibarra wasn't there.
4 Maybe he was out on other drug business. I don't know.
5 But certainly he was left there with these four guns
6 fully accessible, protect our drugs, protect our money.
7 He and Migo. Migo and Ace. They're working together.
8 Ace and Migo, Migo and Ace. The two of them together.

9 Or, you're guilty of trafficking heroin if you
10 conspire to sell, manufacture, cultivate, deliver,
11 purchase or bring into this state. How many times can I
12 say it? Ace and Migo, Migo and Ace. This drug
13 enterprise is the two of them working together hand in
14 hand. You heard Detective Dabkowski talk about her weeks
15 long surveillance. You heard her talk about 220 Leica
16 Lane. She saw the defendant there. She saw Angel Ibarra
17 there. She saw the defendant going to and from the shed.
18 She saw Angel Ibarra and the defendant going to and from
19 the shed together. They're working hand in hand.
20 They're sharing vehicles. They're using Angel's home.
21 Isn't it reasonable to think that you're not gonna
22 transport all of this stuff back and forth between West
23 Columbia and Gaston every single day. Keep it in a
24 centralized location, somewhere that you can easily
25 protect all of these guns, all of these drugs, all of

1 this money, and all of this ammunition. They're working
2 hand in hand.

3 You can also be guilty of trafficking heroin 28
4 grams or more if you are knowingly in actual or
5 constructive possession or who knowingly attempts to be
6 in actual or constructive possession of the drugs and
7 we'll talk a little bit more about constructive
8 possession. You cannot tell me in that teeny tiny little
9 shed where you can see everything from anywhere that you
10 don't know that all of these guns, all of these drugs,
11 all of this money and all of this ammunition is there.
12 You're not just sitting in the shed and have no idea
13 what's on that table. It's not possible. It's not
14 reasonable. The defendant knew about all of this. He
15 was an active member of this drug enterprise. His
16 behavior was consistent with a drug enterprise.

17 So let's talk about constructive possession a little
18 bit. Constructive possession, you have knowledge of the
19 heroin, the cocaine and firearms sitting right there
20 within your reach, right there where you're laying face
21 down. You heard Detective Purdy, you can't be anywhere
22 in that shed without seeing all of this stuff. Guns are
23 all easily accessible. They're all lying out so you can
24 grab them real quick in case someone tries to steal your
25 drugs, steal your money. All of these drugs, packaging

1 materials, cutting agent, cash, it's all right there.
2 How can you tell me that you don't know about this?
3 That's not reasonable. Of course he knew about it. He
4 has to have dominion or control or the right to exercise
5 dominion and control.

6 Remember Mr. Cervantes' statement to Detective
7 Dabkowski and Sergeant Colwell. Everything in the shed
8 is mine, before they even found all this and brought it
9 out. He didn't have to be told about all this stuff. He
10 knew it was there. All of the guns, all of the drugs,
11 all of the money, all of the ammunition is mine and
12 Ace's. If it's yours, you certainly have the right to
13 exercise dominion and control over it. Ace left you in
14 charge while he was gone on other drug business. You
15 certainly have the right to exercise dominion and control
16 over it. It's mine and Ace's. Everything in the shed,
17 all the guns, all the drugs, all the money, all the
18 ammunition.

19 And don't forget, he told Detective Dabkowski that
20 he and Ace used this shed for their drug enterprise.
21 That they run this drug enterprise out of Angel's shed.
22 Certainly he had the right to exercise dominion and
23 control. They're his drugs, they're his guns, they're
24 his money and his ammo and Angel trusted him enough to
25 protect all of the guns and all of the money and all of

1 the drugs. You have to have the right to exercise
2 dominion or control over either the heroin, cocaine,
3 firearms or the property on which the heroin, cocaine,
4 firearms is found. We've already talked about this. He
5 certainly had the right to exercise dominion and control
6 over guns that he admitted were his own. They're his
7 drugs, his guns, his money and his ammunition.

8 We have to prove to you that it was any morphine,
9 opium, salt isomer, or mixture of heroin. You heard Meg
10 Walker. This is heroin. It is heroin. She put it
11 through a machine and the machine told her exactly what
12 it was. No question about it. But it's also a mixture.
13 Remember this cutting agent? Cutting agent that drug
14 dealers and drug traffickers use to increase the weight
15 of their product to make more money so that 105 grams of
16 heroin goes a little bit longer. Doesn't matter that
17 it's a mixture. There's heroin there. 105 grams of it.
18 We know that.

19 And the quantity involved must be 28 grams or more.
20 Do the math. You have that drug report. You will have
21 it back there with you. Get a calculator out or do it
22 with pen and paper. It's about 105 grams, about three
23 times more than the legal limit. I only have to show
24 that there's 28 grams there. 105. 105 grams of heroin.
25 He's guilty of trafficking heroin 28 grams or more.

1 Since we talked so much about Ace and Migo, let's
2 talk about the hand of one is the hand of all. The hand
3 of one is the hand of all. If a crime is committed by
4 two or more people acting together in committing a crime,
5 the act of one is the act of all.

6 MR. WILLIAMS: Your Honor, we have an objection.
7 Can we approach the bench for a second?

8 THE COURT: Yes. You may.

9 (Side bar off the record.)

10 MS. OPPENHEIMER: We know that Ace and Migo were
11 together during this drug enterprise, that they were both
12 actively involved. We know that. Richland County told
13 Lexington County that there were two targets. Always
14 were two targets. We know Ace is involved. It's his
15 house, but it's their drugs, their guns, their money,
16 their ammunition. Certainly both of them are players in
17 this drug enterprise, this drug conspiracy, this drug
18 operation. Don't just take my word for it. The
19 defendant told Detective Dabkowski exactly what he was
20 doing in that shed. He didn't have to be asked, what
21 about those drugs. Are those yours? Nope. He didn't
22 have to be asked that. He said right off the bat
23 voluntarily without being coerced or threatened in any
24 way, everything in the shed is mine, mine and Ace's.
25 That's where we run our drug operation out of. Their

1 drugs, their guns, their money, and their ammo. They're
2 both responsible for this drug enterprise. They're both
3 active players. Don't be fooled by the defense. You're
4 smarter than that. He's guilty of trafficking heroin 28
5 grams or more.

6 He's also charged with possession of a weapon during
7 a violent crime. It's pretty easy. Possession of a
8 firearm. One, two, three, four firearms, not just one
9 and it's during the commission of a violent crime. I
10 don't get to tell you what a violent crime is. Mr.
11 Williams doesn't get to pick what a violent crime is,
12 neither does the Judge. The Legislature has told us that
13 trafficking heroin 28 grams or more is a violent crime.
14 He's guilty of possession of a weapon during a violent
15 crime. Let's talk about these guns a little bit more.
16 Remember where this Scorpion was found? The box that was
17 found in the car belonging to the defendant? This is
18 right on the couch in that shed. There's a receipt for
19 it with the defendant's name on it. Don't just take my
20 word for it though. Look at the serial numbers. On the
21 receipt the serial number is C594438. The serial number
22 on this gun C594438, in the shed with the defendant.
23 It's the defendant's gun plain as day. See the receipt,
24 see the gun.

25 What about this nine mill that's found right next to

1 the TV? The nine mill, that's the receipt for it, found
2 in the box in the car that Angel Ibarra was arrested in.
3 The receipt in the defendant's name, serial number
4 38185416. The serial number on this nine millimeter,
5 38185416. The defendant's guns are in the shed to
6 protect his drugs and his money. If it's just your
7 buddy's house and you're just hanging out, why do you
8 need to bring both of these guns with you and have them
9 easily accessible? Why do you have them if you're just
10 hanging out? To protect your drugs and your money.

11 The defendant is also charged with possession with
12 intent to distribute cocaine. He must knowingly and
13 intentionally manufacture, distribute, dispense, deliver
14 or purchase. There's cocaine found in one of those
15 balloons, one of those balloons that the defendant was
16 packaging. He knows it's there. How could you not?
17 Again, this teeny tiny little shed. You're going to say
18 that you're an innocent bystander when law enforcement
19 has been observing you for weeks, see you going to and
20 from that shed, see you acting the way drug traffickers
21 act? Come on, guys. Some of y'all might have been at
22 night, but you certainly weren't born last night. Use
23 your common sense.

24 Or, otherwise aid, abet, attempt or conspire to
25 manufacture, distribute, dispense, deliver or purchase.

1 We've talked about this over and over again. This is a
2 drug enterprise, drug conspiracy. Ace and Migo, Migo and
3 Ace. Angel Ibarra and the defendant. The defendant and
4 Angel Ibarra. They're working hand in hand together.
5 They're sharing cars. They're sharing guns. Left at
6 Ace's house alone. Why? You're packaging drugs and
7 you're there to protect all of these drugs and all of
8 this money. Or, possess with intent to distribute,
9 dispense or deliver. We all know that balloons are
10 commonly used by drug traffickers to sell their drugs.
11 These things are easy to package, easy to put drugs in
12 there. You heard all the narcotics officers tell you
13 that balloons are commonly used in the sale of drugs. We
14 have to prove to you that it's a controlled substance and
15 it's cocaine. Seven and half grams of cocaine. He's
16 guilty of dealing in cocaine.

17 We've talked a little bit about what proof beyond a
18 reasonable doubt is and jurors often think that that's
19 very hard and difficult to understand. Ms. Martin and I
20 have come up with a way to make it easier to understand.
21 Proof beyond a reasonable doubt means that you must be
22 firmly convinced of the defendant's guilt. You don't
23 have to be sure beyond any doubt. You don't have to be
24 sure beyond all doubt. You don't even have to be one
25 hundred percent convinced. You don't have to be

1 absolutely convinced. You have to be firmly convinced of
2 the defendant's guilt. Firmly convinced that the
3 defendant knew about this drug enterprise and was an
4 active member of it. He's right there in the shed
5 surrounded by this table with all the drugs, all the
6 packing materials, the cutting agent, the scales.

7 He's right inside this shed when SWAT hits. That
8 Scorpion that's his is lying there on the futon. This
9 table is right there within arms reach. And you heard
10 Detective Uveges, he saw the defendant. He identified
11 the defendant, remember? He didn't just give a vague
12 description. He gave a description and he was able to
13 point out the defendant was the person he saw peeking
14 through this window. You're peeking through that window
15 and you don't know those drugs are there? Come on, guys.
16 That's not reasonable.

17 All of this is going to be right near you and you
18 don't know what's going on? You're not an active member?
19 It's not reasonable. Why would Angel Ibarra leave the
20 defendant alone with 105 grams of heroin and \$3000.00 in
21 cash if he wasn't a trusted member of this drug
22 enterprise? If he's not a part of this drug enterprise,
23 certainly he would not have been left alone with all of
24 this, all of this profit, all this cash. It's not
25 reasonable.

1 Look at the scales found in the shed. Look at the
2 cash. Look at the cutting agent. Look at these balloons
3 scattered on this table. Some of them are already
4 filled. Some of them have yet to be filled. Don't you
5 think it's reasonable that the defendant was in the
6 middle of doing his job of packaging these balloons for
7 sale when SWAT comes up, when the BearCat that Mr.
8 Williams wants to focus so much on rolls up into the
9 driveway, when the defendant sees SWAT coming up to the
10 house on that surveillance feed? That's reasonable.
11 It's reasonable that he was in the middle of his job and
12 he just laid down with his arms out because he knew he
13 had been caught. He knew he was guilty.

14 If he wasn't part of this drug enterprise, why was
15 that door to the shed open at first and then all of a
16 sudden closed? Why was someone peeking through that
17 window? The defendant is the only person found in that
18 shed with all of these drugs, all of this money, all of
19 these guns, and all of this ammo.

20 The defense is gonna try to tell you that he's not
21 involved at all. Is it reasonable that someone would be
22 there in the middle of the day on a weekday during the
23 morning just hanging out? He doesn't have legitimate
24 employment. Detective Dabkowski followed him in her
25 weeks of investigation and never saw any legitimate

1 employment. What did she see? Behaviors consistent with
2 a drug trafficker. I don't know about y'all, but who
3 leaves \$3000.00 in cash in an outside shed? I don't.
4 It's drug money. Drug money maybe from the sale of 30
5 additional grams of heroin. Could be. I don't know.
6 It's laying right there on the table. Haven't put it in
7 your wallet yet. Haven't distributed it among you and
8 your partner Ace.

9 The defendant and Mr. Williams is gonna try to
10 distract you. They're using smoke and mirrors because
11 that's all they have. All they have is smoke and mirrors
12 and try to confuse you and distract you from the fact
13 that the defendant was found with all of these guns, all
14 of this money, all of these drugs, and all of this ammo.
15 They're gonna try to confuse and distract you from the
16 fact that the defendant admitted that he and Ace owned
17 everything together, that they're part of a drug
18 enterprise together. Don't be confused. Don't let Mr.
19 Williams confuse you. He's going to try, but you're
20 smarter than that. Use your common sense.

21 They're gonna try and say all of this is Angel's.
22 It was Angel's home, Angel's shed, but the defendant is
23 right there in the midst of it. You heard testimony that
24 Angel's little brother wasn't involved at all. His mom
25 wasn't involved at all. None of the kids were involved

1 at all. Ace and Migo, Migo and Ace. Use the defendant's
2 own words. All this is mine, my drug enterprise with
3 Ace. We operated it out of Ace's shed. It's not the
4 first time he was in the shed, not the first time law
5 enforcement saw him in the shed, not the first time.
6 He's in there numerous times, observed with Ace and
7 behavior consistent with a drug trafficker.

8 The defense is gonna try and tell you, well, they
9 could have gone to his house over in Gaston. Well, they
10 did. No evidence that it was consistent with where the
11 drug operation was being run out of. They had to pick a
12 centralized location. It just happened to be Angel's
13 house where he was involved with the defendant Israel
14 Cervantes. Just because all of the information led to
15 220 Leica Lane, Detective Dabkowski, weeks of
16 surveillance, saw the defendant and Angel there multiple
17 times together there in the shed together going to and
18 from the shed, behaviors consistent with a drug
19 trafficker.

20 They're gonna try and claim that the defendant had a
21 legitimate job. The fact of the matter is Detective
22 Dabkowski never, ever, observed the defendant going to
23 and from legitimate employment. She observed him during
24 the weeks, during the day, during the evenings, never
25 went to a legitimate job. And even if he does, who

1 cares? This might have been his side hustle. I don't
2 know. This other legitimate job might be a side hustle.
3 He wasn't at his legitimate job. Detective Dabkowski
4 observed him committing acts that are consistent with
5 drug traffickers. He wasn't at his legitimate employment
6 on a random weekday when SWAT hits that house. What's
7 he's doing? Packaging balloons. That's his employment.

8 He's gonna try and distract you by saying that he
9 legally purchased these guns. Congratulations. You're
10 using legal guns in your drug enterprise. The receipts
11 for those guns were found in the car that Angel Ibarra
12 was arrested in. We went through the serial numbers
13 already. That nine mill Ruger, the box is in the
14 defendant's car that Angel is driving, but the gun itself
15 is in the shed to protect all the drugs and all of the
16 money within arms reach of the defendant. This gun, the
17 CZ Scorpion, we already looked at the serial numbers. We
18 know it's the defendant's, but guess where it's found?
19 Right there on the couch, easily accessible, not hidden
20 at all. His nine mill is right there on the TV, easily
21 accessible to protect his drugs and his money.

22 You also have this rifle easily accessible right
23 next to the table with all the drugs on it. You're gonna
24 protect those drugs. You're gonna protect that money.
25 Same with this rifle. This box for the CZ Scorpion found

1 in the car that Angel Ibarra was arrested in. If you're
2 just merely hanging out at that house in the shed, why do
3 you need two weapons with you? Why do you need them to
4 be easily accessible? If you're just hanging out, you
5 don't know that all this is right there? Packaging
6 materials that are laying out haphazardly. The drugs
7 that are laying out haphazardly, the scales, the cutting
8 agent. The bottle of the cutting agent was open when law
9 enforcement hit the shed. Someone was interrupted. The
10 defendant was interrupted packaging these balloons for
11 his drug enterprise.

12 And you heard all of these officers testify, even
13 the SWAT officers whose job it is not to search, they all
14 see all of this within seconds of entering that shed
15 right there, right there within arms reach of the
16 defendant. Is it reasonable that he was just sitting in
17 that shed and had no idea that all of this was there?
18 That's not reasonable.

19 The defense is gonna try and distract you about
20 Kevin Kelley and how his name was on the search warrant.
21 Okay. Kevin Kelly was nothing but a drug addict who was
22 an employee of this drug enterprise. You heard Detective
23 Dabkowski. He was never left alone there in the shed
24 with all these guns, all these drugs, all this money.
25 You don't trust an addict with all your drugs. He's a

1 mule. You've all heard that term. The defendant however
2 was trusted to be alone with all of the drugs, all of the
3 money. 105 grams of heroin. I'm not very good at math
4 anymore, but what about \$10,000.00 in profit? You're
5 gonna trust a random friend that's not involved in your
6 business with \$10,000.00 worth of profit? I doubt it.
7 Certainly not gonna trust this drug addict because he
8 wasn't even there. He was never left alone. He's not a
9 partner of this drug enterprise. And remember the
10 defendant's words. Me and Ace. Everything in that shed
11 is mine and Ace's. It's our drug operation. We operate
12 out of the shed.

13 The defense is gonna try and distract you by harping
14 on what wasn't done in this case. Written statements and
15 recorded statements. Well, just because a statement
16 wasn't recorded doesn't mean it didn't happen. You're on
17 scene with a search warrant. There's a ton of officers
18 there. There's a ton of stuff going on. You would have
19 brought him back to the station, headquarters to take a
20 written statement. You took it on scene and then you
21 moved on. But why else don't they record these
22 statements? Because of the sensitive nature of the
23 information that they get from drug traffickers. The
24 sensitive nature that they get from drug traffickers.
25 Don't you think it's important to protect people if

1 you're going after bigger fish? I don't know what
2 information was provided, but I certainly know that
3 Detective Dabkowski wouldn't have written it down
4 anywhere in a formal report that could have been provided
5 to anyone. Just because it wasn't recorded doesn't mean
6 it didn't happen.

7 You heard this officer. You heard Sergeant Colwell.
8 They spoke to him on scene. It was a 10, 15 minute
9 interview. They finished the interview. They got the
10 confession from the defendant voluntarily. It was not
11 coerced at all and they moved on. They had confirmation
12 that this was the defendant's and Ace's drug enterprise.

13 The defense is gonna tell you, well, they don't have
14 any fingerprints and DNA. Unfortunately this is not TV.
15 This is not "Law And Order". If I got DNA and
16 fingerprints in every single case that I tried, my job
17 would be so much easier, but it's not. And why didn't
18 they request fingerprints and DNA? The defendant was
19 found within arms reach of all of these drugs, all of
20 these guns, all of this money, and all of this
21 ammunition. But what's more is he confessed. This is
22 all mine. Why are you gonna use state resources when you
23 have a confession, a voluntarily confession? It's all
24 mine. Great. You just did our job for us.

25 They're gonna try and distract you that there are no

1 recordings from the surveillance system. Well, one, we
2 don't even know if the surveillance system did record.
3 It was just a live feed. A live feed that the defendant
4 saw SWAT approaching the house from. Remember, they
5 don't turn on the TV. They don't turn it off. You heard
6 Dabkowski, that's one of her SWAT officers. But also if
7 you're trafficking drugs out of a shed, why on earth
8 would you create recordings of yourself and your partner
9 going to and from that shed? Talk about even more
10 damning evidence than we already have.

11 The observations from this officer that the
12 defendant was seen going back and forth from the shed,
13 behavior consistent with a drug trafficker. Use your
14 common sense. What is reasonable. None of the defense's
15 arguments will be reasonable.

16 They're gonna try to distract you with the chairs.
17 I don't know that I even understand why they were asking
18 Detective Dabkowski about the chairs in the shed. But
19 remember, it doesn't matter where you are in that shed,
20 you're gonna see all of this. You're gonna know about
21 all of this. And Detective Uveges used one of the
22 chairs, used it to check the loft to make sure that no
23 one else was there.

24 The defendant is not an innocent bystander.
25 Certainly wasn't the first time in the shed. Certainly

1 not just hanging out in the shed and just happens to be
2 caught by SWAT. No one is that unlucky. No one on this
3 planet is that unlucky that they just happened to be in
4 the middle of all of this, this drug enterprise when SWAT
5 hits. No one is that unlucky. You know everything about
6 this. You're an active member of this drug enterprise.
7 Everything easily accessible. You're right next to it
8 within arms reach. You're not just there. You're not an
9 innocent bystander. No one is that unlucky.

10 You've looked at all of the evidence and you've
11 listened to all of the testimony. Now it's time to
12 follow the law. You must find the defendant guilty of
13 trafficking heroin 28 grams or more, guilty of possession
14 of a weapon during a violent crime, and guilty of
15 possession with intent to distribute cocaine. Use your
16 common sense and follow those three l's. Thank you.

17 THE COURT: Thank you, Solicitor. Mr. Williams.

18 MR. WILLIAMS: May it please the Court.

19 My daughter wanted to know if I wanted to move all
20 of that. I guess maybe she thought I would fall over it
21 or something. Already been referenced I'm old or
22 something in opening argument. Well, I wanted to leave
23 it here a little while longer for you because I just
24 wanted to make sure no one else in this courtroom is
25 gonna be charged with this because I'm standing right

1 next to it. I'm not doing anything with it, but I am
2 right next to it so I do worry about that a little bit
3 because -- But fortunately I do know one part of the law
4 that says mere presence does not constitute sufficient
5 cause to convict somebody of possessing that, using that.

6 You know, I was thinking earlier this morning about
7 I normally have a theme of something like that that I
8 would argue and the one thing that I thought about, it
9 sounds kind of corny, it's, and justice for all. You say
10 why in the world would you say something so arbitrary or
11 stupid as that. This whole system that we have is based
12 on a jury system. It's based on the selection of you 13
13 - 12 jurors, I guess, to make a decision. It's based on
14 your analyzing the evidence as presented and then you
15 make a determination based on that evidence after you put
16 that evidence to a test and you determine what the facts
17 are, and after you determine what the facts are, then the
18 Judge tells you what the law is, the Judge has to tell
19 you what the law is, and at that point in time you make a
20 decision as to whether or not there's sufficient evidence
21 or if perhaps that there is not enough evidence because
22 you see, the burden of proof is always on the State.
23 Maybe, maybe there's not enough evidence to find the
24 person guilty.

25 We just all assume a lot of stuff and we just say

1 that this is all here and he must be guilty, the person
2 must be guilty of it. You've got to prove the defendant
3 guilty beyond a reasonable doubt. I'm not gonna try to
4 confuse you on that. Because you see, when I look at
5 this case, I worry about situations like that because
6 this was a case of timing. It didn't have to be my
7 client who was arrested and charged with trafficking
8 heroin, possession with intent to distribute cocaine, or
9 possession of a weapon in the commission of a violent
10 crime. It didn't have to be him. It could have been
11 Ibarra's mother. It could have been. It could have been
12 his brother. I don't know who else goes inside that
13 shed, but it could have been anybody that they happened
14 to have seen in the shed.

15 So because of that, then you have to look outside
16 that and see what other evidence is there. All I've
17 heard when I was listening to all the testimony from all
18 these officers is that we've had these people under
19 surveillance for weeks. Well, I always like to see
20 stuff. I always like to see proof of that. We've
21 watched that location for weeks and we know that there
22 are only three people who have gone into that shed.

23 Well, if you have law enforcement watching somebody,
24 some place for weeks, you would expect to have
25 photographs of that, wouldn't you? You would expect to

1 have some sort of surveillance information of what
2 occurred. We heard Richland County called and brought
3 some sort of surveillance over here in Lexington County.
4 What evidence has been presented to that? Seriously.
5 What evidence has been presented of anything of an
6 illegal nature that occurred other than the fact that
7 these items were found in that location? All those weeks
8 that they were out walking around, you would think that
9 they would have taken a picture, record something, make a
10 notation, be able to tell you that something happened
11 that was evidence of a drug conspiracy.

12 The other thing that bothered me, too, is that, you
13 know, when you list out witnesses, you list out everybody
14 that you potentially think will be testifying in this
15 courtroom and obviously you ask the question of y'all,
16 you list them out so you find out if y'all happen to know
17 these guys and whether or not that's gonna influence you
18 in some way. And one of the witnesses that was listed
19 out was Mr. Ibarra. Now, he wasn't called to testify,
20 was he? You know, the one true guy who probably knows it
21 all was never called to testify. So what we did in
22 trying this case is we talked about the fact that there
23 was another trial and we talked about that this evidence
24 that was used in that other trial is now introduced
25 against this client, this defendant, this person. You

1 almost wonder if there's gonna be somebody else that's
2 gonna have this same evidence used against them and
3 because of that you have to look beyond that, what's
4 going on here.

5 And so I like to focus on what was actually
6 testified to so I'm gonna cheat. I'm gonna have some
7 little notes here and tell you that what these officers
8 testified to because I heard a lot of arguments from the
9 Solicitor about what I'm gonna try to confuse you with
10 and tell you, so let's just talk about what the people
11 who testified said. Remember the first person who
12 testified was Mike Burke and he testified that the
13 targets in this case was Angel Ibarra, Kevin Kelly and
14 Migo. Now, he didn't say that my client was a target.
15 He said Migo. It's interesting that they would use that,
16 that it would be Migo. Why not just say it's Israel
17 Cervantes or Israel Mendoza Cervantes. You see, all
18 these guys had this big meeting I guess the day before
19 and the day of and you would think in those meetings they
20 would do it like TV. I don't know if you like British
21 TV. I love the police officers on there. They have the
22 poster board up there and they put the pictures of the
23 guys that they're after and they draw these little lines
24 about what the connection is. So I would think that they
25 had this meeting, they would cover that aspect, they

1 would have a picture of him, they would have a picture of
2 another guy and they say this is what they're doing so
3 that when they make this big raid that they'll know who
4 they have there on the scene.

5 But Officer Burke said that Migo was the one they
6 were looking for. You wonder who Migo is. You know, I
7 wondered if anybody would explain what Migo meant in
8 Spanish. Be kind of interesting, wouldn't it? You know,
9 people have these slang nicknames that they normally use
10 for each other. Like Ace, you know what Ace probably
11 means. It means number 1. It means that's the head.
12 That's the top dollar. In playing cards that the big
13 one. That's the sharp guy.

14 What does Migo mean in Spanish? Is it short for
15 friend? Amigo. It would be nice if it was explained
16 because then maybe we could guess who this Migo is
17 because that's what we're doing. We're guessing who Migo
18 is. Do you have any piece of paper that says that my
19 client's name is Migo? Miga. It's obviously not Miga
20 because I know if it had an "a" at the end of the word,
21 it's feminine in nature, but certainly it's not
22 Cervantes. So the target were those three. You look at
23 the discrepancies of what's going on because remember, he
24 said the shed door was open, then it closed. Then when
25 you have, I think it's Nicholas Ugaras (phonetic), he

1 says that the guy, there was some heavy set Hispanic male
2 who shut the door.

3 Remember the part a while ago where I said that they
4 would have a meeting and you would go over who the
5 targets are? Either you know who the targets are or you
6 don't know who the targets are. So instead of saying I
7 saw him open and shut the door, his name is Israel
8 Cervantes, they said I saw a heavy -- Well, take off your
9 jacket. Yeah. Take off your jacket.

10 MR. CERVANTES: (Complies.)

11 MR. WILLIAMS: I saw him open and shut the door.
12 But you already know who it is, right? So why would you
13 describe the person as doing the door as someone heavy?
14 The reason why that is important is when you can't trust
15 the truthfulness of who you're really looking after, I
16 don't know if this happened when Ibarra was there and
17 Ibarra left and what he observed was Ibarra opening the
18 door or closing the door, but then he does say that when
19 he came in there, he saw the heavy, I assume it's weight
20 related, laying on the ground.

21 You have to look at consistencies between those
22 people testifying too. Remember Mike Burke? He
23 testified that - and there was, all of this is, all of
24 this is about scenery. I mean, really, it's about
25 scenery. Guns. Guns are very bad. They're dangerous.

1 These are guns. Look at all this ammunition. That's
2 bad. If you've got that stuff, you must be guilty of
3 something. You even bring out the dogs. You got these
4 two barking dogs behind the fence, and when Mike Burke
5 was in there and there was a question from the Solicitor
6 about the dogs and said is that indicative, or do drug
7 dealers normally have dogs around in their fence. Do you
8 remember that? And Mike said having dogs is not
9 necessarily common with drug dealing. So we're reaching
10 for everything that we can reach for to indicate that
11 these are drug dealers because they've got two dogs in
12 their backyard.

13 So, one of the other things that he said was he
14 didn't know when Dabkowski was on the scene and that a
15 more important thing that he said was he had a search
16 warrant. I keep going back to the search warrant. The
17 search warrant was the legal document that allowed those
18 police officers to go on the scene and search the
19 property for who was there. And you had to have those
20 persons of interest, if you will, or the basis for the
21 search warrant on the search warrant, and there's no
22 question that my client's name was not on that search
23 warrant.

24 So, he also said that the door was unlocked so it's
25 not a locked door. I think if I was doing something

1 there, I would, you know, lock the door, keep the people
2 out. And the other thing that was interesting is that
3 when Burke testified, he testified that they sent the
4 Flash-Bomb off after the guy was out of the shed and
5 Ugares or Ugondas, I can't pronounce his name, he said he
6 set it off before then. He said he could see the door
7 opening and closing. Remember that? He's five ten. Six
8 foot fence, but he could see the door opening and
9 closing. He could see the guy in there. I visualized in
10 my mind that he was jumping up over the fence to see what
11 he could see. Remember, he got in there. Stoner
12 breached the door and they found a Play Station in there.

13 As you go through it, the witnesses normally are
14 Brian Smith who basically worked with the Lexington
15 County Sheriff's Department. He didn't know who the
16 targets were there. He just came there and he said he
17 saw two people who were handcuffed and he was inclined to
18 give them Miranda. And then you got the person who
19 actually started all this which is Colwell who is the
20 Richland County Sheriff's Department guy, who came over.
21 He said that y'all have a big drug problem because it's
22 coming from Richland County over to Lexington. Yeah.
23 I'm gonna talk about that. You know, for years, for
24 years, we talked about my age earlier, 46 years, for
25 years I have asked the question if you're gonna take

1 statements from people, why don't you write it down? Get
2 them to sign it. If you're gonna give Miranda Warnings
3 and if you've ever seen those statement forms, they have
4 Miranda Warning at the top of it, pre-printed form,
5 somebody in here has probably seen that, you get them to
6 check off that you understand what your rights are. If
7 you don't want to sign it, you just put a big X on the
8 bottom, it will strike right through it and you have what
9 those people say.

10 For years I have wondered why you don't write
11 something down. If you're not gonna write it down, why
12 don't you record it? How many times do you see police
13 officers make notes? I mean, they did a lot of notes on
14 this because they had notes of what they're prepared to
15 do. I'm sure they had some battle plan before they did
16 everything, but why not, why not record it? Because it's
17 sensitive. They have sensitive information. Oh, yes.
18 Yes, Mr. Police Officer, I am so guilty of all those
19 drugs, and I'm gonna say it. I'm not gonna write it
20 down. I'm gonna let you convict me of all these charges,
21 but I'm not gonna write it down because it's sensitive
22 and the reason we don't write it down is because it's
23 sensitive.

24 You heard me ask one of these officers, I said,
25 well, who is it with the Sheriff's Department that you

1 don't want to hearing this? Not only do you pull them
2 away from everybody else, you know what you're doing when
3 you do that, you're eliminating the possibility that what
4 is said is not actually said. That's what you're doing.
5 But there was a hint, there was a hint that he didn't do
6 it. This is the difference between testimony and
7 Solicitor's arguments. The Solicitor indicated to you
8 there was probably some information that was being
9 repeated that we didn't want to have a record of, that we
10 didn't want anyone else to be able to hear so they would
11 find out that he is saying some things. That's not
12 testimony.

13 And I say it like that because why do we get away
14 from testimony? Why do we get away from proof? Why do
15 we get to stand up here and insinuate things? I mean, it
16 is what it is. I mean, you know what the facts are. You
17 make the determination based on what is testified to, not
18 with what you're guessing it might have been.

19 Well, I might as well keep going on that. So, we
20 don't record it. When we go in and we do all this
21 information that we have here and we take all these
22 pictures, all of them, we take all these pictures, and
23 then we line up a litany of witnesses to testify about
24 what happened first, what happened second, what happened
25 third. And then with Dabkowski you can't figure out if

1 she's going in and looking at the areas inside there and
2 then coming in and taking pictures and then she's taking
3 the statements. I tried to do my own guess work and
4 you see, that's exactly what it is. That's purely
5 speculation. Purely guess work in regards to what time
6 any statement that he made would have happened and I just
7 said I don't know. It could have been ten minutes. It
8 could have been an hour. I don't have any idea. You got
9 to go through a house. You got to take some pictures.
10 You got to come back out. You got to grab him. You got
11 to take him to a location. You got to talk to him. I
12 thought to myself, well, what would have solved this
13 question in your mind, Theo? Well, then I said, oh, my,
14 God, how great. The things that you can't bring in the
15 courtroom and can't take back there in the jury room, a
16 cell phone. The simplest tool known to mankind. It's
17 wonderful. Tells you where you are. You can track
18 people who have cell phones. You can see where they're
19 going. You don't have to get right up on their bumper to
20 see whether they're turning left or right or going down
21 the road. It's a surveillance tool.

22 What else can you do with a cell phone? Well, you
23 can record stuff. You can put it in your pocket, put it
24 in your pocket. Now, what did you do? Are these your
25 drugs? Tell me what all you want to tell me. There's a

1 recording of it. You know what else you can do with a
2 cell phone? Lo and behold, if you got one of these
3 stupid cell phones, periodically I look on my cell phone
4 and it will tell me what I did a long time ago. It's got
5 a picture of me at the beach which is just horrendous,
6 but it tells me the exact date that I went down there and
7 had that picture made. Well, you could take all these
8 pictures. You could take each and every one of these
9 pictures and on the bottom of this picture there would be
10 a date and a time that the picture was taken. That way
11 when you're trying to guess whether you went through the
12 house first or through the house second, what you did
13 next, you would look at the picture, you would see, well,
14 this picture was taken at this time so that's how you can
15 tell this was done at this time. It's used all the time.

16 I mean, you look at the videos on, I don't know, DUI
17 cases and stuff like that, you catch times on those. Any
18 video that you have has a time recording on it. So does
19 your silly cell phone when you take pictures. So, I
20 don't know if what we're really trying to do is present
21 evidence and determine things that you can come back and
22 look at, or do we like it better when you have to guess
23 what we're doing and what that looks like and what we're
24 saying. So I don't apologize for suggesting that people
25 need to document things.

1 So, we have Dabkowski, and she is the person who is
2 the agent in charge. She says she sees Ibarra leaving
3 and coming and going. Well, somebody should have asked
4 the question, if you see Ibarra leaving, why don't you
5 just arrest him there? What you waiting on? You want to
6 allege there's a conspiracy, you want to allege some kind
7 of deal that the two of them are working together, just
8 arrest them at the same time. Well, we saw him leaving.

9 Well, no one's asked the question about who -- You
10 remember the red truck? What red truck? Remember there
11 was a discussion about the driveway and you got the house
12 which is in front, you got the gate, you got the fence
13 here and you got a discussion between the two SWAT
14 officers about whether or not they were located on the
15 left hand side in the grassy area and the other officer
16 who said that he was on the driveway behind the red truck
17 and there's a picture in here. There's a picture of a
18 red truck. I asked him, I said, tell me about the red
19 truck. I said you were behind the red truck?
20 That's right. Wouldn't it be interesting to find out who
21 the owner of the red truck is? Because the interesting
22 part of it might be, see, I can guess just like the
23 Solicitor about what it is. I'm not testifying. I'm not
24 sworn. Well, that could have been Ibarra's red truck.
25 And the reason he took the other car which happened to

1 have been my client's car is because he was blocked in.

2 But you see, that's not evidence. Even though I'm
3 messing with you a little bit and telling you the same
4 thing, that's what I do not like about the Solicitors and
5 the State arguing things which are not in evidence. It's
6 not in evidence. All we know is it's a red truck. We
7 don't know whose it is.

8 So, let's go back to documenting things. So we got
9 back here. Remember we're all guilty because we're all
10 sitting next to all these drugs right here, and I asked
11 why, why to Dabkowski, don't you do some forensics? Why
12 don't you do fingerprint analysis? Why don't you do DNA?
13 Are we gonna waste our money on expensive testing like
14 that when we have a person sitting right next to it?
15 Because God knows being convicted of trafficking probably
16 is not as important as spending a little money for a DNA
17 or forensic test. It's a lot more fun to hire a plane to
18 fly around. I would have liked to know what the pilot
19 would have said if he had come and testified. Because
20 it's important that you get it right. It's very
21 important that you determine who touched these items.
22 Whether it be fingerprints, whether it be DNA. We won't
23 know the answer to it if you don't try.

24 You know, there's always, in every trial that I
25 have, there's also some super secret thing that nobody

1 ever talks about. I might as well get to it now if I can
2 find it. It's here somewhere. All of this stuff right
3 here, this is all evidence. You will all have access to
4 the evidence. It's not important that I find it. It's
5 important that probably you have access to it. Here it
6 is. I know there was at least one person on this jury
7 that was thinking about this. Nobody talked about it.
8 It was significant there with all the drugs, there with
9 all these guns. Whatever is in this little package here
10 which you don't know because it's still sealed and marked
11 as evidence, but it's in evidence, I'm sure the Court
12 will allow you to look at it when you go back in the
13 room, it's kind of like a present you get for sitting
14 throughout this entire jury trial because what it could
15 be, it could be probably a list of sales that were made
16 on drugs. I can't say that it is because obviously I
17 haven't opened it up and I haven't looked at it. I'm
18 kind of playing prosecutor here. That's what it could
19 be. And if it were an indication of sales, then you know
20 what you could do to prove that somebody is engaged in a
21 drug trafficking case or enterprise, you then could get
22 documents, I believe there's somewhere in all these
23 documents, you remember there were several little
24 documents that were taken that came in at the end? We
25 talked about the Shooter's Choice document that had my

1 client's address on it? I think there's probably a
2 driver's license in here somewhere with a picture of my
3 client on it with his name on it. It should be in here.
4 God knows we got everything on him but that. I'll bet
5 you can probably get one of those things. When you go
6 home, check your driver's license, see if you have a
7 signature on it.

8 Oh, you know where I'm going with that. All you got
9 to do is look at the driver's license, if there is one,
10 and see what the handwriting is on that. You get some
11 guy who gets paid a lot more money than I get paid and he
12 can tell you if signature on that is the same as what's
13 on what's on that book. Tell me I'm not the only one
14 that thought of that. I thought law enforcement would
15 have thought of that. That would be an indication of
16 being involved in a drug trafficking situation.

17 The other thing is clearly my client is obviously
18 not working, however, he has a business, at least there's
19 a business listed in his name. And I say that because no
20 one disputed that, did they? Deluxe Roofing. I don't
21 know why you just kind of paint these pictures and stuff
22 like that if you don't have evidence of it.

23 You run into discrepancies. I'm concerned about who
24 did what a lot of times and I look at Dabkowski over here
25 who says that she took all these pictures and I look at

1 Purdy over here who took pictures. I don't know who took
2 which pictures, and then I look at Purdy. And you
3 remember what he said when this happened? He said all
4 this stuff happened on the day before on the 23rd. He
5 filled out a written report to his chief, to his law
6 enforcement people saying it happened the day before.
7 Well, to me that seems more of a questionable thing. If
8 people are not documenting what they're doing, then I
9 think you have the right to consider that.

10 We are just about through. I'm not gonna round you
11 up and make you go through each and every one of these
12 little pigeon holes that we have. Okay. I've got to
13 talk about the recording again. The recording on that
14 shelter, the three recording devices, there was one -
15 three different cameras I should say, and they were
16 showing different locations I guess. I've been watching
17 too much British TV. I can see it right now. Did you
18 know if you watch the stupid British TV, they must have a
19 camera on every corner because they solve all their
20 crimes just by looking at cameras. But I think I would
21 at least want to check and see if there was a recording
22 that showed who came and left that shelter because
23 obviously it does pick up some police officer who's
24 wandering around there. But they don't even do that.
25 They don't worry about that, because you got your two

1 targets. It's kind of like, my wife tells me all the
2 time, if you look for bad in people, you can find bad in
3 people. If you look for good, you can find good. I
4 said, well, okay.

5 The next person who testified was Meg Walker. Nice
6 young lady. Works at the Sheriff's Department. She's a
7 chemist. I think the only thing you can take away from
8 that is that she tested these items and you can make a
9 determination as to whether or not you feel what she said
10 was accurate, not accurate. You may consider, because
11 you will learn in the instructions from the Court that
12 you may accept some of what one witness says, none of
13 what one witness says, and the mere fact that someone is
14 qualified as an expert witness doesn't mean that they
15 have anymore ranking, if you will, as a witness. It just
16 means that they're especially qualified because of their
17 education and their knowledge about those things, just
18 like I think my daughter is sometimes. So you just take
19 that as it is, but that just tells you that what she
20 testified to you make a consideration what you accept or
21 don't accept from that.

22 Tom Hodges was the next one who testified.
23 Interesting about Tom Hodges, I should say the word
24 Hodges, is he is the person who those items, those
25 pictures that came through, the car, thank God my client

1 pays his insurance. I mean, there's nothing except that
2 he's law abiding presented in all that stuff that was
3 handed out. And the other interesting thing is that he
4 said that Ibarra was arrested that morning at some
5 subdivision. I think time is important on everything.
6 It would be nice if somebody knew what time everything
7 happened. It would be nice to have Mr. Ibarra here to
8 testify about what the truth is and everything. It would
9 be nice to have the nephew subpoenaed who could testify,
10 the juvenile who is taller than Dabkowski or the mother.

11 We talked about Purdy. He searched the shed. He
12 didn't even see Israel. Oh, well, but you see, the
13 State's position is that he's in there, I don't know,
14 doing balloons. The one interesting fact about that that
15 indicates that he was not actively sitting in there
16 filling balloons is that the grinder was empty. I don't
17 know if anybody picked up on that. You have to grind it,
18 put it in the balloons. I know. It's lost.

19 No one saw my client do anything in there. What
20 people saw was they saw my client in there. See the
21 distinction? There's a charge that you will learn when
22 this is all over with about mere presence. It doesn't
23 make him guilty by mere association with someone. It
24 doesn't make him an aider or abettor. The mere presence,
25 the mere fact that you're located where a crime is

1 committed or where illegal substances are found doesn't
2 make you guilty of anything. That's why right now, right
3 now we have that protection of mere presence. We're not
4 guilty of anything so don't go home and worry that
5 someone's gonna come and arrest you because we're near
6 this.

7 I'm not gonna go through all the charges with you
8 because the Judge instructs the people what the charges
9 are, not me, not the Solicitor. I do want to say this:
10 I thank you for your kind attention. I don't know why
11 the theme of the day is, and justice for all. I really
12 don't. Between you and me I really don't know why. It's
13 just something that came in my head, but I think it's
14 about the jury system. You know, the older you get,
15 everybody talking about my age, the older I get, the more
16 concerned I am about things that change, but the one
17 thing that does not change and that is the juries. The
18 laws may change. Lawyers may change, but the jury system
19 never changes and that's because we trust our system to
20 you individuals, different work, different life, older,
21 younger.

22 So listen to what the Judge tells you in regards to
23 what the law is and you think for yourselves, not based
24 on what somebody else tells you is going on, and
25 determine if you think that there is sufficient evidence

1 or whether or not there is only a mere suspicion of
2 something. You have to be firmly convinced, the Judge
3 will use those words, firmly convinced of the guilt of
4 somebody before you can find them guilty. I would ask
5 that you require people to do a little more than just
6 reuse evidence to find somebody guilty. Thank you.

7 THE COURT: All right. Thank you. Ladies and
8 gentlemen, the next step in the trial is when I'm going
9 to read you the law that applies in this case and that's
10 gonna be probably about a 15 or 20 minute process.
11 You've been sitting here for almost an hour and a half,
12 hour and 20 minutes. Let's take a quick ten minute
13 break, allow you to refresh yourselves and we'll have you
14 back here in the jury room. Again, same instruction I've
15 given you throughout this trial, do not discuss the case
16 at all yet. When you go back to your jury room for this
17 break, don't discuss what you've heard or what you've
18 seen here in this courtroom. You'll be able to do that
19 in a few moments after I read you the law that applies.
20 With that I'm gonna allow you to be excused to the jury
21 room. This will be a ten minute break. Everyone else
22 remain seated.

23 (whereupon, the jury entered the jury room at 11:45
24 a.m.)

25 THE COURT: All right. Let me give you an

1 opportunity to be heard on the issue of charging hand of
2 one hand of all. We had that brief discussion up here at
3 the bench. I'll be glad to hear your position on that.
4 I believe the State now asks that it be charged. I'll be
5 glad to hear you and then I'll here from them.

6 MS. OPPENHEIMER: Thank you, Your Honor. It was a
7 minor oversight this morning when we were going through
8 the charges. Certainly all of the evidence presented
9 during the trial has shown that it was not only Angel
10 Ibarra, but also the defendant. Not only the defendant,
11 but also Angel Ibarra. The law is very clear that two
12 people acting in concert together and both know about the
13 crime, they are guilty under hand of one hand of all
14 theory. We understand that the trafficking statute does
15 incorporate a conspiracy, but there's also this theory of
16 hand of one hand of all that would be appropriate under
17 the law so we would request it.

18 THE COURT: All right. Ms. Williams.

19 MS. WILLIAMS: Your Honor, we are of different mind.
20 We believe that a charge of hand of one is hand of all
21 would be improper in this case. It's my understanding
22 that hand of one is hand of all is a way to impute
23 liability to an accomplice as it were through that case
24 and in order to do that what must first exist is a case
25 against the other party in this case. That would be

1 Angel Ibarra. And I do not believe that there has been
2 any evidence submitted regarding, that would support a
3 reasonable juror's inference that Angel Ibarra either had
4 actual, which he certified did not, no one testified that
5 he was in possession of the drugs, or constructive
6 possession of the drugs. There's not evidence to support
7 that so there's not evidence to support that he, in fact,
8 was the one trafficking and therefore by hand of one is
9 hand of all that Mr. Cervantes is somehow associated with
10 it. Everything that the State has put forward has been
11 under a singular liability theory of either he did it or
12 through conspiracy, through trafficking statute he did
13 it. There's no, well, he happened to participate
14 beforehand. Its an improper charge in this case, Your
15 Honor.

16 THE COURT: All right. I'm not gonna charge
17 accomplice liability. I find in this particular case
18 that the -- Generally accomplice liability is through the
19 defendant's, co-defendant's are physically present in the
20 vicinity of a particular crime or in close proximity. In
21 this particular case when the search warrant was served
22 at the house, Mr. Ibarra was not present. He was not
23 present at the scene of the crime in the building in the
24 backyard. He was stopped in a vehicle that was insured,
25 the evidence was that was insured by the defendant some

1 distance away. When I say some distance away, not miles,
2 but it appeared within several blocks away from the
3 incident location. He was not a witness in the case. I
4 do acknowledge that the trafficking statute incorporates
5 conspire, possession with intent to distribute and
6 incorporates conspire. The jury may very well find that
7 there was a conspiracy. They may find that they met that
8 element, however, that is not the only element of
9 trafficking and possession with intent to distribute and,
10 in fact, conspiracy or conspire is not proof of that, is
11 required to be found guilty of either of those statutes,
12 the trafficking or the possession with intent to
13 distribute.

14 The Court was informed at the beginning of the trial
15 that Mr. Ibarra was convicted of trafficking I think a
16 couple months ago. Based on the circumstances of this
17 case, however, that not necessarily makes it, that
18 evidence was not allowed and not permitted in this trial.
19 In fact, the Court finds that would have been more
20 prejudicial than probative on this defendant's guilt so
21 based upon that reasoning and rationale I'm not gonna
22 charge the accomplice liability, however, again, I do
23 remind you both of the statutes, what I do remind does
24 use the word conspire, aid, and abet and that's part of
25 the, part of what's charged to the jury. All right.

1 That's what the Court is gonna do.

2 MS. WILLIAMS: Your Honor, if I may also renew our
3 objection during closing argument, Your Honor, to the
4 State's mention of hand of one is hand of all. Your
5 Honor, at this time the defense would move for a mistrial
6 on the basis of the Solicitor's improper use of hand of
7 one is hand of all. The standard is, the test for
8 granting a new trial - the standard for granting a new
9 trial for an alleged improper closing argument of counsel
10 is whether the defendant was prejudiced to the extent
11 that he was denied a fair trial. Your Honor, by the
12 State mentioning the hand of one is the hand of all
13 argument, it is improper burden shifting. They have the
14 burden of proving all of the elements of trafficking
15 beyond a reasonable doubt. As Your Honor has already
16 stated, hand of one hand of all is an improper charge
17 here, therefore, the Solicitor essentially told the jury
18 even if you don't think you can prove that he did this
19 beyond a reasonable doubt, you can still find him guilty
20 if you think someone else did it and we believe that the
21 jury instruction would not cure this.

22 THE COURT: All right. I note your objection. I
23 overrule the objection. Again, the Court's instructed
24 the jury right before their closing arguments that
25 arguments are not evidence in the case and I deny the

1 motion for a mistrial. All right. Let's take a five
2 minute break. All right.

3 (Short break.)

4 THE COURT: All right. Let's bring the jury in.

5 (Whereupon, the jury entered the courtroom at 12:05
6 p.m.)

7 THE COURT: All right. Thank you, ladies and
8 gentlemen. It is now my responsibility to charge you and
9 instruct you on the law that's applicable in this case.
10 That simply means I'm gonna read the law to you. You're
11 not going to have the instructions with you when you go
12 back in the jury room so I ask that you listen very
13 carefully. However, if you do have questions about what
14 I have charged you and read to you while you're in the
15 jury room, madam forelady, if you would like to be
16 recharged on a certain area, if you would just write it
17 down on a piece of paper that you've got in there, knock
18 on the door, hand that to the bailiff and we'll deal with
19 that here in the courtroom.

20 I remind you during this trial that you and I have
21 certain duties to perform. As the trial Judge, it's my
22 responsibility to preside over the trial of this case and
23 I also have the duty to rule on the admissibility of
24 evidence offered during this trial. You are to consider
25 only the competent evidence that's before you. You are

1 to consider only the testimony which has been presented
2 from this witness, any exhibits which have been made a
3 part of the record in this case, and any stipulations of
4 counsel.

5 I have the additional duty to charge you the law
6 applicable to this case. As the presiding Judge, I am
7 the sole Judge of the law of the case and it is your duty
8 as jurors to accept and apply the law as I now state it
9 to you. If you already have any idea as to what the law
10 is or what the law ought to be and it does not agree with
11 what I now tell you the law is, you must abandon this
12 idea because you are sworn to accept the law and apply
13 the law exactly as I state it to you.

14 In every case tried in this court before a jury, the
15 jury becomes the sole and exclusive judge of the facts in
16 the case. A trial Judge cannot intimate, state, comment
17 on, or make any statement to a trial jury about the facts
18 in a case. Since you, the jury, are the sole judge of
19 the facts in this case, you are not to infer from what I
20 have said during the progress of this case in ruling upon
21 the admissibility or otherwise or anything I say now
22 during the course of this instruction to you, that I have
23 any opinion about the facts in this case. The law does
24 not allow me to have an opinion about the facts in the
25 case. This is a matter solely for you, the jury, to

1 determine. As jurors, it is your duty to determine the
2 effect, value, weight, and truth of the evidence
3 presented during this trial.

4 The indictments in this case charge the defendant
5 with trafficking in heroin, 28 grams or more, possession
6 of a weapon during the commission of a violent crime, and
7 possession with intent to distribute cocaine. I remind
8 you that the fact that the defendant was arrested,
9 charged, and indicted in this case is not evidence in
10 this case and cannot be considered by you as evidence of
11 guilt in this case, nor does it create any presumption or
12 inference of guilt. The documents are simply the formal
13 written instruments which contain the charges made
14 against the defendant. They are the formal documents by
15 which this case is brought into court.

16 The defendant has pled not guilty to these
17 indictments, and that plea puts the burden on the State
18 to prove the defendant guilty. A person charged with
19 committing a criminal offense in South Carolina is never
20 required to prove his innocence.

21 I charge you that it is an important rule of law
22 that the defendant in a criminal trial, no matter what
23 the seriousness of the charge may be, will always be
24 presumed to be innocent of the crimes for which the
25 indictment was issued unless guilt has been proven by

1 evidence satisfying you of that guilt beyond a reasonable
2 doubt. This presumption of innocence does not end when
3 you begin your deliberations, but it accompanies the
4 defendant throughout the trial until you reach a verdict
5 of guilt based on evidence satisfying you of that guilt
6 beyond a reasonable doubt.

7 The presumption of innocence it is like a robe of
8 righteousness placed about the shoulders of the defendant
9 with remains with the defendant until it has been striped
10 from the defendant by evidence satisfying you of the
11 defendant's guilt beyond a reasonable doubt.

12 The presumption of innocence is not mere legal
13 theory. It is not just a legal phrase. It is a
14 substantial right to which every defendant is entitled
15 unless you, the jury, are satisfied from the evidence of
16 the defendant's guilt beyond a reasonable doubt.

17 What is a reasonable doubt in the law? A reasonable
18 doubt is the kind of doubt that would cause a reasonable
19 person to hesitate to act.

20 The State has the burden of proving the defendant
21 guilty beyond a reasonable doubt. Some of you may have
22 served as jurors in civil cases, where you were told it
23 is only necessary to prove that a fact is more likely
24 true than not true, such as the greater weight or
25 preponderance of the evidence. In criminal cases, the

1 State's proof must be more powerful than that. It must
2 be beyond a reasonable doubt.

3 Proof beyond a reasonable doubt is proof that leaves
4 you firmly convinced of the defendant's guilt. There are
5 very few things in this world that we know with absolute
6 certainty, and in criminal cases, the law does not
7 require proof that overcomes every possible doubt.

8 If, based on your consideration of the evidence, you
9 are firmly convinced that the defendant is guilty of the
10 crimes charged, you must find the defendant guilty. If
11 on the other hand, you think there is a real possibility
12 that the defendant is not guilty, you must give the
13 defendant the benefit of the doubt and find him not
14 guilty.

15 There are two types of evidence which are generally
16 presented during a trial, direct evidence and
17 circumstantial evidence. Direct evidence directly proves
18 the existence of a fact and does not require deduction.
19 Circumstantial evidence is proof of a chain of facts and
20 circumstances indicating the existence of a fact.

21 Crimes may be proven by circumstantial evidence.
22 The law makes no distinction between the weight or value
23 to be given to either direct or circumstantial evidence,
24 however, to the extent that the State relies on
25 circumstantial evidence, all of the circumstances must be

1 consistent with each other, and when taken together,
2 point conclusively to the guilt of the accused beyond a
3 reasonable doubt. If these circumstances merely portray
4 the defendant's behavior as suspicious, the proof has
5 failed.

6 The State has the burden of proving the defendant
7 guilty beyond a reasonable doubt. This burden rest with
8 the State regardless of whether the State relies on
9 direct evidence, circumstantial evidence, or some
10 combination of the two.

11 Necessarily, you must determine the credibility of
12 witnesses who testified in this case. Credibility simply
13 means believability. It becomes your duty as jurors to
14 analyze and to evaluate the evidence and determine which
15 evidence convinces you of it truth.

16 In determining the believability of witnesses who
17 has testified in this case, you may believe one witness
18 over several witnesses or several witnesses over one
19 witness. You may believe a part of the testimony of a
20 witness and reject the remaining part of the testimony of
21 that same witness. You may believe the testimony of a
22 witness in its entirety or reject the testimony of a
23 witness in its entirety. You my consider whether any
24 witness has exhibited to you any interest, bias,
25 prejudice, or other motive in this case. You may also

1 consider the appearance and manner of a witness while on
2 the witness stand.

3 The rules of evidence ordinarily do not permit
4 witnesses to testify to opinions or conclusions. An
5 exception to this rule exists for witnesses we call
6 "expert witnesses". A witness who, by education and
7 experience, has become an expert in some art, science,
8 profession, or calling, may state an opinion as to
9 relevant and material matters, in which the witness
10 claims to be an expert, and may also state the reasons
11 for the opinion.

12 You should consider any expert opinion received in
13 evidence in this case and, like any other evidence, give
14 it the weight you think it deserves. If you decide that
15 the opinion of an expert witness is not based on
16 sufficient education and experience, or if you conclude
17 that the reasons given in support of the opinion are not
18 sound, or that the opinion is outweighed by other
19 evidence, you may disregard the opinion entirely.

20 An expert witness' testimony is to be given no
21 greater weight than that of other witnesses simply
22 because the witness is an expert. Further, you are not
23 required to accept an expert's opinion even though it's
24 not contradicted.

25 I instruct you and emphasize that the fact that the

1 defendant did not testify is not a factor to be
2 considered by you in any way in your deliberation and in
3 your consideration on the question of the guilt or the
4 innocence of the defendant. It must not be considered by
5 you in any manner whatsoever. A defendant has the
6 Constitutional Right to remain silent, and the assertion
7 of this right must not be considered by you in your
8 deliberations. I repeat, under your oath, you are to
9 draw no conclusion whatsoever from the fact that the
10 defendant in this case did not testify. The fact that
11 this defendant did not testify should not even be
12 discussed in the jury room. The burden of proof, as I
13 have stated to you, is on the State. The defendant is
14 not required to prove his innocence. The burden of proof
15 remains on the State to prove the defendant's guilty
16 beyond a reasonable doubt.

17 A statement alleged to have been made by the
18 defendant has been admitted into evidence in this case.
19 While the Court has determined that the statement is
20 admissible, I instruct you that you make the ultimate
21 decision of whether or not the defendant made the
22 statement. If the defendant did make the statement, you
23 must determine whether the statement was made by the
24 defendant voluntarily and of his own free will. This
25 means that the statement was not caused by pressure,

1 force, fear, threats, coercion, or intimidation, or by
2 hope or promise of leniency or a reward of any kind. In
3 determining whether the statement was voluntary, you
4 should consider both the characteristics of the defendant
5 and the details of the questioning. Some of the factors
6 that you must consider are the age of the defendant; the
7 defendant's education or lack of education; the
8 defendant's mental ability or capacity; the defendant's
9 IQ or intelligence; the defendant's background and
10 environment; the place and length of detention; the
11 nature of the questioning; and the advice or lack
12 thereof, to the defendant of his Constitutional Rights
13 including, but not limited to, the right to remain
14 silent; that any statement could be used against him in a
15 court of law; the right to have a lawyer present; that if
16 he cannot afford a lawyer, a lawyer would be appointed to
17 represent him without any cost; and that he could stop
18 making a statement at any time. You must carefully
19 consider all of the surrounding circumstances before you
20 give any weight to an alleged statement.

21 The State has the burden of proving beyond a
22 reasonable doubt the alleged statement was voluntary. If
23 you determine it was, you may give the statement any
24 further consideration that you deem proper. You must
25 decide what weight, if any, should be given to the

1 alleged statement. If you determine that the alleged
2 statement was not the free and voluntary statement of the
3 defendant, you should not consider the statement at all.

4 In order to establish criminal liability, criminal
5 intent is required. For example, the mental state
6 required to be proven by the State for a particular crime
7 might be purpose, intent, knowledge, recklessness, or
8 criminal negligence. Criminal intent must be proven by
9 the State beyond a reasonable doubt. Criminal intent is
10 always a matter that must be determined by the jury from
11 the circumstances surrounding the situation. There is no
12 way to prove intent to a mathematical certainty. There
13 is no way medical science can dissect a person's brain
14 and determine what the person had in mind, so the law
15 says that criminal intent may be inferred from the
16 circumstances shown to have existed. This is how you
17 make a determination of whether or not the element
18 requiring intent was present. It is not necessary to
19 establish intent by direct and positive evidence, but
20 intent may be establish by inference in the same way as
21 any other fact by taking into consideration the acts of
22 the parties and all the facts and circumstances of the
23 case.

24 Criminal intent is a mental state, a conscience
25 wrongdoing. It is up to you to determine what the

1 defendant intended to do based on the circumstances shown
2 to have existed.

3 Criminal intent can arise from action or a failure
4 to act. It may arise from negligence, recklessness, or
5 an indifference to duty or consequences that is
6 considered by the law to be the equivalent of criminal
7 intent.

8 The defendant is charged with trafficking in heroin,
9 28 grams or more. The State must prove beyond a
10 reasonable doubt that (1) the substance involved was in
11 fact heroin; (2) the defendant had possession of that
12 heroin, either actual possession or constructive
13 possession; and (3) that there were in fact 28 grams or
14 more of heroin involved. A person who knowingly sells,
15 manufactures, delivers, purchases, or brings into this
16 state, or who provides financial assistance or otherwise
17 aids, abets, attempts, or conspires to sell, manufacture,
18 deliver, or purchase, or bring into this state, or who is
19 knowingly in actual or constructive possession or who
20 knowingly attempts to become in actual or constructive
21 possession of 28 grams or more of heroin is guilty of
22 trafficking heroin.

23 In order to prove that the defendant knowingly
24 possessed or trafficked any controlled substance, the
25 state is not required to prove that the defendant knew

1 the particular type of controlled substance that was in
2 his possession, only that he knowingly possessed some
3 type of controlled substance.

4 Additionally, the State does not need to prove that
5 the defendant knew the weight of the drugs at issue to
6 prove its case. The weight of a controlled substance is
7 calculated by the weight of that substance in pure form
8 or any compound or mixture thereof.

9 The defendant is charged with possession with intent
10 to distribute cocaine base. The State must prove beyond
11 a reasonable doubt that the defendant possessed cocaine
12 base with the intent to distribute.

13 To prove possession, the State must prove beyond a
14 reasonable doubt that the defendant had both the power
15 and the intent to control the distribution or use of the
16 cocaine base. Possession may be either actual or
17 constructive.

18 Actual possession means that the cocaine base was in
19 the actual physical custody of the defendant.

20 Constructive possession means that the defendant had
21 dominion and control, or the right to exercise dominion
22 or control, over either the cocaine base itself or the
23 property on which the cocaine base was found. Actual
24 knowledge of the presence of the cocaine base is strong
25 evidence of the defendant's intent to control its

1 disposition or use.

2 Two or more persons may have joint possession of a
3 drug.

4 The State must also prove beyond a reasonable doubt
5 that the defendant intended to distribute the cocaine
6 base.

7 Distribute means to deliver, other than by
8 administering or dispensing a drug.

9 Intent may be shown by acts and conduct of the
10 defendant and other circumstances from which you may
11 naturally and reasonably infer intent.

12 In determining whether the defendant had the intent
13 to distribute the cocaine base, you may consider the
14 circumstances surround the defendant's alleged
15 possession. You may also consider the amount of the
16 substance alleged to have been possessed, the manner in
17 which it was allegedly possessed, the place where it was
18 allegedly possessed, and other factors which you consider
19 to be important. You must find that the defendant did
20 not intend to have the cocaine base solely for his own
21 use.

22 Possession of more than one or more grams of cocaine
23 creates an inference that the defendant possessed the
24 cocaine base with intent to distribute. This inference
25 does not relieve the State from proving beyond a

1 reasonable doubt that the defendant had the intent to
2 distribute. It is simply an evidentiary fact to be taken
3 into consideration by you, along with other evidence in
4 this case, and to be given the weight you decide it
5 should have.

6 The defendant is charged with possession of a weapon
7 during the commission of a violent crime. The State must
8 prove beyond a reasonable doubt that the defendant was in
9 possession of a firearm during the commission of a
10 violent crime.

11 A firearm means any machine gun, automatic rifle,
12 revolver, pistol, or any weapon which will, is designed
13 to, or may be readily converted to expel a projectile.

14 In order to find the defendant guilty of possession
15 of a weapon during the commission of a violent crime, you
16 must first find the defendant guilty of either committing
17 a violent crime or attempting to commit a violent crime.
18 Trafficking in heroin is defined as a violent crime.

19 The State must prove beyond a reasonable doubt that
20 the weapon furthered, advanced, or helped in the
21 commission of the crime.

22 The defendant's knowledge and possession may be
23 inferred when a substance is found on the property under
24 the defendant's control. However, this inference is
25 simply an evidentiary fact that may be taken into

1 consideration by you along with other evidence in the
2 case and to be given the weight you decide it should
3 have.

4 I'm going to instruct the jury at this time that the
5 last two sentences that the Court read about inferring
6 possession when it's on property under the defendant's
7 control is not to be considered by you in this particular
8 case.

9 Mere presence at the scene is not sufficient to
10 prove someone guilty of a crime. A defendant's presence
11 where a crime is being committed or mere association with
12 a person who commits a crime does not make a defendant an
13 accomplice or an aider and abettor of the person
14 committing the crime.

15 The burden is on the State to prove every element of
16 the crime charged. If you find, after reviewing all the
17 evidence, that the State has proved that the defendant
18 was only present at the scene of the crime, and that they
19 have not proved, beyond a reasonable doubt, any other
20 participation in the crime, then you must find the
21 defendant not guilty. The law is that proof of at the
22 scene of the crime is not sufficient to find someone
23 guilty.

24 In just a moment, Madam Forelady, I'm gonna allow
25 you to go back to your jury room and we'll send the

1 evidence back with you and a verdict form. The verdict
2 form simply states, and the order that I state it has no
3 significance, we just have to put one in front of the
4 other, we, the jury, find the defendant guilty of
5 trafficking heroin, 28 grams or more, or, not guilty of
6 trafficking heroin, 28 grams or more. If your answer is
7 not guilty, then you would not go any further on
8 question, you would not go to question 2.

9 If you find that he is guilty under number 1, you
10 would then go to question 2. We, the jury, find the
11 defendant guilty of possession of a weapon during a
12 violent crime, not guilty of possession of a weapon
13 during a violent crime.

14 And then thirdly, we, the jury, find the defendant
15 guilty of possession with intent to distribute cocaine or
16 not guilty of possession with intent to distribute
17 cocaine.

18 Your verdict must be unanimous. All 12 jurors must
19 agree. If at any time during the course of your
20 deliberations somebody leaves the jury room and has to go
21 to the restroom or out of the jury room, you must stop
22 deliberations. All 12 jurors must be present for the
23 entire time of the deliberations.

24 Once you reach a verdict, your verdict must be
25 unanimous. It can't be 11 to 1 or 10 to 2. All 12

1 jurors must agree on the verdict. Once you've reached
2 the verdict, check that appropriate places on the verdict
3 form. If you just sign your name, date it, keep the
4 verdict form in your hands, knock on the door, instruct
5 the bailiff that the jury has reached a verdict and y'all
6 can come back here in the courtroom. When you have your
7 seat, I'll ask if you've reached a verdict. If you have,
8 then you will hand the verdict form to the bailiff and he
9 will pass it up to the Court.

10 We need to take up a few matters outside before you
11 can start deliberating about the law and it won't take
12 long so when I send you back to your jury room, don't
13 start deliberating until the bailiff brings in the
14 verdict form and the evidence in the case. With that I'm
15 gonna allow you to go to your jury room. I'm gonna ask
16 the two alternates, if you'll just stand back there in
17 front of that door while the rest of the jury panel is
18 excused.

19 (Whereupon, the jury entered the jury room at 12:30
20 p.m.)

21 THE COURT: I'm going to ask you to step outside
22 that door and don't go down the hall. Just wait outside
23 the door there. All right. The State, as far as the
24 charge, before I hear from y'all, you know, I read State
25 v. Stuart again and, in fact, Justice Few, the language

1 is clear on trafficking that the inference is not to be
2 charged. However, they did rule that the PWID cocaine
3 conviction stood and was proper. I'm not quite sure how
4 that fits when they ruled the language and said - out of
5 an abundance of caution I read what was read in State v.
6 Stuart minus the charge on inference for trafficking. I
7 do think that this Court, that I did give a curative
8 instruction on those two sentences about an inference on
9 PWID for cocaine so that was the reason I did that. I'll
10 be glad to hear y'all if you got any questions about the
11 charge from, Ms. Williams.

12 MS. WILLIAMS: Yes, Your Honor. And I agree with
13 Your Honor that the bit about whether or not it's - it
14 goes back and forth. It doesn't seem to come to a
15 conclusion regarding that particular instruction. My
16 understanding of reading it was that there were
17 additional factors they considered when they went forward
18 on that but, Your Honor, I think just for the purposes of
19 the record we would object to the jury instruction as a
20 whole as confusing. And then, Your Honor, I made a
21 mistake and did not object to the sentence on 22 for
22 possession with intent to distribute where it says, or
23 the property on which the cocaine base was found. But as
24 Your Honor said --

25 THE COURT: I'm sorry. What did you disagree with

1 on page 22?

2 MS. WILLIAMS: Yes, Your Honor. It's in the bottom
3 paragraph. It's the second sentence, or the right to
4 exercise dominion or control over either the cocaine base
5 itself or the property on which the cocaine base was
6 found.

7 THE COURT: The way I read State v. Stuart, Justice
8 Few did not rule that particular wording improper, but I
9 note your objection.

10 MS. WILLIAMS: Thank you, Your Honor.

11 THE COURT: All right. Anything from the State?

12 MS. OPPENHEIMER: Nothing from the State, Your
13 Honor.

14 THE COURT: All right. I don't know what y'all do
15 with the evidence. What did y'all do the last time, put
16 it all in a basket and push it all back in there?

17 MS. MARTIN: Your Honor, we have a rolling cart and
18 they can send it back. We don't send the ammunition back
19 because we can't have the ammunition and the guns so the
20 clerk will hold the ammunition.

21 THE COURT: All right. Well, then, y'all get your
22 cart, send it back. Let me get the - while y'all are
23 doing that, I'm gonna talk to the - can I have the two
24 alternates come back in, bailiff. Get the two alternates
25 back in. Y'all can go ahead and do what you got to do.

1 (Whereupon, the verdict form and the evidence was
2 sent to the jury room and deliberations started at 12:35
3 p.m.)

4 (Whereupon, the two alternates entered the
5 courtroom.)

6 THE COURT: All right. Thank y'all. Y'all have
7 completed your service as jurors this week. In the world
8 which we live now I always have two alternates even when
9 we have a day long trial even in common pleas. We often
10 have issues when a juror has to be out or be replaced.
11 That did not take place here so you will not be needed in
12 the jury room. You're free to talk to anybody you want
13 to about the case. You're not required to. Sometimes
14 the lawyers will call and want to talk to you. It might
15 help them going forward. They're allowed to do that.
16 That's proper, but on the other hand you don't have to
17 talk to them. You can talk to whoever you want to about
18 the case and stuff, whatever you want. Appreciate y'all's
19 attention this week. Thank you for your service. Y'all
20 are free to go. Where do they need to go, that door? Go
21 out that door. They'll tell you how. Thank y'all.

22 (Jury deliberation break.)

23 THE COURT: All right. The bailiff has been
24 informed that the jury has reached a verdict. We have
25 everybody in place. Let's bring the jury in.

1 (Whereupon, the jury entered the courtroom at 1:53
2 p.m.)

3 THE COURT: Madam Forelady, has the jury reached a
4 verdict?

5 FORELADY: Yes, sir.

6 THE COURT: Hand the verdict form to the bailiff.

7 FORELADY: (Proffering.)

8 THE COURT: Madam Clerk, publish the verdict.

9 THE CLERK: On indictment 2019-GS-32-1490, 1491 and
10 2741, the State versus Israel Mendoza Cervantes, we, the
11 jury, find the defendant guilty of trafficking heroin, 28
12 grams or more. We, the jury, find the defendant guilty
13 of possession of a weapon during a violent crime. And
14 we, the jury, find the defendant guilty of possession
15 with intent to distribute cocaine. Ladies and gentlemen
16 of the jury, if this was your verdict and if it is still
17 your verdict, please indicate by raising your right hand.

18 (Whereupon, all jurors hands raised.)

19 THE COURT: Thank you. Anything further from the
20 defense?

21 MR. WILLIAMS: Yes, Your Honor. We would request
22 individual voir dire, polling of the jury rather.

23 THE COURT: All right. Madam Clerk, will you poll
24 the jury.

25 THE CLERK: Okay. When I call your juror number,

1 I'll ask you was this your verdict and is this still your
2 verdict. Just raise your hand and respond. Juror number
3 36, was this your verdict and is this still your verdict?

4 MICHAEL COLEMAN: Yes.

5 THE CLERK: Juror number 81, was this your verdict
6 and is it still your verdict?

7 MICHAEL HILL: Yes.

8 THE CLERK: Juror number 12, was this your verdict
9 and is it still your verdict?

10 CYNTHIA BLACK: Yes.

11 THE CLERK: Juror number 158, was this your verdict
12 and is it still your verdict?

13 BRANDON REYNOLDS: Yes.

14 THE CLERK: Juror number 161, was this your verdict
15 and is it still your verdict?

16 CONNIE ROWE: Yes.

17 THE CLERK: Juror number 215, was this your verdict
18 and is it still your verdict?

19 TIMOTHY WILLIAMS: Yes.

20 THE CLERK: Juror number 171, was this your verdict
21 and is it still your verdict?

22 JOSHUA SIGHTLER: Yes.

23 THE CLERK: Juror number 200, was this your verdict
24 and is it still your verdict?

25 RENEE VASQUEZ: Yes.

1 THE CLERK: Juror number 13, was this your verdict
2 and is it still your verdict?

3 DESTYNI BLANDIN: Yes.

4 THE CLERK: Juror number 104, was this your verdict
5 and is it still your verdict?

6 KARL KEONIG: Yes.

7 THE CLERK: Juror number 112, was this your verdict
8 and is it still your verdict?

9 ALYSSA LEVER MCGAINEY: Yes.

10 THE CLERK: Juror number 82, was this your verdict
11 and is it still your verdict?

12 BRANTLEY HODGES: Yes, ma'am.

13 THE CLERK: Thank you. All jurors polled, Your
14 Honor.

15 THE COURT: Thank you. Anything further from the
16 defendant?

17 MR. WILLIAMS: Nothing further, Your Honor.

18 THE COURT: Anything further from the State?

19 MS. OPPENHEIMER: Nothing further, Your Honor.

20 THE COURT: All right. Madam Forelady, if you would
21 come over here on your way out. The clerk, she'll need
22 to get you to sign the indictments.

23 Ladies and gentlemen, that has concluded your
24 service as jurors this week. Thank you for your
25 attention and promptness in court this week. You can

1 talk to anybody about the case that you want to now. In
2 fact, sometimes lawyers will call and want to get input.
3 There's nothing improper for them to do that. They're
4 allowed to that. On the other hand, you're not required
5 to talk to the lawyers or anybody else if you wish to
6 exercise that right, but you're certainly free to talk to
7 anybody you wish to or not talk to anybody that you wish.
8 So thank you for your service this week. You're excused
9 and will not be called for jury service for another three
10 years here in Lexington County. The bailiff will show
11 you out the door. Everyone remain seated while this jury
12 is excused.

13 (Whereupon, the jury was released from further jury
14 service at 1:55 p.m.)

15 THE COURT: All right. Anything further from the
16 defense before sentencing? Yes, Ms. Williams.

17 MR. WILLIAMS: Yes, Your Honor. The defense would
18 move to set aside the verdict, uhm, because as a matter
19 of law the evidence that was before the jury was not
20 sufficient to return a verdict of guilty on any of the
21 three indictments. We would also move to renew all
22 previous motions and objections.

23 THE COURT: All right. I deny the motion to set
24 aside the verdict, and my ruling will stay the same on
25 all prior rulings. Anything further?

1 MS. WILLIAMS: No. Thank you, Your Honor.

2 THE COURT: All right. Anything from the State?

3 MS. OPPENHEIMER: Nothing from the State.

4 THE COURT: Y'all have your sentencing sheets? If
5 you'll bring those up. Let's bring the defendant around.
6 All right. State, y'all wish to be heard on sentencing?

7 MS. OPPENHEIMER: Yes, Your Honor.

8 THE COURT: I'll be glad to hear from you.

9 MS. OPPENHEIMER: Your Honor, you've obviously heard
10 the facts, but I kind of want to go through what you
11 didn't hear throughout the course of this case, a little
12 bit more about the investigation.

13 Back in a 2018 Sergeant Colwell with the Richland
14 County Sheriff's Department did begin an investigation
15 into Ace and Migo, this defendant. There were numerous
16 controlled buys in Richland County with this defendant
17 where they used an undercover officer to conduct those
18 buys. They were all for heroin, for very large amounts
19 of heroin, Your Honor. When Richland County got word
20 that Migo and Ace had moved into Lexington County --

21 THE COURT: All right. Hold on a minute. The lady
22 that's crying, you're gonna have to remove yourself from
23 the courtroom. If you can't control your emotions, I
24 understand that, but I can't pay attention to what the
25 lawyers are saying.

1 MRS. CERVANTES: I'm sorry. I'll be quiet.

2 THE COURT: All right. If I ask you again, I'll
3 order you to leave. Now be quiet please. All right.
4 Yes, ma'am.

5 MS. OPPENHEIMER: Okay. So, Your Honor, obviously
6 we have the Richland County investigation with these
7 numerous buys with this defendant that they knew as Migo.
8 When they obtained information that Migo and Ace had
9 moved into Lexington County, they immediately called
10 narcotics officers in Lexington County to conduct an
11 investigation. There were several buys with Ace and Migo
12 sometimes where Migo was just following that drug addict
13 that I told the jury about, Kevin Kelly, on buys because
14 obviously he was not trusted.

15 Your Honor, on the morning of the search warrant
16 about 10 minutes prior to the execution of the search
17 warrant, an undercover buy with this defendant was
18 conducted with a Richland County officer and Agent
19 Dabkowski. I do have still photos from that buy that I
20 would like to --

21 THE COURT: I don't need to see the photos on the
22 buy --

23 MS. OPPENHEIMER: Yes, Your honor.

24 THE COURT: -- that he's not here in court on. I'll
25 listen to those allegations, but I don't need to see any

1 photos.

2 MS. OPPENHEIMER: Yes, Your Honor. And certainly
3 that charge still remains pending. That was nine minutes
4 to ten minutes before the execution of this search
5 warrant. We are talking about 105 grams of heroin.
6 Since 2018 Lexington County alone has seen 53 overdose
7 deaths from heroin. We are obviously not that big of a
8 county and 53 might not seem like a lot, but heroin is
9 certainly a very potent narcotic. The amount that this
10 defendant was found to be in possession of alone is just
11 enormous, and then to come into this courtroom and accuse
12 law enforcement of threatening him, coercing him to make
13 a confession and essentially lying, it's just
14 unconscionable, Your Honor.

15 For all these reasons, even though he does not have
16 much of a prior record, he only has one prior conviction
17 from 2014 for a misdemeanor, we would ask for 30 years.
18 He is a validated member of the Surenos Gang, which I
19 don't know if Your Honor is familiar with the validation
20 process, but it is a very lengthy and tedious process.
21 It's not arbitrary. The defendant did tell one of our
22 narcotics officers that he has been a Surenos since he
23 was little and the Surenos are connected to the Mexican
24 mafia, Your Honor. For all of these reasons, obviously
25 the amount of heroin involved, the violent nature of

1 trafficking heroin in and of itself, we would ask this
2 Court for 30 years. And I know agent Dabkowski would
3 like to speak on behalf of law enforcement.

4 THE COURT: All right. I'll be glad to hear from
5 her, yes.

6 AGENT DABKOWSKI: Thank you, Your honor. As the
7 Solicitor has already touched base, is was obviously a
8 long investigation into the co-defendant and the
9 defendant here. Three separate occasions prior to the
10 execution of the search warrant by Lexington County, we
11 bought heroin from this organization. One time where the
12 defendant directly met with an undercover officer. It
13 was not a confidential informant. It was a police
14 officer working undercover. He sold her 34 grams of
15 heroin and introduced himself and made sure she knew he
16 was Migo and made sure she knew he was running the drug
17 operation and was the one in charge.

18 So, again, saying he knew something about it, the
19 mere presence, obviously now you know everything involved
20 in this case, or more details in this case. There was
21 not I was just in the wrong place at the wrong time. He
22 was clearly involved in this drug organization and
23 selling heroin to people in Lexington County. Thank you,
24 Your Honor.

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

1 Williams or Ms. Williams, I'll be glad to hear from
2 y'all.

3 MR. WILLIAMS: Yes, Your Honor. He is 29 years of
4 age. The one misdemeanor that he has is for disorderly
5 conduct. He disputes that he is a member from any gang
6 whatsoever. I did not hear him lie at any point in time
7 in the trial of the case because he didn't take the stand
8 and he insisted on his right to be tried and be proven
9 guilty beyond a reasonable doubt.

10 He spent two years on a monitor after arrest with no
11 violations of that monitor. He spent 21 days in jail
12 prior to, I guess prior to release on bond and then
13 obviously, Your Honor, when this case began on Monday, he
14 has been in jail since Monday.

15 One of the things that probably has changed with
16 him, Your Honor wasn't privy to it, but I'm not used to
17 being -- He is -- People always, I guess, get faith in
18 their life and stuff like that. He prays. He obviously
19 has changed his ways. Obviously I can't respond to what
20 he's done or not done in the past, but I can only talk to
21 the Court about the lack of a record that he has and the
22 number of people that are dependent upon him. He does
23 have a business, Your Honor. It's a roofing business.
24 He's incorporated and he is the registered agent for it.
25 This is his first offense and he's gonna get 25 years

1 regardless. Your Honor knows obviously that we were
2 attempting to settle this before because you heard what
3 the offer was.

4 He's got five kids under the age of five. His
5 youngest child is his daughter Isabella and the reason I
6 remember that one more distinctly than I do the rest of
7 them, it's not to be slight to them, the other four, but
8 when he was telling me about the fifth child, he's been
9 very emotional about this. She's two months old and it's
10 somebody he hasn't had a chance to spend time with.
11 That's obvious his wife in the front row, Your Honor, who
12 has lost control of her emotions. She's seated next to
13 his minister, the young lady on the front row.

14 We would ask, regardless of what they think about
15 him, we would ask for the minimum sentence because of the
16 lack of crime that he has been involved in and the fact
17 that with 25 years, he's gonna be out for an extended
18 period or time for whatever he's done, Your Honor.

19 THE COURT: All right. Thank you.

20 MR. WILLIAMS: Thank you, Your Honor.

21 THE COURT: Anything you want to say, Mr. Cervantes?
22 You don't have to say anything, but you have a right to
23 speak if you wish.

24 MR. CERVANTES: Life -- Give me a second to choose
25 the right words. Life gives you lessons throughout time

1 and I just want to know that - well, not want to know
2 actually. I want to say that from bottom of my heart I
3 have changed. I'm not the person they're trying to make
4 me out to be. I try to help everybody. I try to
5 minister even in the jail. That's what, I try to preach
6 the Bible to them, keep them wholehearted. I'm not the
7 violent person they're trying to make me be. If at one
8 point in time when I was younger, that was me and I
9 apologize because I know we all make mistakes, but I have
10 grown from then and I have improved.

11 THE COURT: All right. Thank you, Mr. Cervantes.

12 MS. OPPENHEIMER: Your Honor, just very briefly for
13 the record. To the extent that Mr. Williams was asking
14 for credit for the GPS monitor, he was not on house
15 arrest at that time, therefore, the State would argue
16 based on the law he is not entitled to any credit for
17 wearing that ankle monitor.

18 THE COURT: I understand. Well, here's the thing,
19 Mr. Cervantes. I hope you have changed your life and you
20 have the rest of your life to prove that. However, the
21 society in which we live in has penalties for drug
22 trafficking and are almost like drinking and driving.
23 The penalties are well, well known, have been part of our
24 society for the last 30 years about the consequences of
25 being involved in a drug trade and so, you know, society

1 understands that, yet still continue, certain people
2 decide they know that and still continue to commit these
3 type offenses. The legislature has determined what the
4 mandatory minimum is. The Court has no discretion in
5 that. Again, these are very serious charges, very
6 serious facts of the case. The jury has heard the
7 evidence and rendered the verdict and that's the verdict
8 of the society that you live in.

9 The sentence on 2019-GS-32-01490, Israel Mendoza
10 Cervantes having been found guilty after trial by, or
11 convicted at trial for trafficking heroin, 28 grams or
12 more, the sentence is he be committed to the Department
13 of Corrections for 25 years. That is to run concurrent
14 with indictment 2019-GS-32-2741, possession with intent
15 to distribute. The sentence on that indictment is he be
16 committed to the Department of Corrections for 15 years
17 to run concurrent. Indictment 2019-GS-32-1491, Israel
18 Mendoza Cervantes having been convicted of possession of
19 a weapon during the commission of a violent crime, the
20 sentence is he be committed to the Department of
21 Corrections for five years. However, that's to run
22 consecutive to 2019-GS-32-01490. He's given credit for
23 24 days. Consecutive sentence on the possession of a
24 weapon, those were very serious weapons that were shown
25 as evidence in here in the court. That in itself is

1 coupled with the trafficking and this Court thinks it's a
2 very egregious offense. That's basis for the sentence.
3 Thank you.

4 MR. WILLIAMS: Thank you, Your Honor.

5 MS. OPPENHEIMER: Thank you, Your Honor.

6 THE COURT: All right. Let's take about ten
7 minutes. Y'all get all lined up and we'll be ready to
8 go.

9 WHEREUPON, THE TRIAL WAS CONCLUDED.

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WITNESSES

Lexington County Sheriffs Department

Meghan A Dabkowski

Law Enforcement Case #: 18-021525

MFD

ARREST WARRANT NUMBER

2018A3210900111

ACTION OF GRAND JURY

TRUE BILL

Forperson of Grand Jury

Date: 4-8-19

VERDICT

Guilty

Forperson of Petit Jury

Date: Aug. 24, 2022

DOCKET NO. 2019GS3201490

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2019

THE STATE

vs.

Israel Mendoza Cervantes

CDR #: 0149

Indictment for

Trafficking in Heroin, 28 grams or more

§ 44-53-0370(e)(3)(c)

S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Trafficking in Heroin, 28 grams or more
COUNTY OF LEXINGTON	)	
	)	§ 44-53-0370(e)(3)(c)

At a Court of General Sessions, convened on April 2019, the Grand Jurors of Lexington County present upon their oath:

That **Israel Mendoza Cervantes** did in Lexington County, South Carolina on or about October 24, 2018, knowingly and intentionally, willfully and unlawfully sell, distribute, 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, posses with intent to distribute 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 Heroin, a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in the amount of twenty eight (28) grams or more, in violation of § 44-53-370 (e)(3)(c), Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Meghan A Dabkowski

Law Enforcement Case #: 18-021525

MFD

ARREST WARRANT NUMBER

2018A3210900116

ACTION OF GRAND JURY

TRUE BILL

Caitlyn Seely
Foreperson of Grand Jury
Date: 4-8-19

VERDICT

Guilty

NOAH HODG
Foreperson of Petit Jury
Date: Aug. 24, 2022

DOCKET NO. 2019GS3201491

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2019

THE STATE

vs.

Israel Mendoza Cervantes

CDR #: 0549

Indictment for

Possession of a Weapon During a Violent
Crime

§ 16-23-0490

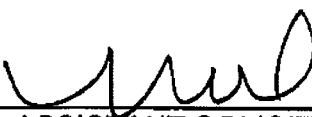
S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Possession of a Weapon During a Violent Crime
COUNTY OF LEXINGTON	)	
	)	§ 16-23-0490

At a Court of General Sessions, convened on April 2019, the Grand Jurors of Lexington County present upon their oath:

That **Israel Mendoza Cervantes** did in Lexington County, South Carolina on or about October 24, 2018 knowingly and willfully, possess a firearm, during the commission of a violent crime or attempt to commit a violent crime, to wit: Trafficking in Heroin, 28 grams or more such weapon described as one Ruger 9mm, one CZ-Scorpion EVO 9mm Rifle, one Rebel .22 cal (AK-47), and one Ruger 30-06, in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Meghan A Dabkowski

Law Enforcement Case #: 18021525

KO

ARREST WARRANT NUMBER

22-STR-00048

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

8.8.22

VERDICT

Guilty

Foreperson of Petit Jury

Date:

Aug. 24, 2022

DOCKET NO. 2022GS3202741

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2022

THE STATE

vs.

Israel Mendoza Cervantes

CDR #: 0183

Indictment for

Possession with Intent to Distribute
Cocaine

§ 44-53-0370(b)(1)

S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Possession with Intent to Distribute Cocaine
COUNTY OF LEXINGTON	)	
	)	§ 44-53-0370(b)(1)

At a Court of General Sessions, convened in August of 2022, the Grand Jurors of Lexington County present upon their oath:

That Israel Mendoza Cervantes did in Lexington County, South Carolina on or about October 24, 2018, knowingly and intentionally, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver cocaine, a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in violation of § 44-53-370 (b)(1), Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SCLICITOR

SCANNED 08092022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
THE STATE OF SOUTH CAROLINA	)	Case No. 2019-GS-32-01490 – 91,
	)	2022-GS-32-02741
	)	
v.	)	VERDICT FORM
	)	
ISRAEL MENDOZA CERVANTES,	)	
	)	
DEFENDANT	)	

1. We, the Jury, find the Defendant:

☒ Guilty of Trafficking Heroin, 28 grams or more.

☐ Not guilty of Trafficking Heroin, 28 grams or more.

If Defendant is guilty of number 1, complete numbers 2 and 3. If not guilty, skip number 2 and continue to number 3.

2. We, the Jury, find the Defendant:

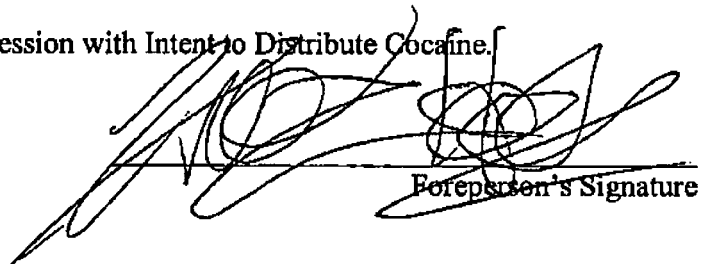
☒ Guilty of Possession of a Weapon During a Violent Crime.

☐ Not guilty of Possession of a Weapon During a Violent Crime.

3. We, the Jury, find the Defendant:

☒ Guilty of Possession with Intent to Distribute Cocaine.

☐ Not guilty of Possession with Intent to Distribute Cocaine.



Foreperson's Signature

August 24, 2022
Lexington, South Carolina

25-40 years and \$50,000

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

STATE

VS.

Israel Mendoza Cervantes

AKA:

Race: White

Sex: M

Age: 29

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# [REDACTED]

SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019 - GS - 32 - 01490

AW#: 2018A3210900111

Date of Offense: 10/24/2018

S.C. Code §: 44-53-0370(e)(3)(c)

CDR Code #: 0149

SENTENCE SHEET

AUG 31 2022

SC Court of Appeals

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Drugs / Trafficking in Heroin, morphine, etc., 28 g or more

In violation of § 44-53-0370(e)(3)(c) of the S.C. Code of Laws, bearing CDR Code # 0149

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

103245

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 25 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.

24 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Israel Mendoza Cervantes INDICTMENT/CASE#: 2019 - GS - 32 - 01490

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning	\$ _____
§14-1-206 (Assessments 107.5%)			\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)		\$100	\$ <u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)		\$100	\$ _____
§56-5-2995 (DUI Assessment)		\$12	\$ _____
§56-1-286 (DUI Breath Test)		\$25	\$ _____
§14-1-212 (Law Enforce. Funding)		\$25	\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)		\$150	\$ <u>150</u>
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)		\$41	\$ _____
§50-21-114 (BUI Breath Test Fee)		\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)		\$40/ea	\$ _____
3% to County (if paid in installments)		TBD	\$ _____
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees		\$500	\$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund		TBD	\$ _____
		TOTAL	\$ <u>275</u>

Clerk of Court/Deputy Clerk: Lia J. [Signature]
Court Reporter: [Signature]Presiding Judge: [Signature]
Judge Code: 2753
Sentence Date: 8-24-22

ROA 321
0-5 years

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

STATE

VS.

Israel Mendoza Cervantes

AKA: _____
Race: White Sex: M Age: 29
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL#* _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019 - GS - 32 - 01491

AW#: 2018A3210900116

Date of Offense: 10/24/2018

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

RECEIVED
AUG 31 2022
SC Court of Appeals

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 103245
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 5 days/months/years/Time Served ☐ Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$____; provided that upon the service of _____ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2019 GS 32 01490

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.

24 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Israel Mendoza Cervantes INDICTMENT/CASE#: 2019 - GS - 32 - 01491

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$_____ plus 20% fee: _____ \$_____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning	_____	\$ _____
§14-1-206 (Assessments 107.5%)				\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)		\$100		\$ <u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)		\$100		\$ _____
§56-5-2995 (DUI Assessment)		\$12		\$ _____
§56-1-286 (DUI Breath Test)		\$25		\$ _____
§14-1-212 (Law Enforce. Funding)		\$25		\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)		\$150		\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)		\$41		\$ _____
§50-21-114 (BUI Breath Test Fee)		\$50		\$ _____
§56-5-2942(J) (Vehicle Assessment)		\$40/ea		\$ _____
3% to County (if paid in installments)		TBD		\$ _____
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees		\$500		\$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund		TBD		\$ _____

Clerk of Court/Deputy Clerk:
Court Reporter:

[Signature]

[Signature]

Presiding Judge:
Judge Code:
Sentence Date:

TOTAL \$ 900.00

2753

8-24-22

0-18 years and/or \$25,000

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

STATE

VS.

Israel Mendoza Cervantes

AKA:

Race: White Sex: M Age: 29

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Possession with the intent to distribute cocaine

In violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. [REDACTED] (def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

[Signature] 103245
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 15 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.

24 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2022 - GS - 32 - 02741

AW#: 22-STR-00048

Date of Offense: 10/24/2018

S.C. Code §: 44-53-0370(b)(1)

CDR Code #: 0183

SENTENCE SHEET

RECEIVED

AUG 31 2022

SC Court of Appeals

STATE VS. Israel Mendoza Cervantes INDICTMENT/CASE#: 2022 - GS - 32 - 02741**SPECIAL CONDITIONS:**☐ **PTUP** after _____ months/years**And Other Terms Listed Below:**

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$_____ plus 20% fee: _____ \$_____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$_____ Beginning _____ \$_____

§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$

- ☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees
- ☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

TOTALClerk of Court/Deputy Clerk: _____
Court Reporter: _____Presiding Judge: _____
Judge Code: _____
Sentence Date: _____



COPY

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FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

2022 AUG 15 AM 11:25

COUNTY OF LEXINGTON)

ELEVENTH JUDICIAL CIRCUIT

State of South Carolina,)

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

Warrant No(s). 2018A3210900111,
2018A3210900116

Indictment No.: 2022GS3202741

v.)

Israel Cervantes-Mendoza,)

MOTION FOR SUPPRESSION OF
INVOLUNTARY STATEMENTS

Defendant.)

The Defendant, by and through the undersigned Counsel, moves for the suppression of all statements made by the Defendant to any government agent and any evidence seized because of statements obtained in violation of the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 3, 10, and 14 (due process, unlawful search and seizure, right to silence, right to counsel and fair trial). The undersigned Counsel hereby requests that the Court hold an *in-camera* evidentiary hearing on the admissibility of any statements made by the Defendant to any government agent during the police investigation, arrest, and any subsequent interrogation.

LAW

The Fifth Amendment to the United States Constitution guarantees that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. V. The Fifth Amendment privilege is violated by government coerced self-incrimination. See *United States v. Washington*, 431 U.S. 181 (1977). The Fifth Amendment's protections extend to statements or acts that are (1) compelled; (2) testimonial; and (3) incriminating of the person in a criminal proceeding. *United States v.*

Hubbell, 530 U.S. 27 (2000).

Interrogation: Custodial Statements and Warnings

Miranda v. Arizona and its progeny bar the admission of certain statements given by a suspect during “custodial interrogation” without prior warning. See *Miranda v. Arizona*, 384 U.S. 436 (1966). In *Miranda*, the Court held that “[p]rior to any questioning, the person must be warned (1) that he has the right to remain silent, (2) that any statement he does make may be used as evidence against him, and (3) that he has the right to the presence of an attorney, either retained or (4) appointed.” *Id.* The Court further found that *Miranda* warnings apply to “questioning initiated by law enforcement after a person has been taken into custody or otherwise deprived of his freedom of action in any way.” *Id.* Notably, all of the circumstances surrounding the interrogation must be considered (including events that occurred before, during and after the interrogation).

In *Thompson v. Keohane*, 516 U.S. 99 (1995), the United States Supreme Court held that “[t]wo discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave. Once the scene is set and the players’ lines and actions are reconstructed, the 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.”

The Court has further held that an interrogation occurs when the police engage either in express questioning or its functional equivalent. See *Rhode Island v. Innis*, 446 U.S. 291, 300-01(1980) (finding “the *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent.”).

Police actions are the functional equivalent of an interrogation when the comments or actions were reasonably likely to result in an incriminating statement. *Innis*, 446 U.S. at 301 (finding “the definition of interrogation can extend only to words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response.”). The police officer's intent is relevant, but not determinative. *Innis*, 446 U.S. at 301 n.7 (finding the intent of police “may well have a bearing on whether the police should have known that their words or actions were reasonably likely to evoke an incriminating response”).

Invocation of Rights

In *Miranda*, the Court held that “[i]f the individual indicates *in any manner*, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.” 384 U.S. at 473-74 (emphasis added). The Court has also explained that “[t]he critical safeguard” provided by the *Miranda* warnings is the knowledge of “a person's ‘right to cut off questioning.’” *Michigan v. Mosley*, 423 U.S. 96, 103 (1975) (quoting *Miranda*, 384 U.S. at 474). Therefore, “the admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his ‘right to cut off questioning’ was ‘scrupulously honored.’” *Id.* at 103-04. At a minimum, this means that the police must immediately cease questioning for a significant period of time and administer a new set of warnings prior to reinitiating interrogation. *Id.* at 105-06.

If the suspect unambiguously invokes his right to counsel, the police must cease questioning immediately. See *Edwards v. Arizona*, 451 U.S. 477 (1981); see also *Minnick v. Mississippi*, 498 U.S. 146, 153 (1990). Even if a suspect has invoked her rights, law enforcement may nonetheless speak with the person if he or she reinitiates

communication subsequent to the invocation. See *Edwards*, 451 U.S. at 485 (1981). Whether a suspect has initiated interrogation turns on whether the suspect's comments or questions evidenced a willingness or desire to engage in a generalized discussion about the investigation. See *Oregon v. Bradshaw*, 462 U.S. 1039, 1045-46 (1983) (finding that a suspect's question about what was going to happen to him met this test because "it was not merely a necessary inquiry arising out of the incidents of the custodial relationship").

Waiver of Rights

A valid waiver of rights must be knowing and intelligent. In other words, "the waiver must have been 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). There is a presumption against waiver. See *North Carolina v. Butler*, 441 U.S. 369, 373 (1979) ("The courts must presume that a defendant did not waive his rights; the prosecution's burden is great"). Whether a waiver has occurred is determined by a totality of the circumstances test. *Butler*, 441 U.S. at 374-75 (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)) ("The question of waiver must be determined on 'the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused'").

This is a subjective test, and the defendant's particular background, experience and characteristics are relevant considerations. *Id.* at 375. 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*, 475 U.S. at 421. “In sum, a suspect who has received and understood the Miranda warnings, and has not invoked his Miranda rights, waives the right to remain silent by making an uncoerced statement to the police.” *Berghuis v. Thompson*, 560 U.S. 370 (2010).

Voluntariness of Statement

The Due Process Clause of the Fifth Amendment provides that no person shall be “deprived of life, liberty, or property, without due process of law.” U.S. Const. Amend. V. “[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.” See *Jackson v. Denno*, 378 U.S. 368 (1964). A defendant has a constitutional right to “have a fair hearing and a reliable determination on the issue of voluntariness.” *Id.* The test is whether, considering the totality of the circumstances, the free will of the witness was overborne. *Rogers v. Richmond*, 365 U.S. 534 (1961).

The Court has notes that “certain interrogation techniques, either in isolation or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned[.]” *Miller v. Fenton*, 474 U.S. 104, 109 (1985). Whether a statement was voluntary is determined by a totality of the circumstances test. The relevant inquiry is whether the particular suspect's will was overborne. See *Arizona v. Fulminate*, 499 U.S. 279, 287 (1991) (finding that the defendant's confession was coerced by a credible threat of physical violence where the defendant confessed to a government informant who promised to protect him from other inmates in exchange for information about the crime)

No single factor is determinative, but each case requires careful scrutiny of all the

surrounding circumstances. *Schneckloth*, 412 U.S. at 226. *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). The Due Process Clause voluntariness inquiry is not limited to the context of custodial interrogation, but the statement must be obtained by a police officer or other state agent. In other words, there must be a link between the coercive activity of the state and the confession. *Colorado v. Connelly*, 479 U.S. 157, 164 (1986) (“Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law.”).

Right to Counsel

The Sixth Amendment guarantees that in all criminal prosecutions “the accused shall enjoy the right to ... have the Assistance of Counsel for his defense.” U.S. Const. amend. VI. The essence of this right is the opportunity for a defendant to consult with an attorney and to have her investigate the case and prepare a defense for trial. *Powell v. Alabama*, 287 U.S. 45, 58 (1932). The Sixth Amendment right to counsel attaches once formal adversary proceedings have commenced against an individual. See *Brewer v. Williams*, 430 U.S. 387, 398 (1977) (“[T]he right to counsel guaranteed by the Sixth and Fourteenth Amendments means at least that a person is entitled to the help of a lawyer at or after the time that judicial proceedings have been initiated against him whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.”) (internal quotation omitted) (“The Sixth Amendment right to counsel attaches when adversarial judicial proceedings have been initiated and at all critical stages.”) (citing *Michigan v. Harvey*, 494 U.S. 344 (1990)).

The Sixth Amendment right to counsel is offense specific. See *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991) (“It cannot be invoked once for all future

prosecutions, for it does not attach until a prosecution is commenced.”). In other words, once the Sixth Amendment right to counsel attaches to a formal prosecution, police may not interrogate a defendant about *that particular prosecution* without the presence of counsel, unless the defendant initiates the interrogation or makes a valid waiver.

Deliberately Elicited Statements

If the Sixth Amendment right to counsel has attached, the next consideration is whether the police “deliberately elicited” incriminating statements from the defendant. *Massiah v. United States*, 377 U.S. 201, 206 (1964). The core concern is not only with direct interrogation, but also with “indirect and surreptitious interrogations” brought about by “investigative techniques that [are] the functional equivalent to interrogation.” *Kuhlmann v. Wilson*, 477 U.S. 436, 457 (1986). Deliberately elicited statements, without an express waiver of the right to counsel, are inadmissible. See *Maine v. Moulton*, 474 U.S. 159 (1985).

Waiver of Right to Counsel

To demonstrate a valid waiver, the State must prove a voluntary, knowing and intelligent relinquishment of the Sixth Amendment right to counsel. See *Patterson v. Illinois*, 487 U.S. 285, 292, and n.4 (1988); *Brewer*, 430 U.S. at 404. When a suspect waives his right to counsel after receiving warnings equivalent to those prescribed by *Miranda v. Arizona* will generally suffice to establish a knowing and intelligent waiver of the Sixth Amendment right to counsel for purposes of post-indictment questioning. *Patterson*, 487 U.S. at 292 and n.4; see also *Montejo v. Louisiana*, 129 S.Ct. at 2092 (“In determining whether a Sixth Amendment waiver was knowing and voluntary, there is no reason categorically to distinguish an unrepresented defendant from a represented one.

It is equally true for each that, as we held in *Patterson*, the *Miranda* warnings adequately inform him 'of his right to have counsel present during the questioning,' and make him 'aware of the consequences of his decision by him to waive his Sixth Amendment rights.'").

Promises of Help or Improper Influence

"A statement may not be 'extracted by any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, [or] obtained by the exertion of improper influence.'" *State v. Miller*, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct. App. 2007) (quoting *State v. Rochester*, 301 S.C. 196, 200, 391 S.E. 2d 244 247 (1990)). It is not enough that a defendant previously waived his rights to silence. *Rochester*, 301 S.C. at 200, 391 S.E. 2d at 246. "[A] voluntary waiver continues" only "until the individual being questioned indicated that he wants to revoke the waiver and remain silent or circumstances exist which establish that his 'will has been overborne and his capacity for self-determination critically impaired.'" *Id.* (quoting *State v. Moultrie*, 273 S.C. 60, 62, 254 S.E.2d 294, 295 (1979)).

A confession may not be induced by any sort of threats or violence, or obtained by any direct or implied promises, however slight, or by the exertion of improper influence. *Id.* (citing *Hutto v. Ross*, 429 U.S. 28, 30 (1976)). When a statement induced by a promise of lenience is so connected with the inducement as to be a consequence of the promise, the statement is involuntary and inadmissible. *Id.* at 200, 391 S.E.2d at 246-247 (citing *State v. Peake*, 291 S.C. 138, 352 S.E.2d 487 (1987)).

Our Supreme Court held the State failed to meet its burden of showing a

defendant's statement was voluntary and not the product of the officer's promise of leniency where the officer "made a suggestion" to the defendant that the state "would not ask for the death penalty" in his case and that the officer "would call the solicitor and have him put it in writing to that effect." *Peake*, 291 S.C. at 139, 352 S.E.2d at 487. The officer testified that he essentially guaranteed the defendant that the state would not see the death penalty if he gave the statement. *Id.*

In *Rochester*, a polygraph examiner told the suspect that it would be in his best interest to tell the truth. *Rochester*, 301 S.C. at 199, 391 S.E.2d at 246. Almost immediately thereafter, the suspect gave a detailed confession. *Id.* According to the South Carolina Supreme Court, "[t]he polygraph examiner's statement was not on its face an inducement or hope of lighter punishment. Standing alone, the polygraph examiner's comment did not constitute the kind of hope of reward or benefit condemned by this Court in *Peake*." *Id.* at 200-201, 391 S.E.2d at 247.

IN-CAMERA HEARING

Prior to the admission of any statements allegedly made by the Defendant, Counsel for the Defendant respectfully moves for this Court to make the following determinations based upon the evidence offered during the hearing. See *Jackson v. Denno*, 378 U.S. 368 (1964). The Defendant respectfully requests that the Court put all findings for the following issues regarding the voluntariness of the Defendant's statements on the record to preserve all issues for appellate review. See *State v. Brown*, 402 S.C. 119, 740 S.E.2d 493 (2013).

Below are the quintessential questions in determining the admissibility of a

defendant's statement(s) at trial:

FIFTH AMENDMENT

- (1) Whether the Defendant was in custody? *See California v. Beheler*, 463 U.S. 1121 (1983); *Berkemer v. McCarty*, 468 U.S. 420 (1984); *State v. Evans*, 354 S.C. 579, 582 S.E.2d 407 (2003).
- (2) If the Defendant was in custody, did the police interrogate him? *See Rhode Island v. Innis*, 446 U.S. 291 (1980); *State v. Franklin*, 299 S.C. 133, 382 S.E.2d 911 (1989).
- (3) If the Defendant made custodial statements, did the police adequately advise him of his rights (*Miranda* warnings) prior to the interrogation? *See Miranda v. Arizona*, 384 U.S. 436 (1966).
- (4) If the Defendant was advised of the *Miranda* warnings, were the warnings adequately explained to him? *See Duckworth v. Eagan*, 492 U.S. 195 (1989); *State v. Easler*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996).
- (5) If the warnings were adequately given to the Defendant, did he invoke or waive his right to counsel or to silence (against self-incrimination)?

WAIVER

- (1) If the Defendant waived his rights, was the waiver "knowing and intelligent" under the totality of the circumstances? *See Moran v. Burbine*, 475 U.S. 412 (1986); *North Carolina v. Butler*, 441 U.S. 369 (1979).

RIGHT TO SILENCE

- (1) If the Defendant invoked his right to silence, did he clearly articulate a desire to end the interrogation? *See Davis v. United States*, 512 U.S. 452 (1994); *State v. Reed*, 332 S.C. 35, 503 S.E.2d 747 (1998).
- (2) If so, was the Defendant's invocation "scrupulously honored" by law enforcement? *See Michigan v. Mosley*, 423 U.S. 96 (1975); *State v. Benjamin*, 345 S.C. 470, 549 S.E.2d 258 (2001).

RIGHT TO COUNSEL

- (1) If the Defendant invoked his right to counsel, was the invocation of his right to counsel unambiguous? *See Davis v. United States*, 512 U.S. 452 (1994); *State v. Kennedy*, 333 S.C. 426, 510 S.E.2d 714 (1998).

- (2) If so, did law enforcement cease questioning immediately after the invocation? See *Edwards v. Arizona*, 451 U.S. 477 (1981); *Minnick v. Mississippi*, 498 U.S. 146 (1990).

REINITIATE INTERROGATION

- (1) Did the suspect reinitiate the interrogation? See *Oregon v. Bradshaw*, 462 U.S. 1039 (1983); *State v. Sims*, 304 S.C. 409, 405 S.E.2d 377 (1991).
- (2) If so, were new *Miranda* warnings given to the Defendant?
- (3) If so, were the new warnings adequate?
- (4) If so, was there a valid waiver?

SIXTH AMENDMENT

- (1) Did the Defendant have a Sixth Amendment right to counsel? See *Brewer v. Williams*, 430 U.S. 387, 398 (1977); *State v. Register*, 323 S.C. 471, 477, 476 S.E.2d 153, 157 (1996).
- (2) If so, did the police deliberately elicit incriminating statements? See *Massiah v. United States*, 377 U.S. 201, 206 (1964); *Brewer v. Williams*, 430 U.S. 387, 405 (1977)
- (3) If so, did the Defendant make a voluntary, knowing, and intelligent waiver of his Sixth Amendment right to counsel?

DUE PROCESS

- (1) If the Defendant provided statements to police, was his statement(s) voluntary based on the totality of the circumstances? See *Arizona v. Fulminate*, 499 U.S. 279 (1991); *Colorado v. Connelly*, 479 U.S. 157 (1986); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *State v. Von Dohlen*, 322 S.C. 234, 243, 471 S.E.2d 689, 695 (1996); *State v. Salisbury*, 330 S.C. 250, 272, 498 S.E.2d 655, 666 (Ct. App. 1998).

IMPEACHMENT

- (1) Are there any of the Defendant's statements admissible for impeachment purposes? See *Harris v. New York*, 401 U.S. 222 (1971); *Mincey v. Arizona*, 437 U.S. 385 (1978); *State v. Victor*, 300 S.C. 220, 223, 387 S.E.2d 248, 249 (1989); *State v. Brown*, 296 S.C. 191, 193, 371 S.E.2d 523, 525 (1988).

DISCUSSION

If the Court finds that any of the alleged statement(s) were obtained involuntarily, the Defendant moves for suppression of the following evidence:

- (A) All statements made, whether written or oral, and such other actions of the Defendant, which involuntarily occurred before or after his arrest;
- (B) All documents, photographs, audio/video recordings, digital data, or other tangible things that were seized from the Defendant and his property because of the statement(s);
- (C) The testimony of any law enforcement officers, agents and all other persons working with such officers and agents, and all persons present at or near the location of the arrest of the Defendant and the subsequent interrogation regarding any statements and/or evidence acquired or objects seized as set forth in paragraphs (A), (B), and (C).

See U.S. Const. amends. VI, V, VI, XIV; S.C. Const. art. I, §§§ 3, 10 and 14.

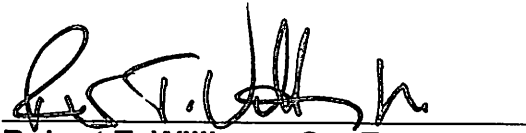
CONCLUSION

Based on the foregoing reasons, the Defendant respectfully moves to suppress all statements made by the Defendant to the government and any evidence seized in violation of the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 3, 10, and 14.

IT IS SO MOVED.

[Signature Page to Follow]

Respectfully Submitted,



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August 11, 2022

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Court of General Sessions

The Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

Israel Mendoza Cervantes,

APPELLANT.

APPELLATE CASE NO. 2022-001214

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

s/Anna W. Yonge

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October 27, 2023