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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Pickens County
The Honorable Robin B. Stillwell, Circuit Court Judge
Appellate Case No. 2019-001246

THE STATE,

Petitioner,

vs.

WANDA JANE CRUMPTON,

Respondent.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WANDA JANE CRUMPTON,

APPELLANT

APPELLATE CASE NO. 2019-001246

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA
IN GENERAL SESSIONS
2 COUNTY OF PICKENS

3 The State of South Carolina,
4
5 Plaintiff,

6 vs. Transcript of Record
2017-GS-39-03291 &
2017-GS-39-03292

7 Wanda Jane Crumpton,
8
9 Defendant.

10

11

July 22, 2019
Pickens, South Carolina

12

13

B E F O R E:

14

The Honorable ROBIN B. STILWELL

15

16

A P P E A R A N C E S

17

Megan Owen, Representing the State of South Carolina

18

Daniel King, Representing the Defendant

19

20

21

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, II

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23

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1 (PLF. EXH. 1, Plastic baggies, was marked
2 for identification.)

3 THE BAILIFF: All rise. Judge Stilwell
4 presiding.

5 THE COURT: Let's go ahead and call the
6 case of The State vs. Wanda Jane Crumpton There
7 are two indictments before the Court. One ending
8 in 3291, one ending in 3292. One for possession
9 to distribute marijuana, and one for possession of
10 -- or distribution of marijuana within close
11 proximity of a school or park.

12 Mr. King, I think you told me you had
13 motions that you would like to put on the record,
14 sir.

15 MR. KING: I do, Judge. Judge, as we
16 discussed first -- I apologize. My name is
17 Daniel King and I represent Wanda Crumpton.

18 As we discussed in chambers,
19 Miss Crumpton, like you to recuse yourself. As I
20 shared with you, I don't have the basis for that
21 motion. I believe she did file a grievance
22 against you about a trial from 2010. I did talk
23 to her defense attorney at that time and he said
24 those allegations are baseless. I can share with
25 you that I had nothing to do with making the
grievance. I wasn't told about it until after the

1 fact.

2 THE COURT: Yes, sir.

3 MR. KING: My understanding is,
4 Miss Crumpton does not feel that she can get a
5 fair trial with you presiding. That's what her
6 position is.

7 So, I believe, on her behalf, I would ask
8 you to recuse yourself.

9 THE COURT: Okay, fair enough. All
10 right. Generally speaking, under the rules of
11 professional conduct, we're not supposed to
12 discuss these types of grievances that are posed
13 in the ODC. But inasmuch as Miss Crumpton has put
14 it on the record by her attorney of record, and
15 I'll waive any confidentiality as well, I'll
16 comment on the same. I didn't know about any
17 complaint to ODC, and I received a letter from the
18 Supreme Court in Lancaster county. I didn't have
19 the opportunity to look at it until this morning
20 at about 0800 in my office. I had no idea of the
21 genesis of the complaint. No independent
22 recollection of Miss Crumpton or of the trial to
23 which she refers.

24 And, frankly, didn't have any idea that
25 it had anything to do with this morning's docket,

1 an only knew that when, Mr. King, you advised me
2 of the same.

3 So I will say, first and foremost, I
4 don't have any issues with Miss Crumpton. She's
5 certainly within her right to file whatever
6 complaint she thinks is appropriate. I hold no
7 ill will or animosity of any sort against
8 Miss Crumpton for filing a complaint. That's
9 really part of the job that I have. We get
10 complaints all of the time. Some of them have --
11 well, I'll say this: None of them have ever had
12 any basis.

13 So, I also find it very curious the
14 timing of the filing of the complaint. And the
15 timing of the complaint would suggest to, perhaps,
16 a reasonable person, you might even suggest a
17 cynical person, that it was pretextual in
18 anticipation of the trial coming before me this
19 morning, an may have been just another way of
20 affecting a continuance.

21 Therefore, respectfully, I'll refuse and
22 deny your motion for recusal without hesitation
23 with no reservation without equivocation that I
24 can be objective in this case, and that I have
25 absolutely no stake one way or the other in the

1 outcome of the same, and I can be fair.

2 MR. KING: Thank you, Judge. There's one
3 more issue, Judge.

4 THE COURT: Yes.

5 MR. KING: Miss Crumpton said that she
6 has -- it's her motion, and I'll speak from the
7 beginning, she would like to relieve me as her
8 court appointed counsel and ask for a continuance
9 to hire private counsel. I guess, I've spent a
10 lot of time on this case, but I don't begrudge
11 anybody a different attorney, so I will join in
12 this motion for what it's worth.

13 THE COURT: All right. Miss Owen, why do
14 you want to have a different attorney -- or,
15 excuse me. Miss Crumpton why do you want to have
16 a different attorney?

17 MR. KING: He asked why you want to have
18 a different attorney.

19 MS. CRUMPTON: Because I feel like this
20 attorney here, he also works with the system, and
21 I just don't feel like I can get a fair trial. I
22 was offered this past weekend monies to help me
23 hire an attorney, an beforehand, and I just let it
24 stand that I'd rather have a paid, hired attorney.

25 THE COURT: All right. Miss Crumpton, I

1 respectfully deny your motion. I will tell you
2 that Mr. King is an excellent attorney, and that
3 he's more than capable of handling your case and
4 advocating on your behalf.

5 Every attorney who exists on the face of
6 the Earth is a part of the system. Every person
7 who lives in the United States and who is a
8 citizen of the United States is part of the
9 system. And that is not a sufficient legal reason
10 to remove Mr. King as counsel in this case.

11 I would suggest to you that Mr. King is
12 in a better position now to try this case than any
13 other attorney that you may hire for a host of
14 reasons, at least of which is, he's had the
15 opportunity to speak with you and review the
16 evidence and talk to you about the case and
17 prepare a defense in this case.

18 I will tell you that I'll let you hire
19 another attorney, but you got to do it today because
20 we're starting the case today.

21 MS. CRUMPTON: That's fine.

22 THE COURT: Okay. Mr. King, anything
23 additional?

24 MR. KING: I'm sorry. I'm slightly
25 confused. Are you giving her the opportunity to

1 go hire an attorney right now?

2 THE COURT: She can go out in the hall
3 after we pick a jury and call an attorney and tell
4 him to come up here and try this case for her, if
5 she wants to.

6 MS. CRUMPTON: Sir, there's no way I can
7 get a fair trial in front of you. First of all,
8 this shouldn't even come to this far. I ain't
9 guilty of selling nothing. I ain't guilty of
10 doing nothing but smoking. I'm guilty of that
11 100 percent. But I'm not guilty of some stuff
12 that I've been tried for and sentenced for for
13 something I didn't do.

14 THE COURT: Fair enough.

15 MS. CRUMPTON: And I just don't think I
16 can get a fair trial.

17 THE COURT: I understand.

18 MS. CRUMPTON: Without a paid attorney.

19 THE COURT: Yes, ma'am.

20 MS. CRUMPTON: So I ask you, sir, would
21 you please either step down from this trial or let
22 me have a chance to get an attorney?

23 THE COURT: Yes, ma'am. I hear the angst
24 in your voice.

25 MS. CRUMPTON: Yes, I'm nervous. I'm

1 scared, because you yelled at the jury the last
2 time.

3 THE COURT: I know you feel passionate
4 about it. I know. I understand that I've
5 explained by position in this case, and
6 respectfully. I'm not going to recuse myself, and
7 I'm not going to withdraw of the rulings that I've
8 already made in this case. Okay.

9 MR. KING: Thank you, Judge.

10 THE COURT: Yes, sir.

11 Okay. So let's bring the jury in,
12 please.

13 (Jury pool enters the courtroom at 11:27).

14 THE COURT: All right. Good morning,
15 Ladies and Gentlemen. Hope you are doing well.
16 I'm Rob Stilwell. I know that you've been through
17 a qualification process with Judge Verdin
18 downstairs. I'll remind you before we get started
19 with the selection of a jury in this case that you
20 remain under the oath that you took downstairs to
21 tell the truth. Now, we don't have you taking an
22 oath because we think you're going to lie
23 necessarily. We just need to impress upon you the
24 importance of receiving candid responses to
25 questions that are posed in court.

1 So Ladies and Gentlemen, the process for
2 selecting a jury in the trial of the case is very
3 similar for the process of qualifying a jury.
4 That is, questions are posed, you respond to those
5 questions. And, if there is additional
6 explanation that's necessary, then I'll ask you to
7 explain yourself.

8 So, Ladies and Gentlemen, what I'm going
9 to do is, I'm going to ask you questions. And
10 then, if the response is in the affirmative,
11 please stand up and tell me either yes or no, and
12 qualify your response if necessary.

13 Now, before I go through all of these
14 questions, I want to tell you a couple of things.
15 First of all, when you respond to your questions,
16 please state your name and your juror number, your
17 name and your juror number. And the reason that's
18 important is not because I just want to make it
19 difficult, because I don't. The reason is, is
20 because everything that I say and everything you
21 say is being down by a court reporter, which means
22 that you may stand up and I may know you from
23 first grade and may have known you your entire
24 live, you may be my cousin, but the record doesn't
25 know you many. So it's important that you state

1 for the record your name and your juror number so
2 that the record is very clear who is responding to
3 what questions. And that holds true even if you
4 are answering a question for the second time and
5 you've already identified yourself for the record.

6 Also, speak clearly so that everyone can
7 hear you because the answers that you give will be
8 important for the attorneys to know so that they
9 can make intelligent and informed jury strikes
10 when we're selecting the jury.

11 Now, Ladies and Gentlemen, also note,
12 before we get started in this case, it's important
13 for you throughout the trial of this case to keep
14 in mind that in this case that is before the
15 Court, just like any case that comes before a
16 criminal court in the United States of America, a
17 defendant is presumed innocent until the State
18 proves each and every element of the offense
19 beyond a reasonable doubt. The State has the
20 burden of proving each and every element of the
21 offense to a jury of 12 persons. The defendant
22 retains a presumption of innocence until such time
23 as 12 people determine that the State has met its
24 burden of proof. So, as we start this case and
25 throughout this case and this entire trial, the

1 defendant is presumed innocent.

2 So, imagine, before we get started, that
3 the defendant is wearing a robe just like I am,
4 and that robe signifies and symbolizes innocence,
5 and the defendant retains that robe and that
6 presumption innocence until 12 people determine at
7 the very end of the case whether the State has met
8 its burden of proof.

9 It's important for me to tell you that on
10 the front end because the presumption of innocence
11 and the burden of proof is not just a legal theory
12 that lawyers banter around. It is, in fact, the
13 cornerstone of our criminal justice system. So
14 it's for you to keep that in mind at inception
15 when start jury selection and throughout the
16 entirety of the trial.

17 So, Ladies and Gentlemen, I will start by
18 reading for you the indictments that are before
19 the Court. Now, I want you to understand that
20 when I read these indictments to you, I am not
21 telling you the facts in this case. All I am
22 doing is reading to you the allegations that the
23 State has brought before the Court. In order for
24 the State to get to this point in its prosecution,
25 it must have an indictment true billed. And, in

1 order to do that, they have to produce
2 allegations. These are the allegations. So
3 understand that nothing has been proven yet and
4 the State retains the burden of proving each and
5 every element beyond a reasonable doubt. But it's
6 important on the front end that I tell you what
7 the case is about, because then you can't
8 intelligent answer the questions that I pose to
9 you. So I'm reading the indictments to you so
10 that you'll understand what this case is about and
11 you can answer questions honestly.

12 Okay. So, Ladies and Gentlemen, the
13 first indictment that is before the Court is, The
14 State of South Carolina vs. Wanda Jane Crumpton,
15 and that is case 2017-GS-39-3291. And that is the
16 case of possession of marijuana with the intent to
17 distribute. And, Ladies and Gentlemen, the State
18 would allege that Mr. Crumpton did in Pickens
19 County on or about March 21, 2017 possess with the
20 intent to distribute or aid, abet, or conspire to
21 possess with the intent to distribute a quantity
22 of marijuana, a controlled substance, such
23 possession not having been authorized by law.

24 Ladies and Gentlemen, the second
25 indictment that is before the Court is the

1 indictment ending in 3292, the State vs. Wanda
2 Jane Crumpton, an indictment for distribution of
3 marijuana within close proximity of a school or
4 park. And, Ladies and Gentlemen, in that
5 indictment, the State would allege that Miss
6 Crumpton did in Pickens County on or about March
7 21, 2017 distribute a quantity of marijuana, a
8 controlled substance, while being within one-half
9 mile proximity of Hagood Park, a public park in
10 Pickens County.

11 So, Ladies and Gentlemen, before we get
12 started, is there anyone among you who has any
13 prior knowledge, any prior disposition, or any
14 prior opinion regarding the parties or the
15 allegations in this case? Let the record reflect
16 no affirmative response.

17 Ladies and Gentlemen, the defendant in
18 this case is Wanda Jane Crumpton. Is there anyone
19 among you who has a personal, profession, or
20 family relationship with Miss Crumpton? Ladies
21 and Gentlemen, Mr. Daniel M.H. King represents the
22 defendant in this case. Is there anyone among you
23 who has any personal, professional, or family
24 relationship with Mr. King? Let the record
25 reflect no affirmative response.

1 Ladies and Gentlemen, Miss Megan Owen is
2 an assistant solicitor with the 13th District
3 Solicitor's Office. Miss Owen will be prosecuting
4 this case on behalf of the State. Is there anyone
5 among you, who has any personal, professional, or
6 family relationship with Miss Owen or with anyone
7 who is employed with the 13th Circuit Solicitor's
8 Office, or any prosecutor's office anywhere in the
9 nation? Let the record reflect no affirmative
10 response.

11 Ladies and Gentlemen, I'm going to read
12 to you a short list of the witnesses who may be
13 called to testify in this case, and I'm going to
14 ask the same exact question that I asked, whether
15 you know them or have any relationship with them.
16 So those potential witnesses may be Jason Lovell
17 of the Easley Police Department, Jon Hamby of the
18 Easley Police Department, Deonte Brinston of the
19 Easley Police Department, Kerek Harris, Brian
20 Cowan of the Easley Police Department, and
21 Miss Wanda Crumpton. Ladies and Gentlemen, is
22 there anyone among you who has any personal,
23 professional, or family relationship with any of
24 those potential witnesses?

25 Yes, ma'am.

1 MS. JENNINGS: I'm Jennifer Jennings.
2 I'm juror number 95. I worked for the City of
3 Easley.

4 THE COURT: Okay.

5 MS. JENNINGS: I know those officers.

6 THE COURT: Okay. Do you think given
7 that fact that you could be a fair and impartial
8 juror in the trial of this case?

9 MS. JENNINGS: Oh, absolutely.

10 THE COURT: Thank you for telling me. I
11 appreciate it, Miss Jennings. Anyone else?

12 All right. Ladies and Gentlemen, is there
13 anyone among you who has either yourself been or has a
14 close friend or an immediate family member who is
15 employed by law enforcement? Okay. Just whatever
16 order you all think is appropriate. Stand up, name,
17 juror number, and let me know.

18 MS. BLYTHE: Excuse me, Your Honor. I'm
19 not sure in the nation, like you said the other
20 one.

21 THE COURT: Anywhere.

22 MS. BLYTHE: Yeah, I have two. One
23 brother in-law, a member of the police force in
24 St. Petersburg, Florida and another one in
25 Miami.

1 THE COURT: Okay. Name and juror
2 number.

3 MS. BLYTHE: My name is Nicole Blythe.
4 Juror number 15.

5 THE COURT: Miss Blythe, do you think,
6 given that fact, you could be a fair and impartial
7 juror in the trial of this case?

8 MS. BLYTHE: I don't know. I've never
9 been on a jury before, so I don't know.

10 THE COURT: Well, do you have the ability
11 to be objective and to look at evidence and make a
12 reasonable and rationale decision without any bias
13 or prejudice?

14 MS. BLYTHE: I'm not sure about that
15 either, Your Honor.

16 THE COURT: Okay. All right. Well, I'll
17 let the attorneys take that into consideration
18 when they're making their strikes. Okay.

19 MS. BLYTHE: Thank you.

20 THE COURT: Yes, ma'am.

21 Okay. Yes, ma'am.

22 MS. FELTON: Amber Felton. Juror 55. I
23 work for Greenville County dispatch, so I have a
24 lot of friends.

25 THE COURT: I understand. So you think

1 given that fact that you could be a fair and
2 impartial juror in the trial of this case?

3 MS. FELTON: Yes.

4 THE COURT: Thank you.

5 Yes, ma'am.

6 MS. HAMILTON: Sandra Hamilton. I'm
7 juror 71. My son-in-law is a Pickens County
8 Deputy, and my sister-in-law and brothers work for
9 Greenville County.

10 THE COURT: Okay. Do you think, given
11 that fact, that you could be a fair and impartial
12 juror in this case?

13 MS. HAMILTON: Yes.

14 THE COURT: Thank you.

15 MR. REID: Wesley Reid, 151.

16 THE COURT: Yes, sir.

17 MR. REID: My best friend is a deputy
18 with Pickens County. I have several family
19 members that work for Pickens County.

20 THE COURT: Do you think, given that
21 fact, you could still be a fair and impartial
22 juror in the trial of this case?

23 MR. REID: Yes, sir.

24 THE COURT: Thank you, sir. I appreciate
25 that. Anyone else?

1 MS. CORN: My name is Courtney Corn. Juror
2 number 30. My father is a Sheriff at Reedy River in
3 Sebastian, Florida.

4 THE COURT: Do you think, given that
5 fact, that you could still be a fair and impartial
6 juror in the trial of this case?

7 MS. CORN: Yes, sir?

8 THE COURT: All right. Anyone else?

9 THE COURT: All right.

10 Ladies and Gentlemen, is there anyone
11 among you who is a member of or a contributor to
12 an organization which either advocates for
13 victims' rights or for criminal prosecution? Now,
14 when I say that, I mean organizations like MADD,
15 Mothers Against Drunk Driving, SADD, Students
16 Against Drunk Driving, or any other organization,
17 again, that in any way, shape, or manner advocates
18 for victim's rights or for criminal prosecution?
19 Let the record reflect no affirmative response.

20 Is there anyone among you who has ever
21 served on a criminal jury before? Yes, sir. Name
22 and juror number?

23 MR. BUSH: Richard Bush, 21. I witnessed
24 a criminal trial, criminal vehicular homicide.

25 THE COURT: Okay.

1 MR. BUSH: Three, four years ago in this
2 court.

3 THE COURT: Okay. Do you think you could
4 still be a fair and impartial juror in the trial
5 of this case?

6 MR. BUSH: Yes, sir.

7 THE COURT: Thank you for telling me.

8 MS. ROBINSON: Elizabeth Robinson, juror
9 156. About 18, 19 years ago in Anderson County
10 for drugs.

11 THE COURT: Drug charges. Do you think
12 you could still be a fair and impartial juror in
13 the trial of this case?

14 MS. ROBINSON: Yes, sir.

15 THE COURT: Thank you for telling me. I
16 appreciate it. Yes, sir.

17 MR. NIX: Teddy Nix, juror number 135. I
18 sat on a case in this courthouse about 7 years
19 ago.

20 THE COURT: What kind of case was it?

21 MR. NIX: It was for criminal theft.

22 THE COURT: All right. Do you think you
23 could still be a fair and impartial juror in this
24 case?

25 MR. NIX: Yes.

1 THE COURT: Thank you. I appreciate
2 it.

3 Okay. Ladies and Gentlemen, is there
4 anyone among you who has such a moral or religious
5 conviction against the use of marijuana that you
6 feel as though you could not be a fair and
7 impartial juror in the trial of this case? All
8 right. Let the record reflect no affirmative
9 response.

10 Is there anyone that feels that marijuana
11 is or should be legal in Pickens County, South
12 Carolina? Stand up. Name and juror number,
13 please.

14 MS. BLYTHE: My name is Nicole Bailey
15 Blythe and I'm juror number 15, and I believe it
16 should be for a lot of reasons.

17 THE COURT: Do you think you could still
18 be fair and impartial in this case?

19 MS. BLYTHE: I'm not sure about that
20 either, Your Honor.

21 THE COURT: Okay, thank you. I
22 appreciate it.

23 MS. BLYTHE: Thank you.

24 THE COURT: Okay. Ladies and Gentlemen,
25 is there anyone among you who, for whatever

1 reason, feels that you could not be a fair and
2 impartial juror in the trial of the case that is
3 before the Court this morning?

4 Okay. Any additional questions or voir dire
5 from the State or from the defense?

6 MS. OWEN: None from the State, Your
7 Honor.

8 MR. KING: Your Honor, the State does
9 have some -- I believe we passed up our proposed
10 orders.

11 THE COURT: Yes.

12 MR. KING: I'd like to make a Court's
13 exhibit a copy, if that's acceptable.

14 THE COURT: Exhibit Number 1, sir.

15 (COURT EXH. 1, Proposed orders, was entered
16 into evidence.)

17 THE COURT: Yes, sir.

18 MR. KING: Your Honor, would you like to
19 hear argument on the ones you have not asked.

20 THE COURT: After we pick the jury, if
21 you want to make the record clear, you're welcome
22 to do that.

23 MR. KING: Thank you, Judge.

24 THE COURT: Thank you very much.

25 Okay. Ladies and Gentlemen, we're going

1 to proceed now to selection of the jury. So we're
2 going to pick 14 jurors. We're going to get 12
3 sitting jurors and we're getting two alternates.
4 Now, the reason we pick alternates is because, at
5 any point in time during this trial, there may be
6 people who, for some reason, have be excused from
7 the jury. Sometimes it's because of personal or
8 family reasons. Sometimes it's because the
9 witness takes the stand and you didn't realize
10 that, in fact, it was somebody that you knew, and
11 it would affect your ability to be objective. So
12 it's important that we have alternates, because I
13 can't proceed with the number less than 12. It's
14 important that I have 12.

15 So the two who are selected as
16 alternates, your position on the jury is just as
17 important as the main jurors but you may actually
18 be one of the ultimate 12 people who make a
19 decision in the case.

20 So each side gets five strikes, and/or
21 peremptory challenges. And what will happen is,
22 your name will be read by the clerk of court in
23 the order as it's listed on this randomly
24 generated document. So downstairs, after you went
25 through qualifications, the clerk got on the

1 computer and randomly generated 35 names. So
2 you're not in any particular order as well. Just
3 whatever order the computer decided to spit you
4 out.

5 When your name is called, what I'd ask
6 you to do is stand up right where you are. You
7 don't have to do or say anything, just stand up.
8 And then the attorneys will make their strikes.
9 The State will go first. Generally, the State
10 goes first because, as I told you, the State has
11 the burden of proof. The State will go first and
12 may ask that you be sworn and seated, or that you
13 be excused and stricken. And then the defense
14 will have the opportunity to exercise a strike as
15 well.

16 So if you hear from both sides -- from
17 both sides if you hear, please seat the juror, or,
18 please swear the juror, then you can come forward
19 and have a seat in the jury box. You will have
20 been selected for the jury. If you hear from
21 either side, please excuse the juror from the
22 trial of this case or please strike the juror,
23 then you will have been stricken from this trial
24 and you can just remain seated where you were.
25 And we will go through that process until we 14

1 jurors.

2 Now, please don't take offense if you are
3 either stricken by an attorney, or if you are
4 asked to serve by an attorney. Each side is given
5 very wide latitude in exercising challenges or
6 strikes. They make decisions and exercise strikes
7 in keeping with their theory of the case with
8 their theory of advocacy. Many times when
9 attorneys make strikes, as long as I've been
10 doing, I don't know why they may exercise a
11 strike. I promise you, in some instances, you're
12 not going to know why they may have exercised a
13 strike against you or asked you to sit on a jury.
14 So what I will ask you is, don't try to figure it
15 out and don't be offended one way or the other.

16 So having said that, Ladies and Gentlemen, we
17 will proceed with jury selection.

18 Mr. Weldon.

19 THE CLERK: Juror number 55, Amber
20 Felton. What says the State?

21 MS. OWEN: Please present this juror.

22 THE CLERK: And the defense?

23 MR. KING: Please excuse Miss Felton.

24 THE CLERK: If you will return to your
25 seat, please, ma'am.

1 Juror Number 113, Robert Lollis. What says
2 the State?

3 MS. OWEN: Please present this juror.

4 THE CLERK: And the defense?

5 MR. KING: Please swear Mr. Lollis.

6 THE CLERK: If you will come forward and
7 have a seat in the jury box, please, sir.

8 Jury Number 82, Kelsea Hicks. What says
9 the State?

10 MS. OWEN: Please present this juror.

11 THE CLERK: And the defense?

12 MR. KING: I apologize, Mr. Clerk. I
13 missed the number.

14 THE CLERK: 82.

15 MR. KING: 82, thank you. Please swear
16 Miss Hicks.

17 THE CLERK: Please come forward and have
18 a seat in the jury box.

19 Juror number 156, Elizabeth Robinson. What
20 says the State?

21 MS. OWEN: Please present this juror.

22 THE CLERK: And the defense?

23 MR. KING: Please swear Miss Robinson.

24 THE CLERK: Please come forward and have
25 a seat in the jury box.

1 Juror number 116, Bethanne Mabbitt. What
2 says the State?

3 MS. OWEN: Please present this juror.

4 THE CLERK: And the defense.

5 MR. KING: Please swear Miss Mabbitt.

6 THE CLERK: Please come forward and have
7 a seat in the jury box.

8 Juror 137, Jesse Overton. What says the
9 State?

10 MS. OWEN: Please present this juror.

11 MR. KING: Please excuse Mr. Overton.

12 THE COURT: Return to your seat, please,
13 sir.

14 Juror number 151, Wesley Reid. What says the
15 State?

16 MS. OWEN: Please present this juror.

17 THE CLERK: And the defense.

18 MR. KING: Please excuse Mr. Reid.

19 THE CLERK: Please return to your seat,
20 sir.

21 Jury number 21, Richard Bush. What says the
22 State?

23 MS. OWEN: Please present this juror.

24 THE CLERK: And the defense?

25 MR. KING: Please swear Mr. Bush.

1 THE COURT: Please come forward and have
2 a seat in the jury box.

3 Jury number 34, Tammy Dillashaw. What
4 says the State?

5 MS. OWEN: Please present this juror.

6 THE CLERK: And the defense?

7 MR. KING: Please swear Miss Dillashaw.

8 THE CLERK: Please come forward and have
9 a seat in the jury box.

10 Jury number 143, Timothy Pickel. What says
11 the State?

12 MS. OWEN: Please present this juror.

13 THE CLERK: And the defense?

14 MR. KING: Please swear Mr. Pickel.

15 THE CLERK: Please come forward and have
16 a seat in the jury box.

17 The next juror does not have a number,
18 Tatiana Jenkins. What says the State?

19 MS. OWEN: Please present this juror.

20 THE CLERK: And the defense?

21 MR. KING: Please swear Miss Jenkins.

22 THE CLERK: Please come forward and have
23 a seat in the jury box.

24 Jury number 73, Cristy Hancock. What
25 says the State?

1 MS. OWEN: Please present this juror.

2 THE CLERK: And the defense?

3 MR. KING: Please swear Miss Hancock.

4 THE CLERK: Please come forward and have
5 a seat in the jury box.

6 Juror number 71, Sandra Hamilton. What says
7 the State?

8 MS. OWEN: Please present this juror.

9 THE CLERK: And the defense?

10 MR. KING: Please excuse Miss Hamilton.

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

13 Jury number 178, Samuel Turner. What says
14 the State?

15 MS. OWEN: Please excuse this juror.

16 THE CLERK: If you will return to your
17 seat, please, sir.

18 Jury number 148, Ronald Queen. What says
19 the State?

20 MS. OWEN: Please present this juror.

21 THE CLERK: And the defense?

22 MR. KING: Please swear Mr. Queen.

23 THE CLERK: Please come forward and have
24 a seat in the jury box.

25 Jury number 135, Teddy Nix. What says the

1 State?

2 MS. OWEN: Please present this juror.

3 THE CLERK: And the defense?

4 MR. KING: Please swear in Mr. Nix.

5 THE CLERK: Please come forward and have
6 a seat in the jury box.

7 This juror does not have a number as
8 well. Laura Wells. What says the State?

9 MS. OWEN: Please present this juror.

10 THE CLERK: And the defense?

11 MR. KING: Please excuse Miss Wells.

12 THE CLERK: If you will return to your
13 seat, please.

14 Jury number 124, TJ MCGOWENS. What says
15 the State?

16 MS. OWEN: Please excuse this juror.

17 THE CLERK: If you will return to your
18 seat.

19 Juror number 161, Ginger Seavey. What says
20 the State?

21 MS. OWEN: Please present this juror.

22 THE CLERK: And the defense.

23 MR. KING: Please swear Miss Seavey.

24 THE CLERK: Please come forward and have
25 a seat in the jury box.

1 THE COURT: All right. Counsel, I
2 believe that's 12 jurors. You have two juror
3 strikes. So it will be one and one for each
4 alternate.

5 MR. KING: Thank you, Judge.

6 THE CLERK: For the first one, juror
7 number 41, Dakota Dryman. What says the State?

8 MS. OWEN: Please present this juror.

9 THE CLERK: And the defense?

10 MR. KING: Please swear Mr. Dryman.

11 THE CLERK: Please come forward and have
12 a seat in the jury box.

13 For the second alternate, juror number
14 95, Jennifer Jennings. What says the State?

15 MS. OWEN: Please present this juror.

16 THE CLERK: The defense?

17 MR. KING: Please excuse Miss Jennings.

18 THE CLERK: Please return to your seat.

19 Juror number 15, Nicole Blythe. What
20 says the State?

21 MS. OWEN: Please excuse this juror.

22 THE CLERK: Please return to your seat,
23 ma'am.

24 Juror number 154, Figueroa Benjamin
25 Rivera. What says the State?

1 MS. OWEN: Please present this juror.

2 THE CLERK: And the defense?

3 MR. KING: Please swear the juror.

4 THE CLERK: Please come forward and have
5 a seat in the jury box.

6 Your Honor.

7 THE COURT: Yes, sir. Thank you. Any
8 matters of law, exceptions, or objections to take
9 up with respect to the qualification or selection
10 of this jury.

11 MS. OWEN: None from the state, Your
12 Honor.

13 MR. KING: None on behalf of
14 Miss Crumpton, Your Honor?

15 THE COURT: For those of you that weren't
16 selected for this jury, chipper up because we're
17 going to have more trials this week. You have
18 another chance. So your opportunities aren't
19 over. However, for today, I believe that
20 Judge Verdin already has a panel, right? So you
21 don't need to worry about the rest of the say, so
22 I'll excuse you. What I ask you to do is call
23 back tonight at 1800, or six o'clock, after 6:00
24 and get instructions from the call-in line. It
25 may be that you have to come back tomorrow. It

1 may not be. Right now, I anticipate that this
2 trial is going to bleed into tomorrow, so I don't
3 anticipate picking another jury tomorrow.
4 However, I'm not in the business of making
5 guarantees and assurances. So, as I sit here
6 right now, I can't be certain of that. So call in
7 after 6:00 and you get instructions from the clerk
8 of court's hotline.

9 Thank you all very much. You have a good
10 night.

11 (Jury seated at 11:58 a.m.)

12 THE COURT: All right. Ladies and
13 Gentlemen, congratulations for having made the
14 cut. I look forward to working with you on this
15 case.

16 Now, you heard witness list. It's a
17 fairly short witness list. I anticipate we'll be
18 able to finish this trial tomorrow. And, I don't
19 know -- probably about by close of business.
20 Maybe midday, but I think it may take a little bit
21 longer than that.

22 We're going to start this afternoon at
23 2:30. And the reason we're going to start at 2:30
24 is because there's several matters of law, several
25 motions that I need to take up regarding the

1 introduction of evidence before we even start the
2 case, so really don't have any business starting
3 right now because we're not sure exactly what will
4 be admissible in court and what won't be
5 admissible. I need to have a hearing on the
6 record regarding that. So that's going to take
7 anywhere from an hour to an hour and a half to get
8 to the point where we're ready to proceed with the
9 introduction of the case.

10 So what I'm going to ask all of you to do
11 is please be back at 2:30. Okay, 2:30. When you
12 come back at 2:30 what we're going to do is, we
13 will start with my opening charge, that is telling
14 you what your role is in the trial of the case and
15 how we're going to proceed and give you that
16 information that you need to actually be good
17 jurors in the case. Then you will hear opening
18 statement and we'll proceed with the introduction
19 of evidence.

20 So you all go to lunch, go home, if want
21 to, whatever you think you need to do until 2:30.
22 Please don't discuss the case. I know you don't
23 know anything about the case except what I've read
24 to you on the indictment, but it's not appropriate
25 for you all to begin any discussions or any

1 deliberations about the case, about the parties
2 about the allegations until such time as I tell
3 you to begin deliberations about the case which
4 would be at the end of the trial. What that means
5 is, don't go out and try to do any self help, that
6 is, don't get on the computer or smart phone and
7 see if you can look something up about this case.
8 I don't think you could find anything out about
9 the case, but don't even try. Because understand,
10 the only thing that's appropriate for your
11 consideration is the evidence that's presented
12 under oath in the courtroom. If you consider
13 anything outside of that then it takes you to your
14 did deliberations.

15 Also know that you shouldn't discuss the
16 case with any of your significant others or
17 friends or acquaintances. You really don't know
18 enough right now to discuss the case. But I
19 wouldn't even be tempted to begin the discussion.

20 It's not -- it's important now, but it's
21 even more important when we break at the end of
22 the day, and I will, at that point, have another
23 discussion.

24 So, what I will tell you is, forget about
25 this until 2:30 and then coming back. Please be

1 on time. Not out of consideration for me or the
2 parties, but out of consideration for each other
3 because I'm not going to be able to start until I
4 have all 14 of you. If there's 13 sitting here
5 and I'm waiting on one, then you're just
6 disrespecting the other 13 jurors, not me. Okay?

7 So the bailiff is going to show you your
8 means of ingress and egress, how to get in and out
9 of courthouse. You all have an excellent lunch
10 and I'll see you back at 2:30.

11 (Jury excused at 12:02 p.m.)

12 THE COURT: All right. Mr. King, I will
13 be happy to hear from you with those issues in
14 voir dire.

15 MR. KING: Thank you, Judge.

16 THE COURT: Yes, sir.

17 MR. KING: In the defenses proposed voir
18 dire, we started with the Court's instructions to
19 the jury.

20 THE COURT: Yes, sir.

21 MR. KING: You did give an initial
22 instruction, however we feel that your initial
23 instruction was not sufficient given that it's the
24 Court's duty to ensure an unbiased and impartial
25 jury.

1 In particular, it's our concern that you
2 did not impress upon the jury that we need to hear
3 from them and we need them to speak up and tell us
4 about their opinions and what their responses are
5 and how they feel about different things.

6 In particular, when you did give voir
7 dire, it seemed like, maybe, a quarter of them
8 actually stood up that we've heard from, and so
9 that was my purpose of giving the initial
10 instruction.

11 So very respectfully, we feel that your
12 initial instruction of not sufficient.

13 THE COURT: Okay.

14 MR. KING: Now, as to the actual
15 questions, I believe number 4 and 5, and, again,
16 this is on the Court's Exhibit 1, did not ask --
17 those were about anybody member -- anybody a
18 member of an organization that is opposed to the
19 legalization of marijuana. Later on, sort of
20 asked -- it was sort of compound question about
21 whether or not people felt like it should be legal
22 or illegal. I think voir dire needs to be precise
23 to get out whether or not people are fair,
24 impartial, and unbiased. So I really think that
25 needed to be broken up into two questions, and

1 that's part of why I would ask the Court to ask
2 number 4.

3 And number 5 is, is anyone a member of a
4 church, or organization, or program that
5 administers to drug addicts? The reason we
6 requested that one is the same reason I would ask,
7 is anyone a public defender, it becomes very
8 cynical when you're working with drugs addicts all
9 the time, so I wanted to get an idea who's out
10 there in the community participating with people,
11 like Miss Crumpton, so that's we requested number
12 5.

13 You did not ask number 9, "Have you ever
14 appeared as a witness for the prosecution or
15 defense at any trial?" I think that is important.
16 It gives people an understanding -- gives us an
17 understanding of what the potential juror's prior
18 experience to our court system and where they're
19 coming in at.

20 Then number 10, 11, 12, I do not believe
21 you asked number 10. "Have you had any personal
22 experience with someone who has a problem with
23 marijuana?" Again that goes directly to someone's
24 personal bias of their prior experiences in life.

25 Number 11, "Have you had any personal

1 experience with someone who had a problems with
2 substances other than marijuana, like alcohol,
3 prescriptions, or recreational drugs?" That just
4 expands further the idea in number 10.

5 Then number 12 is very concerning to me
6 that you didn't ask have. "Do you have a relative
7 or close friend who is a victim of a criminal as a
8 result of marijuana or recreational drugs?" That
9 would absolutely go straight to someone's biases,
10 and we strongly feel a question like that needed
11 to be asked.

12 I believe you did ask 13, or something
13 close enough to be that way.

14 Number 14, "Do you believe marijuana is a
15 gateway drug?" Again, I think that goes into the
16 juror's individual opinions to find out deep down
17 and see what they have to say about how they feel
18 about marijuana. Because if you got people on
19 here that it's just the most awful thing ever,
20 then they can't possibly be fair. But without
21 asking the question, then they're going to just
22 sit there and not raise their hand because they
23 may feel it's not politically correct to say one
24 way or the other.

25 Again, number 15, similar vein as number

1 14.

2 Number 16, because this is a possession
3 with intent to distribute case, I feel 16 is very
4 important. "Are you aware or are you suspicious
5 about the sale the same of marijuana and
6 recreational drugs," in your neighborhood,
7 essentially. That one needed to be asked to
8 clarify where people are. And if they're nosy
9 Nancy looking down the road all the time about all
10 the people coming in an out of this house, they're
11 going to have some strong suspicions and they're
12 going to want to try to pin that on Miss Crumpton,
13 so we needed to hear from jurors about that.

14 And number 17, "Do you have a strong
15 belief against the use of marijuana and
16 recreational drugs that you cannot completely
17 flush that belief out of your mind during this
18 trial and your deliberations?" That's very
19 similar to a common DUI question about how alcohol
20 came -- do you have such strong beliefs about the
21 substance that you can't flush that out of your
22 mind? So, I really would have liked to have heard
23 from jurors about that.

24 Now, number 18. "Would you be more
25 inclined to give weight to a police officer's

1 testimony than to a private citizen's testimony
2 simply because he is a police officer?" That goes
3 to, again, what people think about the upcoming
4 evidence. And you probably think it's silly to
5 ask this question, but I've had magistrates ask it
6 and municipal courts ask it, and, for some reason,
7 people are much more vocal in those courts. And a
8 whole slew of people tend to stand up and have an
9 opinion about law enforcement one way or the
10 other. And that brings out their biases, and then
11 we can accurately see whether or not they could
12 sit on a jury.

13 Similar to that one is number 19, would
14 you be more inclined to give more weight to a
15 police officer's testimony than a defendant's
16 testimony because he is a police officer. Again,
17 it goes to a police officer's credibility and how
18 these jurors think about police officers.

19 Then numbers 20 and 21, go directly to
20 follow up on your initial instruction of
21 presumption of innocence. And it's all well and
22 good to say the defendant is innocent until proven
23 guilty, but it's really good to ask them to do
24 they understand that. And that was the purpose of
25 number 20 and 21. We don't have that. So I'm

1 concerned, not -- with our jury as it is without
2 hearing whether or not they understand that basic
3 right.

4 And then the last one, number 22, "Do you
5 feel that a person who is guilty of a crime is
6 untrustworthy and should not be believed?" With that,
7 I don't know if Miss Crumpton is going to testify or
8 not. She does have some record. I wanted an idea
9 from the jury about how they feel about that ahead of
10 time so we can make sure, if she does decide to
11 testify, and if any of her prior record comes out, we
12 can address that on the front end because you can't
13 close the barn door after it's left open, but it's
14 real hard to catch all those pigs.

15 So, respectfully, we feel that we don't
16 have -- we're not sure of a fair, impartial, and
17 unbiased jury at the moment, and we ask you to
18 give these extra questions.

19 THE COURT: All right. Thank you. With
20 respect to the Court's instructions to the jury,
21 reasonable people can have reasonable
22 disagreements, but I believe that, substantively,
23 that's exactly what I told them. Perhaps not
24 verbatim, word for word, but, substantively, that
25 is exactly what I told them particularly in

1 combination with the instructions prior to jury
2 selection coupled with instructions that
3 Judge Verdin had for jury qualification.

4 With respect to the questions that were
5 posed, those questions that are posed in voir dire
6 are within the discretion of the trial court. And
7 I've read the questions that were posed by both
8 the State and the defense in this case. And many
9 of them I did ask in substance. I did not think,
10 perhaps, there may be a semantical distinction
11 between what I asked and what you asked me to ask.
12 But, ultimately, there were questions pose that
13 addressed most of the issues that you brought up,
14 if not all.

15 And I'm going to tell you, I've read a
16 lot of these and I am not adverse to asking
17 different questions in voir dire. May concern
18 with a lot of these questions is that they were
19 putting much to fine a point on the use of
20 marijuana and the presence of marijuana and/or
21 drugs in, not only the community, but in their
22 respective neighborhoods. Which -- which gave me
23 cause for concern because it began the
24 conversation, potentially, as to whether it was
25 right or wrong, whether it was moral or immoral,

1 whether it was a blessing or a curse on society,
2 and I didn't want that to be the question to be
3 considered by the jury in its deliberations. I
4 wanted to make very sure that we were clear to
5 this jury that their question was not one of
6 morality and not one of right and wrong with the
7 respect to the legalization, use, consumption,
8 sale of marijuana, but rather whether the State
9 meets its burden of proving each and every element
10 of the offense beyond a reasonable doubt.

11 And all the questions that I asked which bore
12 upon marijuana were all calculated to determine
13 whether, in fact, they had such a bias that it would
14 subvert their ability to fair and objective in the
15 trial of the case.

16 So I don't want you to think I just
17 looked at these questions and said, yeah, I'm not
18 asking it because I don't want to. I applied
19 scrutiny to it. And some of those questions,
20 honestly, I did not think enured to the benefit of
21 the defendant who is on trial for distribution of
22 marijuana. I just didn't think it was fair to her
23 ultimately because it was planting seeds that I
24 wasn't sure would enure to the benefit of the
25 defendant. That's why I didn't ask.

1 I'll also say that the voir dire question
2 in there that says, "Have any of you used or
3 consumed marijuana?" "Do you or anyone close to
4 your buy or sell marijuana?" I didn't ask that
5 question either. I didn't that was appropriate
6 for a juror to incriminate himself or herself in
7 the jury selection process.

8 So, in any event, anything else you need
9 to put on the record, Mr. King?

10 MR. KING: I do not think I have anything
11 else, Judge.

12 THE COURT: Good enough.

13 All right. I know we talked pretrial
14 about a few additional issues that we need to put
15 on the record, and I believe that those were,
16 first of all, the sufficiency of the search
17 warrant and also the ability of the State's
18 confidential informant and/or witness to testify
19 as to prior sales. Am I correct, Mr. King, is
20 that all of them?

21 MR. KING: And when it comes up, we're
22 going to be objecting to the expert.

23 THE COURT: Yes. We can put that on the
24 report as well.

25 So let's -- it's quarter after 12:00 now, so

1 let's convene at 1:30. Do both of you think that an
2 hour is a sufficient amount of time to address the
3 issues that we have before we begin the trial of the
4 case? Mr. King?

5 MR. KING: I would assume so, Your Honor.

6 THE COURT: Okay.

7 MS. OWEN: Yes, sir, Your Honor.

8 THE COURT: Okay. Good enough. Then
9 I'll see you all back here at 1:30.

10 MR. KING: Thank you, Judge.

11 (A break was taken from 12:15 p.m. to 1:30 p.m.)

12 THE BAILIFF: All rise. Court will come
13 to order.

14 THE COURT: So, Mr. King, I believe you
15 had some motions, so I'll defer to you, sir.

16 MR. KING: Thank you, Judge. We would
17 request an in camera hearing about Kerek Harris's
18 testimony. It's out position that anything he
19 could testify to would be inadmissible. It's my
20 understanding, it looks like that would all be
21 character evidence with that exception, and so we
22 would ask for a hearing when the State would
23 present their evidence.

24 THE COURT: Okay. So let me ask you
25 this: What evidence -- Miss Owen, what testimony

1 do you anticipate to elicit from Mr. Harris, who,
2 I presume, is the confidential informant and/or
3 the witness would will testify that he delivered
4 to the defendant a quantity of marijuana?

5 MS. OWEN: Correct, Your Honor.

6 THE COURT: Okay.

7 MS. OWEN: I just want to make a couple
8 things clear. I don't call him a confidential
9 informant. I don't believe he was a confidential
10 informant.

11 THE COURT: Okay.

12 MS. OWEN: The search warrant affidavit
13 says that the is -- like a corroborating witness
14 is how it's described.

15 THE COURT: Fair enough.

16 MS. OWEN: Mr. Harris was supplying Miss
17 Crumpton with marijuana. Law enforcement is here.
18 They are going to attest to the fact that they saw
19 him leave her home, that they were aware that a
20 younger black male was selling drugs to
21 Miss Crumpton.

22 They then get a search warrant for his
23 house. They execute the search warrant. Four
24 pounds of marijuana is located. They talk to him.
25 He tells them that, yes, he does deliver marijuana

1 to Miss Crumpton. He signs a consent to search
2 his phone, at which point they go through his
3 phone and take pictures of text messages between
4 himself and Miss Crumpton. That is what he is
5 going to testify to, to the fact that he was
6 selling her marijuana and that that is his phone
7 and that those are the text messages that are
8 taken off of his phone and he allowed law
9 enforcement to do that.

10 Your Honor, Mr. King has had the
11 opportunity to speak to Mr. Harris. He talked to
12 him on the phone, so I don't know that an in
13 camera hearing is necessary. He has all the
14 information that I have. We has supplied copies
15 of the text messages, the incident report, consent
16 to search, the search warrants, so I don't know
17 that an in camera hearing is necessary. He will
18 be able to cross him on what his prior history is,
19 what kind of sentence he received, if he's getting
20 any cooperation, which he is not, I want to make
21 that clear. His case has already been resolved,
22 and I don't know that an in camera hearing is
23 necessary, Your Honor.

24 THE COURT: Okay. So there are two
25 issues, if I'm not mistaken. One is to his

1 reliability of whether it was -- if it was
2 appropriate for the magistrate to rely upon his
3 testimony for the issuance of the search warrant,
4 right?

5 MR. KING: Yes, sir. I was taking that
6 as a separate --

7 THE COURT: I know you are. I know you
8 are, but we're talking about his testimony relates
9 to both things right now.

10 And the other issue is, what he can
11 testify to when he takes the stand. You take
12 exception to certain representations that he may
13 make about prior dealings with the defendant,
14 correct?

15 MR. KING: That's correct, Your Honor.

16 THE COURT: So, I look at those as two
17 separate issues and two separate things that we
18 need to take up.

19 With respect to the sufficiency of the
20 search warrant, it's a Franks hearing. And there
21 are certain showings that you have to make in
22 order to have an in camera hearing on a Franks
23 hearing. I think there has been an allegation
24 that he has made factual misrepresentations to the
25 magistrate judge, or the issuing authority. I

1 will accept that at face value, and I will -- out
2 of a wealth of caution, I will allow you to
3 question him regarding that issue and question, if
4 necessary, the officer as well regarding issues of
5 reliability and probable cause for the search.

6 Inasmuch as he will be on the stand, I
7 would like for you to essentially ask him, so that
8 I'll have the opportunity to see what type of
9 testimony you intend to elicit and what his
10 responses will be, just as quickly as you can and
11 as surgically as you can possible that which he
12 would say about his prior contact and conduct with
13 the defendant, okay?

14 MS. OWEN: Yes.

15 THE COURT: And I'm -- based on our
16 conversations before, I sat down and I read it
17 pretty good in my case law, and there may be some
18 things he can say and there may be some things he
19 can't say. Okay? And we may have to have some
20 limiting instructions as to what he can say,
21 specifically. Okay?

22 So what I'd ask you to do is, go ahead
23 and call to the stand Mr. Harris, and, perhaps,
24 your lead investigator and your officer to the
25 extent that he can weigh in on the request for the

1 bench warrant.

2 MS. OWEN: Yes, sir.

3 THE COURT: Not bench warrant. Search
4 warrant, because I haven't seen the search
5 warrant, so I don't -- are we talking about just
6 what exists on the affidavit or are we just
7 talking about corroborating oral as
8 supplementation.

9 MS. OWEN: I understand, Your Honor.
10 Thank you.

11 THE COURT: So basically what I'm telling
12 you, I'm not telling you how to do it, but I think
13 I need to at least hear Mr. Harris, and maybe the
14 officer as well.

15 MR. KING: And, Judge, can we sequester
16 any unnecessary witnesses for this?

17 THE COURT: We can. Do you have any
18 additional witnesses who intend to testify in this
19 case who aren't already aware of all this.

20 MS. OWEN: Just law enforcement, and
21 they're already aware.

22 THE COURT: Do you want law
23 enforcement -- I know the lead investigator can't
24 be excluded, but additional witnesses we'll
25 exclude.

1 MR. KING: That's all we ask, Judge.

2 THE COURT: Okay.

3 MS. OWEN: Mr. Harris, would you please
4 take the witness stand.

5 MR. KING: Sorry. One more question,
6 Judge. Are we going to handle the testimony as
7 two issues or are we going to do both the Franks
8 hearing and the additional testimony at the same
9 time?

10 THE COURT: We're going to do one, so you
11 can ask questions bearing upon both.

12 MR. KING: Thank you, Judge.

13 THE CLERK: Place your left hand on the
14 Bible and raise your right. Do you solemnly swear
15 or affirm the testimony you're about to give in
16 this case to be the truth, the whole truth, and
17 nothing but the truth, so help you God?

18 THE WITNESS: Yes, sir.

19 THE CLERK: If you would have a seat and
20 state your name for the record, please.

21 THE WITNESS: My name is Kerek Harris.

22 WHEREUPON:

23 KEREK HARRIS,
24 after having been sworn to tell the truth,
25 testified as follows:

TESTIMONY OF KEREK HARRIS
DIRECT EXAMINATION

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BY MS. OWEN:

Q How are you doing, Mr. Harris?

A I'm doing good.

Q Thanks for coming. Mr. Harris, where do you currently reside?

A [REDACTED] Hampton Avenue, Greenville, South Carolina.

Q How long have you been --

MR. KING: I'm sorry. Can you speak into the microphone, please.

THE WITNESS: I've been there for, like -- what? Three years, two and a half to three years.

BY MS. OWEN:

Q How long have you been in the upstate?

A My whole life.

Q Where were you born?

A Greenville.

Q And have you kind of gone back and forth between Greenville and Easley?

A Yeah. I ended up getting a job in Easley at Taco Bell. I transferred from the one in Greenville.

Q How long did you live in Easley?

1 A Like five years. Six maybe.

2 Q While you lived in Easley, did you have occasion
3 to come into contact with Miss Wanda Crumpton?

4 A Yeah.

5 Q You recently moved to Greenville three years ago,
6 is that what you said?

7 A Right, when all this took place.

8 Q Okay. So you were living in Easley about 2016,
9 2017?

10 A Right.

11 Q And you knew Miss Crumpton back then?

12 A Right.

13 Q Back then, were you buying marijuana?

14 A Yeah.

15 Q Were you selling marijuana?

16 A Yeah.

17 Q Okay. On March 20th of 2017, did you sell
18 marijuana to Wanda Crumpton?

19 A Yeah, that was the day I noticed him.

20 Q Okay. And then on that date, did officers from
21 Easley come to your house with a search warrant?

22 A It was the next day.

23 Q The next day, I apologize. March 21, 1017.

24 A Early in the morning.

25 Q Early in the morning.

1 A Yeah.

2 Q And when they got there, did they execute the
3 search warrant?

4 A Yeah. Like I said, I cooperated with them.
5 I told them where everything was. I didn't want
6 them tearing the house up. I didn't want to get
7 in no trouble.

8 Q So what did you give them when they were there?

9 A I told them where everything was at. All the
10 weed, the money. They got my phone. You know, I
11 know they were going to look at my phone because I
12 already knew how it operates. You know what I'm
13 saying? I got in trouble. I knew they were going
14 to look at the phone, so I went ahead and just let
15 them, go ahead do it. I gave them permission. I
16 knew it was going to happen.

17 They went through the phone. I turned it in.
18 It didn't have nothing to do with nothing. They seen
19 a picture of it. I just turned it in.

20 Aside from that, they got the messages, and
21 all that stuff. It is what it is. I did what I did.
22 You know what I'm saying? I did what I had to do to
23 get passed it. I trying to move forward. It's been
24 three years. I already done did my probation. I did
25 my voc rehab classes, all of that. I don't understand

1 why all this is still going on. I'm missing work
2 today for this.

3 Q I apologize, Mr. Harris.

4 A No apologies needed. I'm just saying.

5 Q I'm going to show you this. This is a consent to
6 search.

7 A Yes.

8 Q Is that your signature at the bottom?

9 A Yes.

10 Q What was that consent to search for?

11 A That's for the phone, right.

12 Q Your cell phone?

13 A Yeah.

14 Q On that date, did law enforcement ask you if you
15 were selling marijuana to Miss Wanda Crumpton?

16 A Right, yeah.

17 Q They did. Did you acknowledge that you were?

18 A Yeah. Because no point in lying when you got
19 a cell phone that's right there. You can't lie
20 about it.

21 (STATE EXH. 6, Pictures, was marked for
22 identification.)

23 BY MS. OWEN:

24 Q Let me show you what's marked as State's Exhibit
25 6. Can you identify those?

1 MR. KING: Judge, may I see them before
2 we go into what's -- is no sure.

3 MR. KING: This is all State's six?

4 MS. OWEN: Yes.

5 BY MS. OWEN:

6 Q Can you identify what's been marked as State's
7 Exhibit 6, Mr. Harris?

8 A Yeah. My phone and text messages.

9 Q Okay. Can you read that first page for me?

10 A First text messages is, "Yeah." That's from
11 me.

12 And then other one says, "In the morning when
13 you have time will you bring two ounces, please."

14 I say, "Yup."

15 "Thank you so much, Baby Boy. I love you. I
16 didn't want you to forget about me."

17 Q So she -- read -- "In the morning when you have
18 time will you bring me two ounces, please." Who is
19 that from?

20 A Wanda.

21 Q And what was your understanding of that message?

22 A She wanted two ounces of weed.

23 Q And was this a regular occurrence with you and
24 Wanda?

25 A I looked for her earlier. There was a couple

1 of them that say the same thing.

2 Q So you were selling Wanda about two ounces on a
3 frequent basis?

4 A Basically.

5 Q Do you know, back then, how much you would have
6 been selling that to her for?

7 A 180.

8 Q Eighty dollars?

9 A 180.

10 Q 180 for two ounces. Okay. At any point in time
11 during those messages, did she mention that other
12 people were going to buy from her?

13 A No, not really. Not that I remember. Like I
14 say, it's been so long, I ain't really read all of
15 them. I never sat there and just watched her do
16 what she do. Like I say, I do what I did and I'd
17 leave. But, like I say, I would assume that she
18 was selling it if she was buying it on a frequent
19 basis, like how she was. You know what I mean?
20 It just makes sense.

21 Q Okay. So you assumed if you were selling to her
22 on a frequent basis two ounces at a time that she was
23 selling it to other people?

24 A Right.

25 Q Mr. Harris, can you tell us what Loud is?

1 A It's a higher strength of marijuana.

2 Q Did you frequently sell Loud to Miss Crumpton as
3 well?

4 A Sometimes, if she wanted it. Like I said,
5 it's just like -- just stronger.

6 Q All right. Mr. Harris, I'm going to ask you to
7 look at this page that was provided. Can you read for
8 us what that says?

9 A "Hey, been a change in plans. He's not
10 getting to go to practice after all and wants to
11 hook up some when you can. One pound weed and an
12 ounce of lab."

13 Q What does that mean?

14 A A pound of weed and an ounce of lab.

15 Q Okay. And that's marijuana, correct?

16 A Correct.

17 Q Okay. That was on what date and time?

18 A It says Wednesday, 11:34, but I don't know
19 the exact date.

20 Q Okay. But those were different than the days you
21 read earlier, correct?

22 A Correct.

23 Q So this was on an ongoing basis when you were
24 selling to her and she would let you know when she
25 needed marijuana?

1 A Right.

2 Q Okay. Mr. Harris, what was your nickname?

3 A BA.

4 Q What does that stand for?

5 A It's Bad Ass, but it's, like, my mama gave me
6 that nickname when I was little.

7 Q So it's stands for BA?

8 A BA.

9 Q And would the people back then know you as BA?

10 A Everybody knows me as BA. It's just my
11 nickname. Like I say, my mama gave me that
12 nickname when I was two or three years old.

13 Q And, Mr. Harris, you said a few minutes ago that
14 you've already resolved your charges.

15 A Right.

16 Q What were you charged with back then?

17 A Possession with intent to distribute, I
18 think, and controlled substance, schedule IV
19 because I had pills.

20 Q Okay. Would this have been a second offense for
21 you?

22 A Uh-huh.

23 Q What was your sentence, do you know?

24 A I believe probation, five years.

25 Q Okay.

1 A And I had to complete a drug class.

2 Q You had to complete a drug class.

3 A Yes.

4 Q Do you know what your sentence could have been up
5 to?

6 A Yeah.

7 Q What?

8 A Ten years each, possession with intent.

9 Q That's your understanding of what your sentence
10 could have been?

11 A It is, right?

12 Q Yes.

13 A Right.

14 Q Mr. Harris, have you been promised anything today
15 to come here and cooperate?

16 A No. Like I said, it was just a process that
17 I already had been through, and I'm just trying to
18 move forward. I was served with a subpoena, so
19 I'm warrant because I don't a warrant for arrest.

20 In this whole process -- my mom passed during
21 this whole process, so, like I say, this is probably
22 one of things that stressed her out to the point to
23 where she died, I think, sometimes.

24 MS. OWEN: Thank you, Mr. Harris.

25 Your Honor, that's the extent of the

1 testimony, other than to potentially read more
2 messages but they're pretty consistent with that.

3 THE COURT: Okay. Let me ask one
4 question before we start, okay?

5 Mr. Harris, is that essentially the
6 testimony you gave the magistrate judge when he
7 issued the search warrant, or did you talk to the
8 magistrate judge, or just the officer?

9 THE WITNESS: Just the officer. I didn't
10 talk to the magistrate judge.

11 THE COURT: Okay. Fair enough. Go
12 ahead.

13 MR. KING: Thank you, Judge.

14 CROSS-EXAMINATION

15 BY MR. KING:

16 Q Mr. Harris, so you had four counts of possession
17 with intent to distribute or distribution of
18 marijuana, second offense, correct?

19 A Right.

20 Q All right. Each of those carries 10 years,
21 correct?

22 A Right.

23 Q So you're looking at a maximum of 40 years,
24 right?

25 A Right.

1 Q As I recall, you pled within a few months; is that
2 right?

3 A In a few months?

4 Q You got arrested on March 21, 2017, right?

5 A I went to court, like, July something.

6 Q Right. July 27, 2017, correct?

7 A Uh-huh.

8 Q You didn't have an attorney at the time, correct?

9 A No, sir. I did not.

10 Q Now, when you were -- when the police came and
11 searched your house on the 21st, I believe you said
12 you had five pounds of marijuana; is that correct?

13 A It was five and some ounces.

14 Q Five and some ounces. How much money did you have
15 with you?

16 A About five, \$6,000?

17 Q Five to \$6,000. And you had pictures of a firearm
18 on your phone, too, correct?

19 A Yes.

20 Q And that firearm was in your possession, too, just
21 not at that home?

22 A Right, at the time.

23 Q Okay. But you weren't allowed to have a firearm
24 at that point, were you?

25 A No.

1 Q Now, you never seen Miss Crumpton sell marijuana
2 to anyone, did you?

3 A I never sat in the house and watched her do
4 nothing.

5 Q You just sold her marijuana, right?

6 A Correct.

7 Q And you sold other people marijuana, correct?

8 A Yes, sir.

9 Q Now, Mr. Harris, when law enforcement was
10 searching your home, they put you under arrest, too,
11 correct?

12 A Correct. I was going to be under -- I was
13 going to be arrested regardless.

14 Q Right. And they -- I think Miss Owen had a form
15 where you signed your rights that you knew you had the
16 right to remain silent, correct?

17 A Right.

18 Q And the right to -- you did not have to let them
19 search your phone; is that correct?

20 A They were going to search the phone
21 regardless.

22 Q Right. But they told you that you had the right
23 to refuse, right?

24 A Right.

25 Q Okay. But you gave it to them and you were under

1 arrest at the time, correct?

2 A Right.

3 MR. KING: No further questions, Your
4 Honor.

5 THE COURT: Anything additional?

6 MS. OWEN: No, Your Honor.

7 THE COURT: All right. Step down,
8 Mr. Harris.

9 Okay. In the context of the previous
10 arguments on the admissibility of allegations of prior
11 sales, I'm not certain for what purpose the text
12 messages are offered other than to substantiate that
13 he had sold her marijuana in the past; am I right?

14 MS. OWEN: Your Honor, they are to
15 substantiate that she was getting two ounces from
16 him on a regular basis.

17 THE COURT: Okay.

18 MS. OWEN: Yes.

19 THE COURT: What's a regular basis,
20 ma'am?

21 MS. OWEN: His messages, they text about
22 every day. It goes back for about a week and
23 basically she was asking for two ounces.

24 THE COURT: Okay. So how many times, and
25 during what time period?

1 MS. OWEN: Let me count them out to make
2 sure I don't give you an incorrect statement.

3 All right. Your Honor, it appears the
4 text messages go back to March 11th. The search
5 warrant was done March 31st. I count 11
6 instances, so about every other day.

7 THE COURT: For 10 days.

8 MS. OWEN: Yes.

9 THE COURT: Okay. All right. Well,
10 let's move on to the search warrant issue.

11 MS. OWEN: Okay. Your Honor, the State
12 will call Officer Jon Hamby to the stand.

13 THE CLERK: Do you solemnly swear or
14 affirm the testimony you're about to give in this
15 case to be the truth, the whole truth, and nothing
16 but the truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Thank you, sir. If you
19 would, have a seat and state your name for the
20 record, please.

21 THE WITNESS: Jonathan Hamby.

22 WHEREUPON:

23 JONATHAN HAMBY,
24 after having been sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. OWEN:

2 Q Good afternoon, Officer Hamby. Is it detective?

3 A Detective will be fine.

4 Q Detective Hamby, where do you work?

5 A Easley Police Department.

6 Q How long have you been employed there?

7 A Almost 21 years.

8 Q What do you do there?

9 A I'm a narcotics investigator.

10 Q How long have you been in narcotics?

11 A Total of 8 years, 12 years total in
12 investigations.

13 Q Okay. Can you tell us a little bit about what
14 that entails?

15 A We receive drug complaints. We investigate
16 drug complaints, sometimes using cooperating
17 individuals, I guess, informants sometimes.
18 Traffic stops. Just multiple ways to investigate
19 it, but we focus on narcotics and alcohol. That
20 is our primary area of investigations.

21 Q Okay. Back in 2017, did you get some complaints
22 about Miss Crumpton?

23 A Yes.

24 Q Can you tell us about those?

25 A The complaints we received --

1 MR. KING: Judge, I'm going to object. I
2 don't see how the complaints are relevant to this
3 hearing. They're just not. They're not relevant.
4 They've already established that the tip came from
5 Mr. Harris while there are other tips relevant
6 here.

7 THE COURT: Okay. I'll overrule. You
8 can continue.

9 MS. OWEN: Thank you.

10 BY MS. OWEN:

11 Q Can you please tell us what complaints you
12 received in regards to Miss Crumpton?

13 A Yes. Some of the complaints involved a
14 mother complaining about her juvenile was able to
15 go to that residence and purchase marijuana.
16 Other complaints come from local businesses that
17 was in proximity of her trailer and complaining
18 about the traffic in and out of that residence,
19 very common. And they believed it would be
20 narcotics related just from what they witnessed.
21 So we started watching the location and seeing
22 what we could see.

23 Q Okay. What did you observe?

24 A We did observe some traffic come and go. And
25 on the 20th of March 2017 is when we observed

1 Mr. Kerek, which we had a separate investigation
2 going on involving him. We saw him leave her
3 trailer that afternoon on March 20th.

4 Q Okay. And based on seeing Mr. Harris leaving her
5 trailer and the complaint you had gotten, what did you
6 do from there?

7 A We had -- like I said, the parallel
8 investigation involving Mr. Harris, we already had
9 a search warrant for his apartment; therefore we
10 conducted it, executed it the next morning on the
11 21st. Arrested him and executed a search warrant
12 of the apartment.

13 Incident to that arrest, when talking to him,
14 he admitted that he knew Wanda at that location,
15 admitted that he sold her marijuana very frequently.
16 When I started talking about, he estimated two ounces
17 on a daily basis is what he told us. Sometimes more,
18 sometimes less. But he estimated two ounces daily.

19 So I asked him, and he said they usually
20 communicated via text messages. At that point, I
21 asked for consent to search his cell phone. He signed
22 a consent. We searched his cell phone and found text
23 messages verifying what he had told us.

24 Q Do you have a copy of the search warrant that you
25 did on Miss Crumpton's house?

1 A I do.

2 Q Based on talking to Mr. Harris and all the
3 information you gathered from him and your own
4 observations, what did you then do?

5 A We took the information that he provided, the
6 information that we observed him leaving her
7 house, and his message which we corroborated his
8 statements and sought a search warrant for her,
9 her trailer on that same date, and we executed his
10 search warrant.

11 Q Okay. What is Miss Crumpton's residence?

12 A It was [REDACTED] Darby Way in Easley, South
13 Carolina.

14 Q Okay. And let's talk about the reason for the
15 search warrant that you give -- would you read that
16 for us?

17 A The affiant part?

18 Q Uh-huh.

19 A It states, during an ongoing drug
20 investigation, marijuana has been observed inside
21 the listed address within the last 24 hours.
22 Officers from the Easley Police Department
23 interviewed a corroborating individual that stated
24 that he or she believe two ounces of marijuana
25 inside -- believed -- he or she observed two

1 ounces of marijuana inside the premises to be
2 searched. Officers conducted surveillance of the
3 location corroborates the cooperating individual's
4 information; therefore it is the affiant's belief
5 that marijuana and/or components associated with
6 the manufacturing and use or sale may be listed --
7 or present in the listed address based off of
8 training and experience of the officers.

9 Q Okay. And, Officer Hamby -- I'm sorry.

10 Detective Hamby, were you the one that got this search
11 warrant signed?

12 A I am.

13 Q What judge did you see?

14 A It was Judge Walsh at the time.

15 Q Judge Walsh. Did you supplement your written
16 search warrant affidavit and oral testimony to her to
17 get your search warrant?

18 A Yes.

19 Q Can you tell us what you would have told her that
20 day?

21 A Yes. We explained since we already had the
22 search warrant from the judge's office that we had
23 executed that morning, I explained to her that we
24 had served that search warrant during the course
25 of that investigation, it was leading to this

1 investigation, and that we had observed that
2 individual leaving this trailer the day before.
3 And when we did the consent search on his phone,
4 the text messages' time frame matched up to the
5 prior afternoon. On the 20th when we saw him
6 leaving, it matched up with text messages about
7 him delivering two ounces of marijuana to her, and
8 that we had -- what we had recovered from his
9 house, we, kind of, went over his case to how it
10 led to this case.

11 Q Okay. And was she also aware that there were
12 complaints in the neighborhood about Miss Crumpton?

13 A We told her we had been having an ongoing
14 investigation about her complaints, yes.

15 Q Okay. And then as far as your affidavit goes, did
16 you also supply where she lives and those kinds of
17 things?

18 A Yes. And also we identified him, Mr. Harris,
19 to the judge because he was a defendant already in
20 our jail and that she would be seeing shortly.

21 So, in the affidavit, I put "cooperating
22 individual" just so his name wouldn't specifically
23 be listed, but I did not use "informant" because
24 we weren't treating him like that. But the judge
25 was aware of who he was and what information he

1 provided?

2 A Yes.

3 Q And she was aware, based on, I assume, your return
4 of his previous search warrant what you had gotten?

5 A I'm not sure if we had already done the
6 return because we did the search warrant, started
7 the booking process when it led into this. So we
8 probably didn't return, but I was able to
9 verbalize what we located in his apartment. He
10 cooperated the entire time.

11 MS. OWEN: I have no further questions,
12 Your Honor.

13 THE COURT: Okay. Yes, sir.

14 MR. KING: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. KING:

17 Q Detective Hamby, when you approached Judge Walsh
18 with this requesting a search warrant, were you also
19 approaching Judge Walsh about arrest warrants for
20 Kerek Harris?

21 A No.

22 Q No? You had already gotten those warrants?

23 A We gotten some of them for the sales, but we
24 did not obtain the possession with intent to
25 distribute from the search warrant because we had

1 followed back into this.

2 Q Okay. So she knew that you already had three
3 possession with intent to distribute seconds, hadn't
4 she?

5 A Yes.

6 Q And she had just served those that morning?

7 A I assumed that she would know. I told her he
8 was under arrest for sale of marijuana.

9 Q Okay. And you told her that he had about five
10 pounds of marijuana when you found him?

11 A We probably said four because the official
12 weight hadn't come back. We thought it was about
13 four.

14 Q Okay. And he several thousand dollars too.

15 A Yes.

16 Q You told all that to Judge Walsh, correct?

17 A Yes.

18 Q And you also told Judge Walsh about his prior drug
19 offenses; is that correct?

20 A I don't know if I testified to the priors,
21 because, when booking, the judges get the rap
22 sheets and she would have access to that.

23 Q Let's talk about this testimony. Where did this
24 testimony happen? Where did your request for the
25 search warrant happen?

1 A It would have been in our bond hearing
2 room.

3 Q Okay, in the bond hearing room. Is she at a desk?
4 Is she on the bench? I've never been in this bond
5 hearing room.

6 A She's at a desk.

7 Q She's at a desk. Are you standing up in front of
8 her?

9 A Yes.

10 Q So you went to Judge Walsh the morning of March
11 21, 2017 with this warrant -- this search warrant
12 request, correct?

13 A Correct.

14 Q And you told her that your cooperating individual
15 gave you new information, correct?

16 A Cooperating individual gave new information?

17 Q Yes, gave you new information about this
18 Miss Crumpton.

19 A I don't know what you're talking about, new.
20 He cooperated. He was able to provide information
21 on Miss Crumpton.

22 Q All right.

23 A If that's what you're asking, yes, sir.

24 Q So your information -- before you searched
25 Mr. Harris's phone and his house was that

1 Miss Crumpton might have been dealing drugs,
2 correct?

3 A Yes.

4 Q That was your understanding.

5 A Yes.

6 Q Yes. So your new information was that
7 Kerek Harris said he delivered two ounces to her,
8 correct?

9 A The new information from the day before and
10 that day would have been we saw him leaving her
11 trailer so we knew that he was tied to her.

12 Q Right.

13 A And we searched his phone. It had text
14 messages that corroborated him saying he went over
15 there to deliver to the house two ounces of
16 marijuana the day before. And a couple hours
17 later, she was already wanting two ounces again.

18 Q Okay. Had you talked to Judge Walsh about
19 Miss Crumpton before this, though?

20 A Before, no.

21 Q All right. So you explain to her that Mr. Harris
22 was under arrest and was looking at a maximum of 30
23 years, correct?

24 A Did I explain all that to her, no.

25 Q Okay. But you explained that once you busted him,

1 right, and searched him and put him under arrest, he
2 started cooperating, correct?

3 A Yes, he cooperated the entire time.

4 Q Okay. Now, the affiant section of your warrant
5 says, "During an ongoing drug investigation, marijuana
6 has been observed inside the resident's address,"
7 correct?

8 A Yes.

9 Q But you don't say who that was, correct?

10 A No, I did not. No.

11 Q And your cooperating individual you just explained
12 to Judge Walsh as someone you just arrested with a
13 giant amount of weed; is that correct?

14 A Yes.

15 Q Let's talk about how much weed this really is,
16 okay? A one-pound bag of marijuana, is that about a
17 regular size of Cheerios? Is that about how big it
18 is?

19 A It can vary. Maybe a gallon-size bag. Less
20 than a gallon-size bag. Depends on how packed it
21 is. There's a lot variables to it.

22 Q But you found four to five of those gallon-size
23 bags?

24 A As I remember, it was four.

25 Q In Mr. Harris's residence?

1 A It was all in a book bag, yes.

2 Q Did you share that with Judge Walsh?

3 A What part?

4 Q That you found those four gallon-sized bags,
5 essentially?

6 A Yes.

7 Q Now, you did not mention the text messages in the
8 affiant section of the search warrant, correct?

9 A No.

10 Q Okay. You didn't mention that Mr. Harris is the
11 one that actually sold the drugs to Miss Crumpton.

12 A Not by name, no.

13 Q No, okay. What do you mean by "not by name?"

14 A He's referred to as a cooperating individual.

15 Q But you told her that he supposedly -- that you
16 think he sold drugs to Miss Crumpton?

17 A Yes. I told her that he admitted to
18 delivering marijuana to Miss Crumpton on the day
19 before. And when we see him there, he
20 corroborated his statement and his text messages
21 also corroborated his statement about delivering
22 marijuana to her.

23 MR. KING: No further questions.

24 THE COURT: Okay. Anything else from the
25 State?

1 MS. OWEN: Nothing from the State, Your
2 Honor.

3 THE COURT: Thank you. I appreciate it,
4 sir. You can step down.

5 Okay. Mr. King, do you have any argument
6 for the record with respect to the search warrant?

7 MR. KING: Towards the search warrant?

8 THE COURT: Yes, sir.

9 MR. KING: Judge, so the fourth amendment
10 of the U.S. Constitution guarantees the right,
11 based on reasonable searches and seizures,
12 essentially the magistrate needed to be made aware
13 of the credibility issues here to make sure this
14 was a reasonable search warrant. Okay? So this
15 situation is not they run from Mr. Harris's house
16 to Judge Walsh and they're telling us now the oral
17 testimony was that we explained to Judge Walsh, we
18 just busted this guy with four gallon-size bags of
19 marijuana, several grands in cash, and he had a
20 firearm floating around out there, and he's got
21 prior drug offenses. That's essentially what
22 they're telling us that they explained to
23 Judge Walsh. And that he was essentially --
24 Judge Walsh had just issued the warrants for this
25 guy, so she would have known he was looking at a

1 ton of time.

2 I find it just -- the way that affiant
3 section of the search warrant is written, it's
4 written extremely vaguely that we don't know
5 whether or not that's actually what Detective
6 Hamby said. Okay? And he swore to tell the
7 truth, but the affiant section says something very
8 different. And it just says, we observed stuff.
9 It's not talking about a sale. It doesn't talk
10 about these text messages or explain what's
11 actually going on. It just, we think that
12 Miss Crumpton has marijuana based on this drug
13 dealer we just busted.

14 So, respectfully, I don't think that
15 could have been presented to Judge Walsh, because
16 it's so -- credibility is so questionable at that
17 point, I can't imagine Judge Walsh actually
18 hearing that and then issuing a warrant.

19 Therefore, we respectfully think that the
20 warrant is vague. And particularly we ask you to
21 strike the language about the cooperating
22 individual from the section of the search
23 warrant.

24 THE COURT: Okay. Position of the
25 State.

1 MS. OWEN: Thank you, Your Honor. I
2 believe it's well understood in South Carolina
3 that law enforcement can get a written affidavit
4 and also give oral testimony to the magistrate
5 judge based on the fact that all this was
6 occurring within a few hours. I have no doubt
7 that Detective Hamby, as he has been in narcotics
8 for eight years and then law enforcement for at
9 least 12, would have told her all the
10 circumstances. He would not mislead her.

11 And I think we are in a Franks hearing,
12 which it would be my understanding, that the
13 defense would need to prove that he had falsely
14 told Judge Walsh incorrect information, and I
15 don't believe there's been any testimony to that
16 fact at all. He clearly puts in there the time
17 limit within law enforcement seeing a drug
18 transaction they believed to have taken place in
19 Miss Crumpton's house. He talks about a
20 corroborating individual stated he sold two ounces
21 of marijuana.

22 The search warrant itself doesn't have to
23 say he sold all this -- he all sold her marijuana
24 daily. He can supplement that orally and tell
25 Judge Walsh that is who we have, this is what he

1 says, these are the text messages that we've seen,
2 here is our search warrant based on what we have
3 so far, could you look at it and determine if we
4 need anything else. I think based on the
5 information that they had given her and the fact
6 that she had just signed a search warrant for
7 Mr. Harris and was well aware, as Detective Hamby
8 states, of he was and what he had been doing, she
9 signed the search warrant based on all the
10 information that she was provided with.

11 And, at this time, I would think the
12 search warrant -- Your Honor, I would argue that
13 the search warrant is valid.

14 THE COURT: All right. So under your
15 Franks review, there must be a determination
16 whether there was a knowing falsehood or
17 misrepresentation to the magistrate judge in
18 issuing the search warrant. I find that there was
19 not a knowing misrepresentation or falsehood given
20 to the magistrate judge. I find that law
21 enforcement gave the magistrate judge the
22 information they had.

23 But in reviewing whether or not probable
24 cause existed and whether, in fact, the magistrate
25 should have issued the search warrant, the

1 standard is determined whether the magistrate had
2 a substantial basis upon which to conclude that
3 probable cause existed. And when you're looking
4 at probable cause, you're looking at totality of
5 the circumstances. And when you look at the
6 totality of the circumstances, probable cause was
7 not simply the testimony of the corroborating
8 witness. There was also additional corroborating
9 evidence upon which the magistrate relied to find
10 that there was a probable cause, that the
11 surveillance of the residence and significant and
12 substantial traffic as well. The statement of the
13 cooperating witness corroborated that.

14 And when looking at the statement of the
15 corroborating witness, the magistrate looks to see
16 whether it had veracity and the basis of his
17 knowledge.

18 Now, obviously, veracity can be called
19 into question, and obviously, based on the --
20 based on the what he had to lose, based on the
21 prior record, there can be some question as to the
22 credibility of the witness. However, I think what
23 the defendant suggests in this instance is a super
24 standard greater than that which the law actually
25 requires of a magistrate judge in determining

1 probable cause. He simply has got to determine
2 that there's a fair probability that contraband or
3 evidence of a crime be found in a particular place
4 based on veracity and the basis of knowledge.
5 Clearly he had the basis of knowledge which was
6 corroborated by the fact that law enforcement saw
7 him leaving the residence and then thereafter
8 found evidence of marijuana in his residence.

9 So, based on all of that, I find that the
10 search warrant was appropriate, and that, in
11 issuing that, the magistrate did have a
12 substantial basis upon which to conclude that
13 probable cause existed.

14 Okay. So, Mr. King, you want to be heard
15 on admissibility of prior acts, sir?

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

17 All right. So what Mr. Harris to --
18 about regarding Miss Crumpton was that he had
19 received text messages from her regularly, that he
20 was selling to her regularly, which, based on the
21 text messages, sounds about like once a day. And
22 then he talks about he assumes she was selling
23 based on that, and this was an ongoing basis. And
24 then, specifically, he never actually saw her
25 selling. Okay?

1 So all of those -- all of that testimony
2 are of acts that are other than the one that is
3 charged here today. The one that's charged here
4 today is possession with intent to distribute on
5 the marijuana that was found in Miss Crumpton's
6 house. I don't think anybody has mentioned at
7 this point, Judge, they found less than a ounce in
8 her home on March 21, 2017. Okay? By saying
9 that, I'm not agreeing that is marijuana.

10 THE COURT: I got you. I understand. I
11 understand.

12 MR. KING: So we're talking about an act
13 prior to March 21, 2017. Okay? That prior bad
14 acts and habit and routine, which is all character
15 evidence, also known as propensity evidence.
16 Right?

17 So the question is really, is this
18 propensity evidence admissible? Okay? And the
19 short answer is no, because propensity evidence is
20 not permissible. It's not going to any element of
21 this offense at all. It's just simply being
22 presented to the jury. Look at her, she's
23 dealing -- or she's buying all of this weed;
24 therefore, she must be selling as well.
25 Propensity evidence is explicitly excluded because

1 it -- I lost my train of thought. It's excluded
2 because it confuses the jury and it prejudices
3 Miss Crumpton on facts that are not at issue here
4 today. Because the facts that are at issue are
5 what was she doing with the marijuana in her house
6 that they actually found. Okay?

7 So far there's been no connection.
8 Mr. Harris didn't testify that the stuff that he
9 found in her house was even the same stuff he
10 sold, and he probably can't tell that because
11 there's no identifying marks on this marijuana.

12 I'm not sure how far you want me to go.
13 I can continue to go past 404(b). I don't think
14 we can get past 404(b). If you would like me
15 to --

16 THE COURT: If you would, just flesh out
17 your argument. Let's hear it all.

18 MR. KING: Let say, for whatever reason
19 that we can get past 404(b), or it's let in
20 through 404(b), I guess is the right way to say
21 it.

22 THE COURT: Okay.

23 MR. KING: Okay. After -- well, actually
24 let's back up.

25 404(b) is several exceptions as to why

1 propensity evidence is allowed. The standard for
2 that, if the State can come up with one of those
3 reasons why they think it's allowed, is then clear and
4 convincing evidence. All right? I can give you a
5 cite on that standard, if you would like, Judge. That
6 cite is State v. Smith. It's 300 S.E. 216. It's from
7 1989, a Supreme Court case. It says that evidence of
8 prior bad acts, not the subject of a conviction, must
9 be clear and convincing.

10 So we got prior bad acts, a.k.a, the
11 sale, or the alleged sale of prior marijuana. So
12 the State has to prove that these actually
13 happened by clear and convincing evidence. Right?
14 Clear and convincing evidence, the definition of
15 that is from State v. Fletcher, 379 SC 17 from
16 2004. Clear and convincing evidence is that
17 degree of proof which will produce in the mind of
18 the trier of fact's firm belief that the
19 allegations sought to be established. Such proof
20 is intermediate, more than a mere preponderance,
21 but less than is required for proof beyond a
22 reasonable doubt. It does not mean clear or
23 unequivocal.

24 So the issue is, here the prior bad act
25 is this prior sale, in particular, if you want to

1 narrow it, the one sale of two ounces the prior
2 day. Okay? The State's as evidence for those
3 facts is Mr. Harris's testimony that he had two
4 ounces and that he delivered those two ounces to
5 Miss Crumpton, and then also the text messages
6 that he backed up that she requested two ounces.
7 All right?

8 So Mr. Harris is essentially a tipster
9 because he said that she would have marijuana.
10 Right? That's a tip. So his credibility, his
11 part of the issue, we're looking at clear and
12 convincing, he certainly has some serious
13 credibility issues, as I just argued, because at
14 this point he's actually looking at 40 years, a
15 maximum of 40 years because he's four PWID second.
16 Then he said that the delivered a greater amount
17 than was actually found. So that calls into
18 question whether or not his tip was actually
19 reliable.

20 Now, because of that, his -- we'll say,
21 based on your ruling, that his credibility gets
22 you past probable cause. Right? We still have to
23 get over preponderance of the evidence and clear
24 and convincing evidence.

25 Now, if you want to look at Miss

1 Crumpton's text messages those are the evidence of
2 a request for a delivery. It doesn't prove actual
3 delivery. So we can't use that to say -- for the
4 clear and convincing evidence. It fills in the
5 picture, but it doesn't get over the clear and
6 convincing evidence.

7 And, finally, you have to have reliable
8 evidence to say that the substance delivered to
9 Miss Crumpton, if it was delivered to
10 Miss Crumpton, was, in fact, marijuana. We
11 actually don't even have that marijuana at all.
12 We have a suspicion that what was in her house was
13 the same as he was delivered. And so here, they
14 would actually have to have these drugs to be able
15 to say, look, we know this is marijuana and this
16 is what was delivered. And that goes back to that
17 connection I was talking earlier. We don't have
18 any connection between the marijuana found at her
19 house with the marijuana that Mr. Harris is saying
20 he delivered to Miss Crumpton. Because, as a
21 result, the State can't get over the threshold of
22 clear and convincing for any 402(b) to even get
23 in. Okay?

24 Let's say that you get over clear and
25 convincing, still -- the evidence still has to be

1 relevant. All right? Relevant evidence must be
2 probative. Probative means that it's more or less
3 likely to prove a fact at issue -- or a fact at issue
4 is more or less probable. I apologize. I said that
5 wrong.

6 Here, again, his testimony isn't going to
7 an element of the offense, so, therefore, it's not
8 relevant. It's speculation about what else is
9 going on Miss Crumpton's life.

10 Once you get through and say it's
11 relevant, you're still stopped by the 403
12 threshold of the probative value versus unfair
13 prejudice. Now, the State can put on the stand
14 Detective Hamby that says he saw -- yeah,
15 Detective Hamby saw Mr. Harris there. He busted
16 Mr. Harris for marijuana. He can say that. He
17 fills in the picture and that's probative
18 evidence, perhaps, of what was going on with
19 Miss Crumpton's activities within her home. All
20 right? However, the unfair prejudice of talking
21 about prior buys is extreme in this case.

22 So she's on trial for possession with
23 intent to distribute marijuana, but she had less
24 than an ounce of marijuana. All right? His
25 testimony is about prior possessions with intent

1 to distribute marijuana.

2 So under 403, you got to address unfair
3 prejudice, confusion of the issues, and misleading
4 the jury. Right? The unfair prejudice is that
5 these acts are essentially what she's on trial
6 for. Right? Which means that it would -- his
7 testimony would then have the jury -- have a
8 tendency to convict her, or convict Miss Crumpton
9 based on past bad acts and not the evidence at
10 trial. It would confuse the issues because, with
11 the timeline, it would call into question what
12 they're actually convicting her for, whether it
13 would be the marijuana beforehand that he
14 delivered to her or the marijuana found in her
15 house, and that also just straight up misleads the
16 jury. It not only confuses them but misleads them
17 to think, well, she had two ounces on the 20th;
18 therefore, she's distributing it on the 21st.
19 And, respectfully, his testimony doesn't get over
20 403 threshold, even if it gets over everything
21 else because it is just so unduly prejudicial in
22 this case. And the State can present other
23 evidence to get over that, to make up for that
24 prejudice.

25 THE COURT: Okay. Miss Owen.

1 MS. OWEN: Thank you, Your Honor.

2 MS. OWEN: Your Honor, in regards to 403,
3 I will try to be as brief as possible. I don't
4 believe this is unfairly prejudicial which I think
5 is the hump that we have to get over.

6 Miss Crumpton has been charged with
7 possession with intent to distribute. We know
8 based on Detective Hamby's search warrant and the
9 arrest of Mr. Harris that he was dealing to
10 Miss Crumpton and it was regularly on a daily,
11 every-other-day basis, two ounces. Your Honor,
12 that is possession with intent to distribute. The
13 indictment clearly says, "On or about March 21,
14 2017." The text messages go back for about 10
15 days. I don't think at any point in time this is
16 unduly prejudicial to her. I think it goes to
17 prove the fact that she was buying and selling on
18 a regular basis, Your Honor. And we have the
19 person that she was buying it from to corroborate
20 that information.

21 And, Your Honor, I don't believe it would
22 confuse the issues or mislead the jury. I think
23 it would, in fact, give them a totality of the
24 circumstances and picture.

25 Moving on to the 404(b), I'll just offer

1 up State v. Dennis. So that the jury could
2 understand the totality of the circumstances and
3 what is going on in this picture is that, for
4 them, they need to know how we got to this point.
5 Mr. Harris is able to fill in the gaps.

6 Her argument, as you heard her state on
7 the record earlier, is that she just smokes weed.
8 She doesn't sell it. So that is what they're
9 going to argue. I appreciate that argument;
10 however, it is my duty to prove beyond a
11 reasonable doubt that she was possessing with
12 intent to distribute marijuana. And Mr. Harris is
13 a key part in that. His testimony would provide
14 the indication that he was selling to her. We can
15 limit it to this 10 days of text messages, if you
16 like, but that he was selling her a regular amount
17 on a daily to every-other-day basis, and that he
18 didn't know what she was doing with it but assumed
19 she was selling it since she was buying it on a
20 regular basis, Your Honor.

21 And I don't believe that would be
22 unfairly prejudicial to Miss Crumpton, because, at
23 this point, it's my burden to prove that, and I
24 don't think that his testimony at any point in
25 time is going to say, you know, she's a crazy drug

1 dealer, she's selling to all these kids. He is
2 just coming in here with the fact that I sold to
3 her, here are the text messages I provided to law
4 enforcement.

5 THE COURT: All right.

6 Okay. In looking at the 403 analysis, the
7 Court has evidence it is prejudicial. It's highly
8 prejudicial. There's no question about that. That's
9 not the end of the analysis. If you look and see if
10 it's prejudicial -- or its probative value outweighs
11 is prejudicial effect.

12 In this instance, that is the actual
13 issue before the jury in this case. That is,
14 whether she possessed it with the intent to
15 distribute same.

16 If the State proves that, and if the
17 State presents evidence of that, clearly it's
18 prejudicial, very prejudicial. However, I do not
19 believe, under a 403 analysis, that its
20 prejudicial effects outweighs the probative value.
21 And a matter of fact, that is the probative
22 question in the case.

23 Under a 404 analysis, I agree that
24 evidence of prior bad acts under 404(b) cannot be
25 admitted to prove the character of the person or

1 show action in conforming therewith. However, it
2 can be admissible to show a common scheme or plan
3 or intent. I think -- I don't think, I know that
4 based on the State's representation of why or for
5 what purpose the evidence has been offered, it's
6 offered to show a common scheme or plan or intent
7 of the accused. Therefore, it falls under the
8 exception of 404(b).

9 However, I do think, in looking at all of
10 that evidence, some of the evidence which the
11 State would offer into evidence, probably doesn't
12 pass the 403 muster. That is, I don't see what
13 the purpose of the text -- the context of the text
14 are other than to just corroborate that he made
15 the sale.

16 So, I'll find that his testimony
17 regarding the sale is admissible, but absent the
18 defense opening the door in cross-examination, I'm
19 not going to allow the actual text into the
20 record.

21 MS. OWEN: I understand, Your Honor.

22 THE COURT: So, Mr. King, you need to be
23 very careful. I'm telling you now, you need to be
24 very careful because I know that you want to throw
25 his credibility into question. Some of those

1 credibility questions may require the State to
2 offer those texts in corroboration. You're on a
3 very, very tight rope in that examination. I just
4 want to tell you before the fact so it doesn't
5 catch you unaware.

6 The other issue is, he cannot testify
7 that, I sold her to her frequently and I sold to
8 her a lot, and I assume she was selling. I didn't
9 hear him saying, I assumed that she was selling.
10 But he can't say that. I'm cautioning the State
11 not to elicit testimony that she was selling
12 marijuana. He stated already on the error he
13 doesn't know. And I think that any evidence that
14 he may offer in that regard is entirely
15 speculative.

16 Also, when he testifies, it has to be
17 limited in scope and time. That is, he can't just
18 say willy-nilly, I sold to her all the time. If
19 you got text messages going back 11 days and what
20 he can say, affirmatively, is, I sold to her so
21 and so times from, what, March 11th to March 21st,
22 whatever that period of time was. It has to be
23 very specific in time and scope. And he can say,
24 generally, I sold her to this amount. Okay? So
25 his testimony needs to be, at least on direct

1 examination, very surgical in regard to what he
2 did. He can't say what she did. Okay?

3 MS. OWEN: Yes.

4 THE COURT: I sold her marijuana X times
5 between date X and Y generally in X amount.

6 All right. So, in essence, what he is
7 doing is testifying as to what he did.

8 Mr. King?

9 MR. KING: Thank you, Judge. So my
10 understanding you're going to -- you're
11 essentially going on res guaste. At the end of
12 the day, it would place a complete picture in
13 front of the picture about all these prior bad
14 acts because you've got no 404(b) and 403.

15 THE COURT: You can characterize it that
16 way, if you want to.

17 MR. KING: Okay.

18 THE COURT: But I think I fully
19 articulated my reasoning. Okay? You said that, I
20 didn't say that.

21 MR. KING: Okay.

22 THE COURT: Okay.

23 MR. KING: I'm trying to get on the same
24 page.

25 THE COURT: Okay.

1 MR. KING: So I understand. I would ask
2 that he only be allowed to testify about the one
3 prior, the day before of two ounces, not these 11
4 days prior. And that's under State v. Owens,
5 which was 346 S.E. 631 in 2001. It's a Supreme
6 Court case. They say that usually the temporal
7 proximity of a prior bad act must be closely
8 related to a charged crime.

9 And so, if that's what we're going on,
10 I'd ask that he only be allowed to testify about
11 that one incident not days and days of days of
12 this.

13 THE COURT: And your point is very well
14 taken. Very well taken. That is specifically why
15 I asked what the date of those texts were and what
16 the frequency was. Because my concern is that
17 they were not in sufficient temporal proximity.

18 So that's why I also won't let him
19 testify to anything behind that very limited
20 period of time, because it must be, as I said,
21 within reasonable temporal proximity. That's why
22 I'm limiting his testimony to not -- to not
23 saying, I told sold to her all the time, or, I
24 sold to her frequently, I sold a lot to her. It
25 has to be very specific as to time and scope for

1 the very reason you articulated.

2 MR. KING: So, I don't want to put words
3 in your mouth again.

4 THE COURT: I don't really mind you
5 explaining it in a manner that will help you
6 understand it. I just want to make sure that on
7 any review that what you say isn't attributed to
8 me. But I don't mind you saying what you want to
9 say.

10 MR. KING: So I move that the temporary
11 proximity be only the prior day of the last day
12 beforehand, and I ask you to kept out all the
13 prior ones. I just ask for a ruling on that so
14 we're clear what the temporal proximity is.

15 THE COURT: Yes, sir. I will tell you
16 that my -- when we had a discussion to chambers
17 about all of this, my inclination was to only
18 allow that sale because I was concerned about that
19 very thing. And I came in here with really
20 thinking that it was only going to be that sale.

21 But after I heard all of the -- all of
22 the testimony from both the officer and the
23 witness, understanding as well that that is the
24 very evidence upon which the State relies to show
25 intent, and understanding the frequency and the

1 temporal proximity, I think it's appropriate to
2 let it all in. When I say "it all," I mean it all
3 I just described on the record. Up and beyond
4 that -- we're not talking about going back years
5 prior, months prior, weeks prior. Just that very
6 limited period of time. Okay?

7 All right.

8 MS. OWEN: Your Honor, I realize the jury
9 is here. May I talk to Mr. Harris for just a few
10 minutes to make we are clear on --

11 THE COURT: I'm a man in my 50s. We've been
12 at this an hour. I am taking a restroom break. We'll
13 take a break and we'll come back in.

14 (A recess was taken from 2:36 p.m. to 2:44 p.m.)

15 THE BAILIFF: Court will come to order. All
16 rise.

17 THE COURT: Be seated. Before we bring
18 the jury in, on opening statements, I'm going to
19 limit you both. Both sides to less than five
20 minutes. Does that work for the State?

21 MS. OWEN: That's works for the State.

22 THE COURT: How about the defense?
23 Mr. King, is there something you wanted to say?

24 MR. KING: I apologize. I handed a
25 motion up to you in chambers about the verdict

1 form.

2 THE COURT: Yes, sir.

3 MR. KING: We request that not guilty be
4 lived before guilty.

5 THE COURT: I will do that.

6 MR. KING: Thank you, Judge.

7 THE COURT: Yes, sir. That's my standard
8 practice.

9 Okay. All right, bring the jury in please,
10 sir.

11 (Jury enters the courtroom at 2:47 p.m.)

12 THE COURT: You can sit down.

13 All right. Ladies and Gentlemen, welcome
14 back. Thank you for being on time. We appreciate
15 it.

16 As you know, we're about to start the
17 trial in the State vs. Wanda Jane Crumpton. Now,
18 during selection, I told you that in each and
19 every case that comes before the Court, the
20 defendant is presumed innocent until and unless
21 the State proves each and every element of each
22 offense beyond a reasonable doubt. So as we sit
23 here, Miss Crumpton is presumed innocent. And
24 Miss Crumpton will retain that presumption of
25 innocence until 12 people are convinced the State

1 has met its burden of proof.

2 Now, I find that before we get started in
3 a case, whether it's a civil case or whether it's
4 a criminal case, that it is helpful for me to have
5 a discussion with the jury and just, kind of, give
6 you an idea of what your role is, what your
7 function is as jurors, and then also to give you
8 an idea of our process, how we'll proceed, how the
9 case will develop and what your endgame is. Okay?

10 So, your role as jurors is to be the
11 finders of the facts, the judges of the facts.
12 And in that capacity as judges of the facts, you
13 will determine, based on the evidence that is
14 presented in the trial of this case, what the
15 facts are. Now, each side has an opinion about
16 what the facts are and they will present evidence
17 and they will argue in an attempt to convince you
18 of their opinion of the facts. However,
19 understand that ultimately what the facts are in
20 this case is entirely up to you. You will
21 determine what the facts are in the case based on
22 the evidence that is presented.

23 Now, you'll receive evidence. You can
24 receive evidence in many different forms. It can be
25 in the form of a witness who takes the stand and

1 testifies under oath. It can be documents. It can be
2 physical objects. It can be audio and video
3 recordings. It can be all of those things.

4 And, frankly, I can't tell you what all
5 you're going to get in this case because almost
6 all the testimony and evidence that you see in
7 this case, I'm going to be seeing for the first
8 time as well. But you'll receive that evidence.
9 You'll take it. You'll weigh it. You'll evaluate
10 it. You'll determine who's believable and who's
11 not believable, and from that you'll decide what
12 the facts are, and you'll apply the law as I give
13 it to you to the facts as you determine them to be
14 and determine whether the State has met its burden
15 of proof.

16 So, you heard me say, you'll take the law
17 as I give it to you. So you all are the judges of
18 the facts and I am the judge of the law. So I'm
19 essentially the impartial umpire calling balls and
20 strikes, making sure that we're following the law,
21 making sure that we're following the rules of
22 court.

23 So, during the course of this trial, I'll
24 be ruling on motions and objections that are
25 lodged, and I'll be ensuring that we're following

1 the law.

2 Also, at the end of the case, I'll give
3 you a charge on the law. I'll wait until the end
4 of the case, because, just I told you, I'm seeing
5 everything for the first time, too, so it's
6 important that I wait to see what evidence has
7 been introduced into the record before I give you
8 a charge on the law so I'll know what's relevant
9 and what's appropriate for your consideration.

10 During the course of the case, as I rule
11 on objections and motions, understand that I'm
12 going to rule for one side and against one side.
13 There are two parties and I really don't have any
14 choice. So understand that when I rule and I rule
15 for somebody and against somebody else, that
16 doesn't mean that I have any bias or any prejudice
17 one way or the other. I truly don't. I'm making
18 a clinical decision based on my understanding of
19 the law and the rules of the Court.

20 Understand that I don't have any stake in
21 the outcome of this case. Your decision is your
22 decision, and I'm going to go home either way. So
23 whatever you decide, I have no interest in it
24 whatsoever. I do not have a dog in this fight.
25 So if you hear me say anything or do anything, you

1 see my facial expressions and you think that that
2 means something about my opinion of the case or
3 the facts as you should determine them to be,
4 disregard that because I'm telling you right now,
5 I don't have a stake in this case. I am
6 absolutely one hundred percent unassailably
7 objective. Whatever you all decide is up to you
8 decide. Okay?

9 So, Ladies and Gentlemen, the way we'll
10 start this case is with opening statements from
11 the attorneys. So each side has the opportunity
12 to offer an opening statement. Opening statements
13 are not evidence. Opening statements are just
14 introductory statements from the attorneys. It
15 should take about five minutes a piece. I've
16 already talked to the attorneys and they've
17 confined themselves to five minutes a piece, just,
18 again, to introduce themselves, their theory in
19 the case, and then sit down and we'll begin
20 introduction of evidence.

21 When we begin the introduce of evidence,
22 the State will go first. As I told you, the State
23 has the burden of proof, which means that the
24 State goes first. So, the State will call a
25 witness to the stand. That witness will come up,

1 take the oath of a witness, and that witness will
2 be examined by the State; that is, asked
3 questions. And when the State has asked all of
4 its questions, then the defense will have the
5 opportunity to cross-examine that same witness.
6 After that, after all the evidence and all of the
7 questions have been introduced of a witness, that
8 witness will stand down and the next witness will
9 come forward and take the stand. And we'll
10 proceed in that fashion until the State has
11 presented all of the evidence and all of the
12 witnesses that it intends to represent.

13 When the State rests, then the defense
14 has the opportunity to offer witnesses and
15 evidence. Understand that the defense does not
16 have to offer any evidence or any witnesses. The
17 defense has the right to remain silent.

18 So the defense isn't compelled to do or
19 say or prove anything. The State has the burden
20 of proof.

21 So, oftentimes, it does come to pass that
22 the State elects not to introduce any evidence,
23 which is perfectly permissible. And if the State
24 doesn't introduce any evidence then we'll
25 proceed -- excuse me -- the defendant doesn't

1 produce any evidence, then we'll proceed to
2 closing arguments.

3 But, if the defense does present
4 evidence, then we'll proceed in the same fashion.
5 They'll call witnesses and examine those witnesses
6 and they'll be subject to cross-examination and
7 then they'll be excused. After all of the
8 evidence has been exhausted, then we'll have
9 closing arguments.

10 Now, closing arguments, just like opening
11 statements, are not evidence. That's the
12 opportunity for both sides to comment on the
13 evidence that has been permitted, or been
14 submitted in court. They will argue in an attempt
15 to persuade you to their positions advocacy.

16 After each side has had the opportunity
17 to make those closing arguments, then I'll give
18 you a charge on the law again. Again, I'll wait
19 until the very end. After you get the charge on
20 the law, then I'll send you back to your jury room
21 and you can begin your deliberations. Please
22 don't begin any of your deliberations until I tell
23 you to. And it's important that you not begin
24 those deliberations. Please between don't discuss
25 the case with one another. Don't comment on

1 evidence that's been presented. Don't talk about
2 witnesses, whether they were good or bad, lawyers,
3 whether they were good or bad. I'm going to give
4 you as much time as you want to talk about the
5 case.

6 But during the conduct of the case and
7 before I tell you to begin your deliberations,
8 don't talk about it. Okay? And I suspect that
9 you know why that is just through your common
10 sense, but I'm going to tell you anyway at the
11 risk of insulting your intelligence. You know
12 that in your lives, you will never be able to make
13 a decision about something important until you've
14 heard all of the facts which bear upon the
15 decision to be decided. So, if you're going to
16 make an intelligent and informed decision, it's
17 important that you listen to everything before you
18 begin to make up your minds and discuss it. So,
19 don't discuss the case. And when I tell you to,
20 I'll let you discuss it all you want to.

21 During the course of this trial, we'll
22 take pretty regular breaks. Okay? As I was just
23 telling the attorneys before we started, I'm a man
24 in my 50s, so I have to take pretty regular
25 breaks. Okay? So we will take pretty regular

1 breaks. I'm not -- I don't have any intention of
2 holding you hostage in that jury box. Okay?

3 Understand, however, that even though
4 we're taking regular breaks, if at any time during
5 this trial, any one of you needs to take a break,
6 it doesn't matter, big or small, if you need to
7 take a break, even if only two minutes into court,
8 let me know and let the bailiff know and what
9 we'll do is, we'll take a break and we'll come
10 back when you're ready, because you are the 14
11 most important people in the courtroom right now,
12 and it's important that you are able to pay
13 attention to the evidence that's being presented
14 on the stand. And if you're distracted for some
15 reason, tell me. We'll take a break so that you
16 can come back and pay attention. Okay?

17 This case, as you know, should be fairly
18 short. We have, I think, about seven witnesses.
19 Now, some will be longer than others. Actually,
20 I'm looking at six witnesses. Some will be longer
21 than others. I can't tell you exactly how long
22 each of the witnesses will be, because, again, I
23 haven't heard. Sometimes a case takes on a life
24 of its own. But I will continuously update you
25 through the case about where we stand and when I

1 expect us to be finished with the case.

2 So, as I sit here right now, we have to
3 go through opening statements, then we're going to
4 put witnesses or evidence into evidence this
5 afternoon, maybe one, maybe two, depending on how
6 we proceed. And I anticipate that we're going to
7 probably close up shop this afternoon before 5:00.
8 Before 5:00. I suspect that when we stop this
9 afternoon, and it will be based on where we are in
10 the witnesses, then we'll come back tomorrow
11 morning, probably at 9:30 so you can avoid
12 traffic, and we'll resume the case. We'll
13 probably listen to the remainder of the evidence
14 and witnesses tomorrow morning, take a lunch
15 break, come back in the afternoon and do argument
16 and charge. That's what I think right now.
17 That's not what I know. Okay? I'll update you as
18 we go forward. We may go a little bit slower. We
19 may go a little bit faster, but that's what I
20 anticipate. So I'm hopeful that we'll be done by
21 close of business tomorrow afternoon. Okay?

22 So, Ladies and Gentlemen, before we get
23 started with the opening statements, I'm going to
24 ask the clerk of court to swear you in. Now,
25 you've already taken an oath this morning to tell

1 the truth, but this is a different oath, and this
2 is to fairly and truly try this case in accordance
3 with the law and the evidence.

4 So, Mr. Weldon, I'll turn it over to you.

5 THE CLERK: Yes, sir.

6 If you would please stand. Raise your
7 right hand, and after the oath is administered,
8 answer by saying "I will." You shall well and
9 truly try the issues during this case of the State
10 vs. Wanda Jane Crumpton and a true verdict render
11 according to the law and evidence, so help you
12 God?

13 JURY PANEL: I will.

14 THE CLERK: And if you agree with that,
15 please have a seat.

16 THE COURT: Okay. Miss Owen.

17 MS. OWEN: Thank you, Your Honor.

18 THE COURT: Yes, ma'am.

19 OPENING STATEMENT

20 MS. OWEN: Good afternoon, Ladies and
21 Gentlemen. I will reintroduce myself. I am Megan
22 Owen. I represent the State in this case. I'm
23 prosecuting Miss Wanda Crumpton, as you heard,
24 with possession with intent to distribute
25 marijuana in proximity of a school or a park.

1 You're going to hear from many witnesses
2 today, and by "many," I mean two most likely,
3 maybe three, and everything you hear is going to
4 come from this witness stand. I'm going to ask
5 you to pay close attention to everything they say,
6 how they act, and what is put into evidence.

7 Every single one of you came in here with
8 some sort of life experience. You all bring
9 something to the table, which is why you're on
10 this jury. I ask that you keep that common sense
11 with you as you're in this courtroom and as you
12 are listening to everything that is going on and
13 watching. I want you to pay close attention to
14 what people say and how they act.

15 At the end of the day, I will ask you to
16 find Miss Wanda Crumpton guilty of possession with
17 intent to distribute marijuana and possession with
18 intent to distribute within proximity to a school
19 or park. And I'm going to ask you to do that
20 after you have heard from the witnesses in this
21 case. And as Judge Stilwell told you, it is my
22 duty to prove beyond a reasonable doubt that Wanda
23 Crumpton did, on or about March 21st of 2017,
24 possess with intent to distribute marijuana, which
25 is a controlled substance, and, therefore, illegal

1 in South Carolina, and that she did it within a
2 half mile of a school or park.

3 Beyond a reasonable doubt is kind of a
4 tricky term, but I like the words "firmly
5 convinced." I have to firmly convince all 12 of
6 you that she did possess with intent to distribute
7 marijuana, and that she did so within half mile of
8 a park or school. At the call of the case today,
9 or tomorrow, depending on when we finish up, after
10 you hear from law enforcement and other witnesses,
11 I'm going to ask that you render a verdict of
12 guilty. Because on March 21st of 2017,
13 Miss Wanda Crumpton was found in her residence in
14 Easley, South Carolina with a quantity of
15 marijuana and we are going to prove to you that
16 that was also with intent to distribute, and that
17 that was in a half mile of a school or park.
18 Thank you.

19 MR. KING: May it please the Court, Your
20 Honor?

21 THE COURT: Yes.

22 MR. KING: Ms. Owen.

23 OPENING STATEMENT

24 MR. KING: Miss Owen, personal use,
25 that's what you're going to hear about today.

1 It's personal use and personal use only. The
2 evidence is going to show that Miss Crumpton was
3 in her home, she had a small amount of marijuana,
4 less than a ounce, which is perfectly legal in
5 other states. She had a blunt in her house, in
6 her easy chair. Her easy chair she was sitting in
7 when law enforcement came up to her house. It was
8 personal use.

9 You will hear about a drug dealer.
10 You're going to hear about those other witnesses
11 that Miss Owen just talked about. He's a drug
12 dealer. His name is Kerek Harris. He's been
13 convicted of being a drug dealer. The evidence is
14 going to show that he had, when what law
15 enforcement found him, several large gallon-size
16 bags -- Ziploc bags of marijuana. That's the drug
17 dealer you're going to hear about. When we come
18 to Miss Crumpton and evidence against her, you're
19 going to hear about personal use.

20 Now, Miss Crumpton, as the judge has told
21 you several times now is presumed innocent until
22 she's proven guilty. All right?

23 Now, that means, practically, that woman
24 at the far side of the table, right now, this very
25 instance, an innocent woman.

1 The other woman at my table, I don't
2 think she's been introduced. Her name is
3 Erica Baldwin. She's working with me. She's
4 another attorney in my office.

5 Now, back to her right that she is
6 presumed innocent. That means that you can't make
7 up your mind until you hear all of the evidence.
8 That's a violation of your oath that you just gave
9 the clerk if you make up your mind beforehand.

10 Along with that right is the right that
11 the State has the burden of proving her guilty
12 beyond a reasonable doubt. That's highest
13 standard we have in the United States. If there
14 was a giant scale next to me, it's not down here,
15 it's not here at my shoulder level. It's way
16 higher than I can reach. It's not beyond any
17 doubt, but it's a reasonable doubt. And you all
18 are reasonable people. That's why we picked you.
19 That's why you gave a oath. That's why the judge
20 qualified you downstairs, because we found that
21 you all are reasonable people.

22 Practicality speaking, what is reasonable
23 doubt? Now, I'm not saying this is a game here.
24 This is a very serious thing. You can think of
25 court like a football game. When you're watching

1 football and the ref makes a call and someone
2 challenges that call, all the refs huddle up to
3 decide if the call on the field was good. But the
4 moment she's presumed innocent, which means the
5 call on the field is not guilty.

6 You all are the rest that are going to
7 huddle up and you're going to apply the standard
8 of beyond a reasonable doubt and decide if you're
9 going to overturn the call on the field of not
10 guilty.

11 I'd ask you to hold to your oath and give
12 Miss Crumpton the benefit of both of those rights.
13 Those rights -- no matter who is sitting in her
14 chair, anyone in the United States, sitting in
15 that chair over there, gets those same rights.
16 It's just like any of our right to decide where we
17 want to go to church, or our right to say we like
18 the president, or say we don't like the president.
19 We have all those rights. And we don't ask each
20 other to give those up. And so I'd ask you not to
21 ask Miss Crumpton to give her rights up either.

22 Now, at the end of the trial, I going to
23 ask you to find Miss Crumpton not guilty. I
24 believe through the evidence, you're only going to
25 see personal use. It's personal use of less than

1 an ounce of marijuana, which is legal in other
2 places in the United States.

3 So thank you. And look for the blunt.
4 That's the key. It's a marijuana cigarette. They're
5 going to show you that. Prime example of personal
6 use. Thank you.

7 THE COURT: Okay. You may call your
8 first witness, ma'am.

9 MS. OWEN: Thank you, Your Honor. The
10 State would call Detective Hamby.

11 THE CLERK: Do you solemnly swear or
12 affirm the testimony you're about to give in this
13 case to be the tell the truth, the whole truth,
14 and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you, sir. If you
17 would, have a seat and state your name for the
18 record please.

19 THE WITNESS: Jonathan Hamby.

20 WHEREUPON:

21 JONATHAN HAMBY,
22 after having been sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. OWEN:

25 Q Good afternoon, Detective Hamby. How are you?

1 A Good.

2 Q Good. Would you tell the jury a little bit about
3 yourself?

4 A I'm employed by the City of Easley Police
5 Department. Been there almost 21 years. Right
6 now, I'm currently assigned to the investigations
7 division and the narcotics division.

8 Q How long have you been doing narcotics?

9 A I've been in investigations a total of
10 12 years, 8 of those have been narcotics.

11 Q Can you tell the jury a little bit about what
12 narcotics investigations look like?

13 A Every one is different, but, in general, we
14 receive narcotic complaints from citizens or
15 officers, however they filtered out to us. And
16 then we investigate those complaints, whether it
17 be finding individuals that will help us. We do
18 traffic stops, surveillance. We work with a lot
19 of the agencies to further those investigations,
20 and we can cross over jurisdictional issues
21 because of that.

22 Q Okay. So every investigation is different; is
23 that correct?

24 A Yes.

25 Q In 2017, did you become aware of Miss Wanda

1 Crumpton?

2 A Yes.

3 Q Can you tell the jury how?

4 MR. KING: I want to be clear about where
5 we're going with us, based on the prior rulings.
6 There's only one route to go.

7 THE COURT: I don't know how --

8 MR. KING: May we approach, Judge?

9 THE COURT: Yes.

10 (Bench conference; not on record).

11 BY MS. OWEN:

12 Q Detective Hamby, I'm going to ask the question a
13 different way. Did you get some complaints regarding
14 the 220 Northwest Main area in Easley?

15 A 220 Northwest Main is the police
16 department.

17 Q Sorry. Within a couple miles of there?

18 A Yes.

19 Q And were those complaints regarding heavy
20 traffic?

21 A Yes.

22 Q Who were those complaints from?

23 A Several citizens called in and local
24 businesses.

25 Q Okay. And based on that information, did you

1 start surveilling areas around there?

2 A Yes. One of the locations that was
3 complained about, several times, was [REDACTED] Darby
4 way. Therefore, we did surveillance on that
5 location several times. And through our records
6 system, we identified who Wanda Crumpton as the
7 female that was living at that trailer.

8 Q Okay. And when you say you were surveilling, what
9 did you see?

10 A A couple different times we were
11 surveilling -- you know, we got the complaints,
12 but there was traffic coming and going from that
13 trailer staying for short periods of time and then
14 leaving. And, at one point when we were
15 surveilling, we saw a gentleman that we had
16 another investigation, a drug investigation going
17 on. We saw him leaving that trailer. The day
18 before, we did a search warrant at that trailer.

19 Q And that other individual is who?

20 A Mr. Harris, Kerek Harris.

21 Q Okay. And on what day did you see Mr. Kerek
22 Harris leaving [REDACTED] Darby Way, Easley?

23 A He left the afternoon of March 20th, 2017.

24 Q Okay. What did you do after that?

25 A Related to just this case?

1 Q Yes.

2 A It's kind of hard to explain. We had an
3 investigation, like I said. A dual investigation,
4 kind of, separate at the time. The next morning
5 on the 21st, we executed a different search
6 warrant. Information from that led us to get
7 another search warrant for Miss Crumpton's house,
8 and we executed that search warrant at [REDACTED] Darby
9 Way to Miss Crumpton's residence.

10 Q So you were able to get a search warrant for
11 [REDACTED] Darby Way and that's where Miss Crumpton lived?

12 A Yes.

13 Q I know we covered this, but I'm going to ask you,
14 what jurisdiction was that in?

15 A It's in the city of Easley, Pickens County.

16 Q And based on that search warrant, what did you
17 do?

18 A We approached the residence. It was myself
19 Lieutenant Lovell, Captain Lovell now, and a
20 uniform patrol Officer Brinston. When we
21 approached the residence, the inside door was
22 opened. The panel door was closed. We knocked on
23 the door. Miss Crumpton allowed us in. We
24 explained we was there to execute a search warrant
25 for narcotics at her residence.

1 Q Okay. And tell us about that.

2 A When we first went in, she was sitting in a
3 recliner-type seat on her phone. She wouldn't put
4 her phone up immediately, but after she put her
5 phone up. We explained the search warrant to her
6 and she offered to -- when we told her it was
7 about the drugs and the narcotics, she offered
8 right then to take us to where -- asked us if she
9 could just show of where the drugs were. So I
10 pulled out the Miranda card and read her her
11 rights about remaining silent. She waived those
12 rights. And, at that point, she took us to the
13 cabinet where her marijuana was.

14 Q Okay. Tell the jury about what you found that day
15 when you executed the search warrant?

16 A She was in her living room there. She kept
17 the marijuana in -- a single wide trailer. It was
18 in the next room down. It seemed like the kitchen
19 area, in a kitchen cabinet up top. Opened it up
20 and there was a bag of marijuana there.

21 And then I asked about any scales she would
22 have to weigh the marijuana out with. She admitted
23 that she had scales and she pulled out a cabinet
24 drawer on the bottom where her scales were located.

25 Q Did she have anything else on her person?

1 A She had a some of money and her cell phone
2 was also taken.

3 Q How much money did she have?

4 A \$534.

5 Q Okay. And you said her cell phone was also
6 taken?

7 A Yes. And she also admitted that she had --
8 she was smoking a joint when we approached the
9 residence. She had stuffed it down into the chair
10 when we approached the front door, and we
11 recovered it as well.

12 (STATE EXH. 1, Picture, was marked for
13 identification.)

14 (STATE EXH. 2, Picture, was marked for
15 identification.)

16 (STATE EXH. 3, Picture, was marked for
17 identification.)

18 (STATE EXH. 4, Picture, was marked for
19 identification.)

20 BY MS. OWEN:

21 Q Okay. I'm going to show you what has been marked
22 as State's 1, 2, 3, 4. Can you identify those?

23 A Yes. These are the photographs I took of the
24 kitchen area of Miss Crumpton's trailer.

25 Q Would you show those to the jury?

1 A Sure.

2 Q I'm sorry. Let me rephrase.

3 MS. OWEN: Your Honor, I'd like to offer
4 those into evidence as State's Exhibit 1 through
5 4.

6 THE COURT: Yes, sir. Any objections?

7 MR. KING: I thought there were five
8 pictures.

9 MS. OWEN: I haven't marked that.

10 MR. KING: No objection to State's 1
11 through 4.

12 THE COURT: Same will be admitted.
13 State's 1 through 4 into evidence.

14 (STATE EXH. 1, Picture, was marked for
15 identification.)

16 (STATE EXH. 2, Picture, was marked for
17 identification.)

18 (STATE EXH. 3, Picture, was marked for
19 identification.)

20 (STATE EXH. 4, Picture, was marked for
21 identification.)

22 THE WITNESS: This one is, kind of, the
23 furthest one back showing just the cabinets and
24 the drawer. The marijuana was found in the corner
25 here of the top cabinet. These scales were in

1 this bottom drawer here.

2 And then the next photograph is just a
3 closer in of the cabinet, and then that is closer
4 in to the marijuana bag that was found in the
5 cabinet.

6 The scales, called digit scales, is in
7 the drawer. They're a set the digital scales
8 commonly used to weigh different narcotics.

9 BY MS. OWEN:

10 Q And were all these items turned in to evidence?

11 A Yes.

12 (PLF. EXH. 8, Marijuana joint, was marked
13 for identification.)

14 BY MS. OWEN:

15 Q I'm going to also show you what's been marked as
16 Exhibit 8. Can you identify that?

17 A Yes. It was the marijuana joint, partial
18 joint that was recovered from the chair
19 Miss Crumpton was sitting in.

20 Q Okay.

21 MS. OWEN: Your Honor, I'd ask that
22 State's Exhibit 8 be moved into evidence.

23 MR. KING: No objection.

24 THE COURT: All right. Without
25 objection, the same is moved into evidence.

1 MS. OWEN: Thank you.

2 (PLF. EXH. 8, Marijuana joint, was marked
3 for identification.)

4 BY MS. OWEN:

5 Q Officer Hamby, did a drug dog go out with you that
6 day?

7 A Yes.

8 Q Was anything else located in the home?

9 MR. KING: Judge, I'm going to object to
10 the drug dog testimony. He's not the drug dog
11 handler.

12 THE COURT: Do you intend to call the
13 drug dog handler in?

14 MS. OWEN: No, Your Honor.

15 THE COURT: You still want to pose the
16 question?

17 MS. OWEN: I'll retract the question,
18 Your Honor.

19 THE COURT: Okay.

20 BY MS. OWEN:

21 Q Officer Hamby, based on your experience with
22 scales, the quantity of marijuana, and cash, what does
23 that mean?

24 A It's an indication -- could be an indication
25 of someone selling marijuana.

1 Q Okay. After you executed the search warrant, what
2 did you do?

3 A A search warrant -- after that, I got a
4 search warrant for Miss Crumpton's cell phone that
5 she had in her hand when we approach the door and
6 they executed it on her cell phone.

7 Q Okay.

8 MS. OWEN: Your Honor, I don't have any
9 more questions for this witness.

10 THE COURT: Mr. King.

11 MR. KING: Thank you, Judge.

12 THE COURT: Yes.

13 CROSS-EXAMINATION

14 BY MR. KING:

15 Q Detective Humby, as a narcotics officer, you set
16 up controlled buys of narcotics, correct?

17 A Sometimes.

18 Q But you did not do that with Miss Crumpton,
19 correct?

20 A No.

21 Q Now you were observing Darby Way, is my
22 understanding. Yes?

23 A At different times, yes.

24 Q Darby Way is a trailer park, correct?

25 A It's a couple trailers on a dead end little

1 drive, yes. I wouldn't consider it a trailer
2 park, no.

3 Q Okay, I apologize. Everybody's term for trailer
4 park is different.

5 Okay. Now, you said when you approached Miss
6 Crumpton's home, the interior door was open but there
7 was a glass storm door that was closed, correct?

8 A Yes.

9 Q And that meant you could see inside of her home,
10 correct?

11 A Yes.

12 Q And she was sitting in her easy chair, correct?

13 A Yes.

14 Q And I believe it was State's 8 that was a picture
15 of her easy chair; is that correct?

16 A A portion of it, yes.

17 Q And you found in her easy chair that she was
18 sitting in a burn joint, correct?

19 A Later on, yes.

20 Q Okay. Now, as an narcotics officer, you talked to
21 both users and dealers, correct?

22 A Yes.

23 Q And users frequently carry a scale of their own,
24 correct?

25 A They have before, yes.

1 Q Because they want to make sure they're getting the
2 correct amount, right?

3 A I don't know, but traditionally they do not
4 have it. It's more common for them not to have it
5 than have it.

6 Q Well, we are going to call him a drug dealer, too,
7 so we're going to talk about it as well. Sometimes
8 they got a scale, sometimes they don't.

9 A I'd say rarely do they have a scale.

10 Q All right. Now, you said, when you asked -- when
11 you explained why you were there to Miss Crumpton, she
12 took you to the kitchen, correct?

13 A She offered to take us to the marijuana, yes.

14 Q She didn't fight you on that?

15 A No.

16 Q Did you see Mr. Harris at Miss Crumpton's
17 residence one time or multiple times?

18 A The only time we him -- we had reports of a
19 person matching his description leaving -- or
20 coming to her residence. The only time we
21 actually saw him was on the 20th, the day before
22 that afternoon.

23 Q What car was he driving on the 20th?

24 A I believe he had a red Volkswagen, if I'm not
25 mistaken.

1 Q To be clear, Detective Hamby, you personally did
2 not set up a controlled buy for Miss Crumpton,
3 correct?

4 A No.

5 MR. KING: No further questions.

6 THE COURT: Any redirect?

7 MS. OWEN: Nothing, Your Honor.

8 THE COURT: Thank you. Please step down.
9 Appreciate it, sir. You may call your next
10 call.

11 MS. OWEN: Thank you, Your Honor. The
12 State would call Kerek Harris to the stand.

13 MR. KING: Judge, I just renew my earlier
14 objections.

15 THE COURT: Yes, sir. You're protected
16 on the record for that.

17 THE CLERK: Do you solemnly swear or
18 affirm the testimony you're about to give in this
19 case to be the truth, the whole truth, and nothing
20 but the truth, so help you God?

21 THE WITNESS: I do, sir.

22 THE CLERK: Thank you, sir. Have a seat
23 and state your name for the record, please.

24 THE WITNESS: My name is Kerek Harris.

25 WHEREUPON:

TESTIMONY OF KEREK HARRIS
KEREK HARRIS,

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after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MS. OWEN:

Q Good afternoon, Mr. Harris. How are you?

THE COURT: Do you want to state something additional?

MR. KING: I believe you denied my second request as to res gestae issue. You set it for a specific amount. I was requesting --

THE COURT: Yes, sir.

MR. KING: I just want to make sure -- I don't remember your ruling specifically.

THE COURT: Okay.

MR. KING: I want to make sure that I said it.

THE COURT: Yes, sir. Thank you.

BY MS. OWEN:

Q Good afternoon, Mr. Harris. How are you?

A I'm okay. You?

Q Good, thanks. Mr. Harris, where are you from?

A Greenville.

Q How long have you lived in the Upstate?

A Like, all my life.

Q At any point in time, did you live in Easley?

1 A Yeah, like five years.

2 Q How long ago was that?

3 A 2017. Right after this happened, I got -- I
4 moved back to Greenville.

5 Q You moved back to Greenville. What brought you to
6 Easley in the first place?

7 A Work. I worked at Taco Bell.

8 Q Back in 2017, were you associated with
9 Miss Crumpton?

10 A Yes.

11 Q Mr. Harris, in 2017 were you selling marijuana?

12 A Yes.

13 Q Did you sell marijuana to Miss Crumpton?

14 A Yeah.

15 Q Let me be a little more definitive. Between
16 March 11th and March 21st, did you sell Miss Crumpton
17 two ounces of marijuana approximately 11 times?

18 A Yes.

19 Q Okay. Back then, how much was two ounces of
20 marijuana?

21 A \$180, \$90 an ounce.

22 Q And did you sometimes sell her a little more, a
23 little less during that time period?

24 A Yeah.

25 Q And what is your nickname?

1 A BA.

2 Q Has it always been BA?

3 A My whole life. Since I was, like, two or
4 three by my family.

5 Q Who knows you by BA?

6 A Pretty much everybody that knows me knows me
7 as BA.

8 Q Now, on March 21, 2017, did detectives from the
9 Easley Police Department come to your house?

10 A Yes.

11 Q Okay. Did you acknowledge your relationship with
12 Miss Crumpton to them?

13 A Yeah.

14 Q Yes, okay. And were you subsequently charged with
15 possession with intent to distribute marijuana and a
16 controlled substance?

17 A Yeah, I was.

18 Q Were those second offenses for you?

19 A Yes, ma'am.

20 Q So you have a prior record?

21 A Yeah.

22 Q Okay. And what did you end up getting out of
23 those?

24 A Probation.

25 Q After you got charged --

1 A Probation.

2 Q Did you plead guilty?

3 A Yeah. I got five years probation.

4 Q Okay. Mr. Harris, has everything you said today
5 been truthful?

6 A Yes.

7 MS. OWEN: I have no further questions.

8 THE COURT: Mr. King.

9 MR. KING: Thank you, Judge.

10 CROSS-EXAMINATION

11 BY MR. KING:

12 Q Mr. Harris, on March 21st, 2017, law enforcement
13 were actually charging you with four counts of
14 possession with intent to distribute, second offenses,
15 correct?

16 A Right.

17 Q And each of those counts carries up to 10 years in
18 prison, correct?

19 A Right.

20 Q For a total of 40 years, correct?

21 A Yes, sir.

22 Q When you were cooperating with them, you were
23 under arrest, correct?

24 A Yes, sir.

25 Q And that particular instance, they had found you

1 with thousands of dollars in your home, correct?

2 A Right.

3 Q And four to five pounds of marijuana, correct?

4 A What did they say? Four pounds, and five to
5 \$6,000.

6 Q Four pounds, five to six grand. How big is about
7 a pound of marijuana? Is it bigger than a big gallon
8 Ziploc bag?

9 A Freezer bag.

10 Q Freezer bag. Gallon size?

11 A Just a big freezer bag.

12 Q I big freezer bag. I hear you.

13 And so you had the equivalent of four of
14 those in your home that day?

15 A Yes, sir.

16 Q Mr. Harris, you never saw Miss Crumpton sell
17 marijuana in her home, correct?

18 A No, I never sat over there with her.

19 Q Okay.

20 MR. KING: No further questions, Your
21 Honor.

22 THE COURT: Any redirect?

23 MS. OWEN: Just briefly.

24 REDIRECT EXAMINATION

25 BY MS. OWEN:

1 Q Just to be clear, from March 11th to March 21st,
2 you sold two ounces to Miss Crumpton about 11 times?

3 A Right.

4 Q Okay. And that's a 10, 11-day period?

5 A Yes.

6 MS. OWEN: No further questions, Your
7 Honor.

8 THE COURT: Mr. King, any questions
9 limited to that redirect?

10 MR. KING: I have none, Your Honor.

11 THE COURT: All right. Thank you, sir.
12 I appreciate you being here.

13 MS. OWEN: Your Honor, may this witness
14 be excused.

15 MR. KING: No objections.

16 THE COURT: Yes, sir. You may be
17 excused. Thank you for being here.

18 Okay. How many more witnesses do you have,
19 Ms. Owen?

20 MS. OWEN: Two, Your Honor.

21 THE COURT: Two more witnesses. Fairly
22 short, as order as these witnesses?

23 MS. OWEN: Yes.

24 THE COURT: All right. So we'll probably
25 be able to finish all of that today. Does anybody

1 need to take a break right now? Is everybody
2 okay?

3 All right. You may call your next witness.

4 MS. OWEN: Thank you, Your Honor. The
5 State would call Jason Lovell.

6 THE CLERK: Do you solemnly swear or
7 affirm the testimony you're about to give in this
8 case to be the truth, the whole truth, and nothing
9 but the truth, so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Thank you, sir. If you
12 would, have a seat and state your name for the
13 record, please.

14 THE WITNESS: My name is Jason Lovell.

15 WHEREUPON:

16 JASON LOVELL,
17 after having been sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. OWEN:

20 Q Good afternoon, Captain Lovell now?

21 A Yes.

22 Q Captain Lovell, can you tell the jury a little bit
23 about yourself?

24 A Yes. I've been working for Easley for 24 a
25 half years, 15 years in narcotics and briefly been

1 promoted to captain in investigations.

2 Q Can you tell the jury a little bit about your
3 training experience with narcotics?

4 A Yes. I've been to multiple schools on the
5 identification of drugs, drug sales, undercover.
6 There's just been numerous schools.

7 Q Okay. And can you tell them a little bit about
8 how you investigate narcotics complaints?

9 A There's different investigations on
10 narcotics. Most common --

11 MR. KING: Judge, I'm going to object.
12 This is accumulative at this point. If there's a
13 relevant addition, we need to get there.

14 THE COURT: I respectfully overrule. You
15 can answer the question.

16 MR. KING: Thank you, Judge.

17 THE COURT: Yes, sir.

18 BY MS. OWEN:

19 Q You can proceed.

20 A In narcotics, we have different
21 investigations. We do controlled buys. We do car
22 stops leaving houses if we have information on
23 selling drugs. In all cases, when it comes to
24 drugs, once we collect the drugs, their packaged
25 and placed into evidence for analysis and weight,

1 and...

2 Q Okay, thank you. On or about March 21st, 2017,
3 did you help execute a search warrant on Miss
4 Crumpton's house?

5 A I did.

6 Q Do you remember what you took into evidence that
7 day?

8 A Yes.

9 Q Do you have it with you?

10 A I do.

11 MR. KING: I'm confused. Are we doing
12 the whole package?

13 MS. OWEN: I wasn't going to. Would you
14 like it separated?

15 MR. KING: I think it needs to be
16 separated.

17 (PLF. EXH. 9, Cell phone and scales, was
18 marked for identification.)

19 (PLF. EXH. 10, Partial smoked joint, was
20 marked for identification.)

21 (PLF. EXH. 11, Green Leafy substance, was
22 marked for identification.)

23 BY MS. OWEN:

24 Q Captain Lovell, I'm showing you what has been
25 marked as State's Exhibit 9, 10, 11. Do you recognize

1 those?

2 A I do.

3 Q What are they?

4 A Number 10 is a partial smoked -- what we call
5 a joint. It's marijuana in a cigarette wrapper.

6 Item 11 is the green leafy substance that's
7 been tested and come back.

8 MR. KING: Objection.

9 THE COURT: What's the objection, sir.

10 MR. KING: He is not the analyst. He is
11 not allowed to testify to what the substance is.

12 THE COURT: All right. I sustain the
13 objection.

14 MS. OWEN: Thank you, judge.

15 THE WITNESS: This is the substance that
16 Miss Crumpton showed us where it was, and
17 identified it as marijuana.

18 This is Miss Crumpton's cell phone that we
19 seized from the residence, and that is the digital
20 scales that we received from the residence in the
21 drawers in the kitchen area, close to where item 11
22 was placed.

23 BY MS. OWEN:

24 Q Thank you.

25 MS. OWEN: Your Honor, I would ask that

1 State's Exhibit 9 and 10 be admitted into evidence
2 at this time.

3 THE COURT: Yes, sir.

4 MR. KING: Judge, we have no objections
5 as to the scale. I don't see the relevance of the
6 phone, however. It's packaged all as one. With
7 the phone, I'm willing to let that in on that
8 caveat.

9 THE COURT: Understood. What's the
10 relevance of the phone?

11 MS. OWEN: Your Honor, there was a search
12 warrant done on the phone.

13 THE COURT: All right. Over the
14 objection, I'll allow both items into evidence. I
15 find that the appropriate foundation has been
16 laid.

17 MS. OWEN: Thank you, Your Honor.

18 BY MS. OWEN:

19 Q Captain Lovell, once you collected all these items
20 what did you do with them?

21 A These items were collected by myself and
22 Detective Hamby. They were brought back to the
23 police department where they were labeled and
24 packaged and placed into evidence.

25 Q Okay.

1 MR. KING: Judge, may we approach?

2 THE COURT: Sure.

3 (Bench conference; off the record.)

4 THE COURT: I'm going to take up a matter
5 outside of your presence now. I have secrets from
6 you all. Sometimes I have to establish a record
7 about why something may either be admissible or
8 not admissible. I'm going to look at the evidence
9 that the State is proffering and make a
10 determination as to whether it's admissible or
11 not, but I have to flesh it out a little bit. I
12 can't do it in front of you because if I find that
13 it's not admissible, then we really messed up.

14 So I'm going to ask you to take a brief
15 break. We'll come back fairly shortly and resume
16 the trial. Thank you very much. Please don't
17 discuss the case.

18 (Jury exits the courtroom at 3:35 p.m.)

19 THE COURT: All right. So the
20 State's Exhibit Number 5, are these the very same
21 text messages that we discussed in context with
22 Mr. Harris?

23 MS. OWEN: Only one, Your Honor. The one
24 that says BA at the top.

25 THE COURT: Yes, ma'am.

1 MS. OWEN: It's one text message chain
2 from them, what appears to be a one-day period.

3 The others are conversations with her
4 other people on her phone that were taken once the
5 search warrant was executed on her phone.

6 THE COURT: All right. And your
7 position, Mr. King?

8 MR. KING: So, Judge, on the one for
9 Kerek Harris -- this packet is all State's 5? Is
10 that what it's listed as?

11 THE COURT: Yes.

12 MR. KING: I apologize. I'm getting a
13 little confused with how we're identifying stuff.

14 The one with Kerek Harris, it's my
15 understanding, you ruled that all these are
16 inadmissible. So I don't see why the State --
17 even if it comes from her phone, there should be
18 no -- that doesn't change. It's still the same
19 messages.

20 Now, the ones that are titled for
21 Courtney Jay, you have three pages from those,
22 Judge.

23 THE COURT: Well, let's see. Courtney
24 Jay, one, two, three -- yes, sir. Three, and then
25 one from Chris Harry.

1 MR. KING: Okay. So Chris Harry is the
2 easy one because Miss Crumpton didn't respond to
3 any of those. These are out-of-court statement by
4 someone named Chris Harry that is not here today
5 to testify. That means it's hearsay and it's a
6 violation of her confrontation clause right.

7 Now, these Courtney Jay ones, those same
8 arguments apply to these.

9 Exception to hearsay is for the
10 defendant. Right? So, in these three pages from
11 Courtney Jay, it says, I got one, I smoked one,
12 police, yes, and yes, and yes, yes, yes, yes, and,
13 no, I'm being silly, and then my fourth page
14 appears to be identical to that second page.

15 I guess they're admissible with redaction
16 with Courtney Jay's statements, but, frankly, to
17 properly authenticate a text message you have to
18 one of the parties of the text message testify
19 that they know the message came from that person
20 based on the lingo or nature of the message.

21 So here, I think even if it is
22 Miss Crumpton's, out-of-court statements, you
23 still need someone to authenticate that they would
24 come from her. So I don't think they're
25 admissible under any circumstances, respectfully.

1 THE COURT: All right. I'm going to
2 sustain the defense's objection. I don't think
3 they're appropriately admissible under the
4 captain.

5 Now, if she takes the stand and she
6 testifies, you can ask her about that. I'm not
7 saying that these would be admissible, but there
8 may be a method of authentication through her if,
9 in fact, they establish it's her phone and it's
10 her conversation.

11 MS. OWEN: Thank you, Your Honor.

12 MR. KING: Thank you, Judge.

13 THE COURT: Okay. So let's take a short
14 break.

15 (A recess was taken from 3:39 p.m. to 3:50 p.m.)

16 (Jury enters the courtroom the 3:50 p.m.)

17 THE COURT: All right. Miss Owen, you
18 may proceed.

19 MS. OWEN: Thank you, Your Honor.

20 BY MS. OWEN:

21 Q Captain Lovell, in regards to the search warrant
22 you executed, you said that -- I believe it was item
23 11 was green plant material taken from the home; is
24 that correct?

25 A Yes. It's two clear plastic baggies

1 containing green plant material.

2 Q I'm going to show you what has already been
3 previously marked as Exhibit 1. What is that?

4 A It's two clear plastic baggies contained
5 plant material.

6 Q And that's now what's been marked as State's
7 Exhibit 11?

8 A It is.

9 (PLF. EXH. 11, Plastic baggies, was marked
10 and entered into evidence.)

11 BY MS. OWEN:

12 Q Let me show you what's been marked as State's
13 Exhibit 4. What is that?

14 A That's the set of digital scales that is 11.
15 I'm sorry. That's in 9.

16 Q 9, thank you.

17 Captain Lovell, in your experience, when
18 someone has marijuana scales and a quantity of cash,
19 what is that usually indicative of?

20 A Based on my training and experience, which is
21 15 years experience, it's distribution of the
22 plant material.

23 Q The green plant material?

24 A Yes.

25 Q And where does Miss Crumpton live?

1 A She lives in Easley off West Main
2 interaction. Her actual home faces West Main Hot
3 Spot on the opposite side of the road. Miss
4 Crumpton lives, kind of, back behind the home on a
5 little street called Darby Way.

6 Q Okay. Can you tell us, driving in as the crow
7 flies, how close that is to Hagood Park?

8 A Not even as a crow flies, but if you cross
9 over West Main intersection beside the Hot Spot in
10 Easley and turn back left, Hagood Park is right
11 there. Or you can turn left off of Darby Way onto
12 the West Main intersection and go to the Liberty
13 intersection and turn right on to Liberty Drive
14 and Hagood Park is right there on the right. Both
15 of those directions were within a quarter mile of
16 Hagood Park.

17 Q So it's less than a half mile?

18 A Well within a half mile.

19 Q Okay. Captain Lovell, have you done anything else
20 in relation to this case?

21 A Yes, I received complaints.

22 MR. KING: I object to that. Any
23 complaints are hearsay.

24 THE COURT: Okay. Well, restate the
25 question. I haven't heard the answer yet. I

1 can't make an evaluation whether it's hearsay or
2 not.

3 MS. OWEN: I understand.

4 BY MS. OWEN:

5 Q Captain Lovell, were you surveilling the [REDACTED] Darby
6 Way area with Mr. Detective Hamby?

7 A Yes, I was.

8 Q And there were complaints about heavy traffic in
9 that neighborhood.

10 A Yes.

11 Q And based on observation that you both made of
12 people leaving that home, that's why the search
13 warrant was executed; is that correct?

14 A Yes. There was traffic consistent with
15 normal distribution of an illegal substance.

16 MS. OWEN: Thank you. I have no further
17 questions.

18 THE COURT: Yes, sir.

19 Cross-examination.

20 MR. KING: Thank you, Judge.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. KING:

24 Q Captain Lovell, you said you were with the
25 narcotics division when this accident happened,

1 correct?

2 A That's correct.

3 Q And part of your duties as a narcotics detective
4 was to set up controlled buys of illegal drugs,
5 correct?

6 A That is one portion of my job, correct.

7 Q But you did not do that in Miss Crumpton's house,
8 correct?

9 A In this circumstance, no, sir. I did attempt
10 that.

11 Q But nothing came of it, correct? You could -- I
12 mean complete a controlled buy.

13 A I did not complete a controlled buy.

14 Q Okay. Now, Hagood Park, if you're standing at
15 Darby on Highway 8, Hot Spot is right across the
16 street, right?

17 A Yes. You can almost see the park right
18 beside the Hot Spot All right.

19 A It sits back some from Hot Spot.

20 Q There's Hot Spot across the street and there's the
21 big stone church next to the Hot Spot.

22 A Yes.

23 Q Hagood park is behind that, correct?

24 A Right behind that, yes, sir.

25 Q And there are trees behind Hot Spot, correct?

1 A There are trees. And when the foliage is
2 off, you can see the park.

3 Q Okay.

4 MR. KING: No further questions, Your
5 Honor.

6 THE COURT: Any redirect, ma'am?

7 MS. OWEN: Nothing on redirect.

8 THE COURT: Thank you, Captain. I
9 appreciate you being here. You can step down.

10 THE WITNESS: Yes, sir.

11 THE COURT: You can remain in the
12 courtroom, if you'd like or be excused.

13 THE WITNESS: I'll remain in the
14 courtroom a while. The evidence is here.

15 THE COURT: You can call you next
16 witness.

17 MS. OWEN: Thank you, Your Honor. The State
18 would call Brian Cowan.

19 THE CLERK: Do you solemnly swear or
20 affirm the testimony you're about to give in this
21 case will be the truth, the whole truth, and
22 nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Thank you, sir. If you
25 would, have a seat and state your name for the

1 record, please.

2 THE WITNESS: Robert Brian Cowan.

3 BY MS. OWEN:

4 Q Good after, Mr. Cowan. Can you tell the jury a
5 little bit about yourself?

6 A Yes. I began my law enforcement career in -
7 oh, Lord have mercy, January 1994, and I ended in
8 January of this year with the police department.
9 I spent 25 years in the Easley Police Department.
10 Eighteen of those years, I spent as an evidence
11 technician, and also a certified marijuana analyst
12 with the Easley Police Department.

13 Q Let's start with what an evidence technician is?

14 A At the Easley Police Department what happens
15 is, the officers collect the evidence, they seal
16 it, they document it, and then they turn it in
17 with the subject's paperwork. At one time -- we
18 have upgraded to what's considered almost like
19 post office boxes. They put it on one side, lock
20 it, I retrieve it from the other side, verify that
21 that's what's on the paperwork, verify that it's
22 sealed and documented properly. And then I enter
23 into the computer system, and then I would place
24 it into a holding area and until it would either
25 go to court, go to a lab, or be destroyed.

1 Q Okay. And tell us a little bit about your
2 training and experience with marijuana?

3 A In January of 2002, I completed a 40-class
4 through the State Law Enforcement Division, and
5 every three years subsequently after that, I
6 renewed my certification up until November of last
7 year at which time they revoked all certifications
8 about analyzing marijuana.

9 Q Okay. Why did they do that, do you remember?

10 A They passed a new law. I think the law was
11 actually passed in 2017, but at that time they did
12 not have procedures in place to accommodate
13 everything and we were advised at that time to
14 continue testing as we would normally test the
15 marijuana.

16 Q Okay. Can you tell the jury a little bit about
17 how you test marijuana?

18 A Okay. Whenever marijuana comes in, there is
19 a two-fold test that we do. One of them is a
20 visual examination that is done under a
21 microscope.

22 MR. KING: Judge, I'm going to -- I'd
23 like to object to his -- I'm not sure how to put
24 it. May we approach, please?

25 THE COURT: Yeah, I think I know what

1 you're saying. You want to object to his
2 qualifications as an expert; is that correct?

3 MR. KING: I do, and I'm not sure we need
4 to go into the testing procedure until we get over
5 that hurdle.

6 THE COURT: Okay. I'm going to allow you
7 voir dire on the record in open court. One of the
8 tests not only whether he is qualified as an
9 expert, but also that methodology is an accepted
10 and recognized scientific method. So I think all
11 of this goes to whether that evidence is
12 admissible or not. I suspect that you're going to
13 want to voir dire him with respect to methodology
14 as well.

15 MR. KING: That's correct, Your Honor. I
16 apologize. I just want to get a ruling on where
17 we're going.

18 THE COURT: I got you. I got you.

19 Okay, you can proceed.

20 MS. OWEN: Thank you.

21 BY MS. OWEN:

22 Q Mr. Cowan, could you continue explaining how you
23 test marijuana?

24 A At that time, we were training through the
25 State Law Enforcement Division, and you are

1 trained to use a microscope in looking for three
2 different hairs on the underneath side of the
3 plant material. Once those hairs are identified,
4 then you move on to the chemical test. And the
5 chemical test is a three-stage test. The first
6 solution a mixture of -- it's a mixture of mixture
7 of vanillin-ethanol and acetaldehyde.

8 What you did then is you soak a little bit of
9 the plant material in that solution, and then you move
10 on to the hydrochloric acid. Once you drop
11 hydrochloric acid into it, you'll see the plant
12 material actually almost start to roll. At that
13 point, it turns to a purple color. Those two steps
14 right there is actually called the Duquenois test.

15 Then a third test later was identified by a
16 chemist or a doctor by the name of Levine. That test
17 is when you use chloroform. You drop a drop of
18 chloroform into that. It forms an eye, and that eye
19 will turn a pink or purple-ish shade. That notifies
20 you and let's you know that this does have TCH, which
21 is tetrahydrocannabinol, which is the illegal
22 substance in the actual marijuana plant material
23 itself.

24 Q Thank you. Mr. Cowan, can you tell the jury a
25 little bit about your trainings and certifications

1 from SLED?

2 A In 2002, I had to score a 100 percent by
3 analyzing 110 samples. Every year after that, we
4 would have to go back -- not every year. Every
5 three years after that, we would end up going
6 back, having to retake a test. We had score a --
7 I believe it's 80 percentile or above, and also we
8 had to do 10 samples. And of those 10 samples, we
9 had to score hundred percent of them. There was
10 no -- no giveaway on the actual chemical test and
11 the microscopic test. It had to be hundred
12 percent or you didn't pass.

13 Q Okay. Were these always done at SLED?

14 A Yes.

15 Q And who were those administered by?

16 A They were administered by certified teachers
17 who had been through the training and they were
18 certified. The State Law Enforcement Division
19 would teach officers how to analyze marijuana.

20 Q Okay. So from 2002 until 2019, you were certified
21 by 110 samples initially and then every three years
22 after that?

23 A Yes, every three years after that.

24 Q And approximately, in your career, would you say
25 how many samples of marijuana have you reviewed?

1 A I actually began counting in the year 2010.
2 From 2010 until 2018, I analyzed probably roughly
3 1600 cases during that time frame.

4 MS. OWEN: Your Honor, at this time, I
5 offer to qualify Mr. Cowan as an expert in
6 chemical analysis for marijuana.

7 THE COURT: You may voir dire.

8 Now, Ladies and Gentlemen, this is a little
9 bit different than a lot of witness that we take up.
10 Usually after examination you have cross-examination.
11 But when one party offers an expert witness, that is
12 someone with the education, qualification and
13 expertise to speak specifically to a given subject,
14 the defense has the opportunity, or the side who is
15 not offering the expert, has the opportunity to voir
16 dire that witness. That means to question him or her
17 to determine whether, in fact, they are qualified, and
18 whether the methodology is appropriate.

19 So we are going to the voir dire now.
20 After I make a determination as to whether he
21 should be excepted as an expert, I'll define to
22 you what an expert witness is, why an expert
23 witness will be introduced, and then we'll proceed
24 with his testimony from questioning. So having
25 said that, Mr. King.

1 MR. KING: Thank you, Judge. May I
2 approach the witness?

3 THE COURT: Sure.

4 CROSS-EXAMINATION

5 MR. KING:

6 Q Sergeant Cowan, you didn't retire until January
7 2019, correct?

8 A That is correct.

9 Q So were you aware of SLED's announcement
10 December 14th of 2018 regarding the termination of
11 marijuana handling, certification, and testing
12 program?

13 A Yes.

14 Q All right.

15 A We were actually notified in November of 2019
16 that our certification would be terminated.

17 Q Okay. I just handed you an announcement on
18 December 14, 2018. Have you seen that one before?

19 A Yes, I have. I received a copy of it.
20 That's when we knew that our certifications had
21 been revoked.

22 Q Right. And so it says, "Effectively immediately,
23 SLED forensics laboratories discontinued the marijuana
24 analyst certification, recertification, and testing
25 programs," correct?

1 A That's correct.

2 Q And it says, "Subsequently, all law enforcement
3 officer currently certified under the SLED marijuana
4 analyst program, known as the program, should
5 discontinue in testing plant material," correct?

6 A Correct.

7 Q Now, they say, "Be advised that SLED has
8 researched this issue excessively and has determined
9 that due to the recreation of hemp industry program,
10 the marijuana testing procedures covered in this
11 program," that's the marijuana analyst testing
12 program, "procedures covered in the program, namely
13 the microscopic analyst and Duquenois-Levine test --
14 Levine spot test -- chemical spot test, excuse me,
15 "cannot differentiate between industrial hemp and
16 marijuana," correct?

17 A That's correct.

18 Q Okay. So what SLED is saying is that the test you
19 performed, or were trained to perform, is no longer
20 accurate, correct?

21 A At that time, yes, they had determined
22 that.

23 Q Okay. And they're saying that microscopic analyst
24 and Duquenois-Levine spot test is not sufficient
25 scientifically to identify marijuana, correct?

1 A No, they are saying they cannot differentiate
2 between industrial hemp and marijuana.

3 Q Thank you. That's because there are two types
4 that are very similar, but this science cannot tell
5 the difference between an illegal substance and the
6 legal substance, correct?

7 A I believe that's correct, yes, sir.

8 Q Okay. Now, now industrial hemp is legal,
9 correct?

10 A Industrial hemp?

11 Q Yeah.

12 A As long as it does not have to a percentage
13 of THC above .3 percent it is.

14 Q Correct.

15 A Yes. As long as it's under that, it's
16 legal.

17 Q Correct. And the problem with the science you
18 perform, or you're trained to perform, was that it
19 cannot tell the difference on that THC threshold,
20 correct?

21 A It gives you a positive or negative that it
22 contains it. It does not give you a quantitative
23 value of how much is in it.

24 Q Right. That's what I'm calling the .3 percent
25 threshold.

1 A That's correct.

2 Q Okay. So, in 2017, the test you performed could
3 not tell the level of THC, correct?

4 A The test could not tell the level. Like I
5 said, it was just positive or negative.

6 Q Okay.

7 A We couldn't get a level of how much THC was
8 in there, or in the sample that was provided.

9 MR. KING: Judge, I have, at this time,
10 an objection to him being qualified as an expert.
11 I've got an written objection I'd like to make a
12 Court's exhibit, the piece of paper in Sergeant
13 Cowan's hands, if I may.

14 THE COURT: All right. Let me get this
15 straight. One, you want to make a written
16 objection a Court's Exhibit, and you want to make
17 the document that you just read into the record as
18 Court exhibit as well?

19 MR. KING: Yes, Your Honor.

20 THE COURT: So it will be Court's Exhibit
21 2 and 3.

22 MR. KING: Would you like to hear --

23 THE COURT: Hand them to the court
24 reporter.

25 MR. KING: May I hand them up, Your

1 Honor?

2 THE COURT: Yes, sir. Thank you. Yes,
3 sir, Mr. King.

4 MR. KING: Would you like to hear my
5 argument now?

6 THE COURT: Yes.

7 MR. KING: Or do that outside the
8 presence of the jury?

9 THE COURT: If we're talking about the
10 qualifications of this expert witness, I'm happy
11 to hear from you right now.

12 MR. KING: Okay. So, Rule 702 of the
13 rules of evidence require the admissibility of
14 expert testimony if the witness has specialized
15 knowledge, that knowledge is based on training or
16 experience, and that specialized knowledge
17 consisted during and understanding the fact at
18 issue. And then, of course, he must give his
19 opinion. Further, in a drug case, the rules of
20 criminal procedure require that we have that
21 identification.

22 So, here, Sergeant Cowan is, at one
23 point, a certified investigator to test marijuana
24 under the marijuana analyst certification and
25 recertification testing program. The program did

1 give him that knowledge, specialized knowledge in
2 training for the microscopic test as well as the
3 Duquenois-Levine chemical spot test.

4 However, I believe it was Court's Exhibit
5 Number 3, SLED has published their customer
6 notice, which has terminated that program and says
7 that was bad science, and that we cannot -- no
8 longer use those tests to determine if it is an
9 illegal substance or a legal substance because it
10 does not determine the threshold of THC.

11 SLEd also said in that exhibit that law
12 enforcement can send things and send substances to
13 the State Law Enforcement Division to be tested
14 properly.

15 So he has prior training and experience,
16 but that training and experience is no longer
17 valid because the science used in 2017 has been
18 disproven. Essentially, it's like a polygraph
19 test was given when it was considered good
20 science. And once it was no longer good science,
21 doesn't mean you can then come in and admit it at
22 trial.

23 So, respectfully, we don't believe you
24 had sufficient qualifications to test the
25 subject -- the substance and render an opinion

1 about what it is.

2 THE COURT: From the State.

3 MS. OWEN: Thank you, Your Honor. Your
4 Honor, this case is from 2017. Sergeant Cowan was
5 testing all the marijuana for Easley back in 2017.
6 In fact, all the counties across the State were
7 following SLED guidelines and testing the
8 marijuana. Only in December of 2018 did SLED
9 issue an order for them to stop testing the way
10 they are testing currently.

11 Your Honor, this was still the law. It
12 was legal for industrial hemp or marijuana back in
13 March of 2017, so I would argue that Sergeant
14 Cowan is definitely qualified under the expert
15 statute or Rule 702, and based on the fact that in
16 2017, and specifically March of 2017, this was
17 still illegal for her to possess.

18 THE COURT: Yes, sir.

19 MR. KING: Judge, respectfully, that is
20 incorrect. Industrial hemp was first passed in
21 2014. Industrial hemp, it was restricted at that
22 time, but it has been legal in South Carolina
23 since 2014.

24 THE COURT: Well, here's the deal: When
25 I charge the jury as to the law, the question is

1 going to be marijuana. Hemp is not part of the
2 equation. Okay? And, the State, it has to be
3 proven beyond a reasonable doubt that she
4 possessed marijuana with intent to distribute the
5 same. Okay?

6 So with respect to his qualification as
7 an expert witness, I will allow him to testify as
8 an expert witness.

9 Now, the reliability of the testing
10 procedure is a matter to be determined by the
11 jury. They will weigh the credibility of the
12 witness's testimony, and determine, in fact,
13 whether it should be relied upon or not in their
14 capacity as the finders of fact.

15 So, Ladies and Gentlemen, this gentleman
16 is being offered as an expert witness. Now, a
17 party to a lawsuit may offer someone as an expert
18 witness because of his or her education,
19 experience, or expertise in a given field. The
20 reason someone may offer someone as an expert
21 witness is because an expert witness can testify
22 about things that a lay witness, that is a regular
23 witness, can't testify to. That is, an expert
24 witness can offer an opinion that a regular
25 witness could not otherwise offer. So, a party

1 offers an expert witness to assist in explaining
2 evidence.

3 Now, when an expert witness takes the
4 stand, you can consider it in the same way that
5 you consider any other piece of evidence that you
6 receive in a trial. That is, you look at it, you
7 determine whether it's believable, whether it's
8 credible what kind of weight it has, and what
9 significance it has in your determination. So
10 what I found is that, because of his experience
11 and his education and his training, he should be
12 qualified as an expert witness, but you decide
13 what weight and what meaning his testimony has
14 just like any other piece of evidence that you
15 receive in the trial of the case.

16 All right. You may proceed.

17 MS. OWEN: Thank you, Your Honor.

18 BY MS. OWEN:

19 Q Sergeant Cowan, let me show you what's been marked
20 as State's Exhibit 11. Can you identify that?

21 A Yes. It's an -- item number 1 from case
22 number 2017-1313. It has my initials and the date
23 on it.

24 Q Okay. What's in that bag?

25 A This is an item that was submitted to me when

1 I was still working with the Easley Police
2 Department, and it was a plant-like material that
3 the officer -- the arresting officer believed to
4 be marijuana. I would have -- with this bag being
5 sealed and my initials on it, it means I have
6 tested this item --

7 Q Okay.

8 A -- to determine if it was -- contained THC,
9 which is the illegal substance in marijuana.

10 MS. OWEN: Thank you. Your Honor, at
11 this time, I'd like to offer State's Exhibit 11
12 into evidence.

13 THE COURT: Yes, sir.

14 MR. KING: It's my understanding, we have
15 not identified it. He just set up the chain. Is
16 that what we've done at the moment.

17 MS. OWEN: No. He just identified it.

18 MR. KING: Has the substance been
19 submitted into evidence?

20 MS. OWEN: Yes.

21 MR. KING: No objection as to that.

22 THE COURT: All right. Same is
23 admitted.

24 MS. OWEN: Thank you.

25 BY MS. OWEN:

1 Q Sergeant Cowan, can you explain to the jury while
2 showing them that what you would have done one more
3 time and the process you would have done in this case
4 in particular?

5 A Okay. Because it has a seal on it here, what
6 I did was, I opened it from this end. I would
7 take this item, this plant-like material and put
8 it under the microscope. At that time, like I
9 said, I would look for the three hairs, verify all
10 three hairs. From there, I would then move on to
11 the spot test, which I believe is the way the
12 defense attorney referred to it as, a spot test.
13 What happens is, you take a little bit of that
14 out, a little bit of the plant material, put it
15 into the little ditch, you start -- you go through
16 your solutions A, B, and C. A is the one that's
17 got the ethanol and the vanillin and the
18 acetaldehyde in it. You put that in there, you
19 let it soak into it. And then you drop your
20 hydrochloric acid into. The sample will then,
21 as we call it, roll, or some officers like to
22 refer to it as dancing. It dances, and then it
23 will turn a shade of purple.

24 At that time, that is the initial
25 Duquenois test. And then the Levine test, which

1 is the chloroform, that is when you drop it down
2 in there and you look for the eye to form. That
3 eye will then turn a shade of pink or purple.

4 What happens then is, it blends in with it.

5 And then once I'm doing with that, I'll
6 make notations of what the test results were,
7 positive or negative, and then I would seal the
8 bag back up and put it back in storage.

9 Q Okay. And did you seal the bag back up?

10 A Yes, I did.

11 Q And what did you write on there?

12 A My initials and the date it was sealed, which
13 was 5/18/2017.

14 (STATE EXH. 7, Marijuana analysis form, was
15 marked for identification.)

16 BY MS. OWEN:

17 Q Thank you. I'm going show you what has been
18 marked as State's Exhibit 7. Can you identify that?

19 A This is the marijuana analysis form that I
20 would put my findings on.

21 Q Can you tell the jury what you found?

22 MR. KING: Judge, I'm going to object as
23 to his form. I have a written objection that I'd
24 like to make a Court's exhibit and hand up as
25 well.

1 THE COURT: All right. You can mark it
2 as a Court's exhibit, sir.

3 MR. KING: I believe we're on number
4 four, Your Honor.

5 (COURT EXH. 4, Written objection; King, was
6 marked and entered into evidence.)

7 THE COURT: 4. All right. Anything you
8 need to say to the written objection?

9 MR. KING: If it pleases the Court, Your
10 Honor, Rule 6 of the rules of criminal procedure
11 require a proper test and a legally reliable test.
12 In this case, we do not have a legally reliable
13 test. Specifically, SLED has said that it is
14 unreliable for the determination of marijuana,
15 because it cannot determine the THC threshold of
16 .3 percent. As a result, these tests are
17 inadmissible.

18 THE COURT: Okay. Position of the
19 State.

20 MS. OWEN: Yes, Your Honor. Again, as I
21 already argued in 2017, this was the test everyone
22 in the state was using. In December of 2018 is
23 when they asked law enforcement to stop performing
24 this test. It doesn't say anything about any of
25 the tests previously being unreliable or that they

1 were to be thrown out or that they meet the
2 minimum threshold, Your Honor. At this point in
3 time, it was still marijuana. In March, April,
4 May of 2017 these were the tests that were being
5 performed back then.

6 Yes, they are no longer using that test,
7 but it was still reliable at the time of the test,
8 Your Honor.

9 THE COURT: All right. I'm going to
10 respectfully overrule the objection. I think it
11 goes to the weight of the evidence. The jury can
12 make a determination as to -- whether based on the
13 exceptions the defense takes to the test, whether
14 the State has proven beyond a reasonable doubt
15 that it was, in fact, marijuana, it will be up to
16 the jury to determine the weight of the evidence.

17 MR. KING: Thank you, Judge.

18 THE COURT: Go ahead.

19 MS. OWEN: Thank you, Your Honor.

20 BY MS. OWEN:

21 Q Sergeant Cowan, can you explain to the jury what
22 your findings were?

23 A Yes. My findings on May 18th of 2017 was,
24 the microscopic test positive, so that means that
25 I did see the three hairs that were supposed to be

1 there for a microscopic test. And then I
2 performed a chemical test and it came back
3 positive also. It had a weight of 19 grams and
4 .66 ounces. And then I completed the form and
5 placed it with the case file.

6 MS. OWEN: Your Honor, at this time, I'd
7 like to ask that State's Exhibit 7 be moved into
8 evidence.

9 MR. KING: Over my have objection,
10 Judge.

11 THE COURT: Over the former objection, it
12 is respectfully admitted into evidence.

13 MS. OWEN: Thank you, Your Honor.

14 (STATE EXH. 7, Marijuana analysis form, was
15 entered into evidence.)

16 BY MS. OWEN:

17 Q So, Sergeant Cowan, back in May of 2017 when you
18 tested this substance, it was marijuana; is that
19 correct?

20 A That is correct.

21 MS. OWEN: Thank you. No further
22 questions.

23 THE COURT: Yes, sir.

24 MR. KING: Thank you, Judge.

25 THE COURT: Yes, sir.

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MR. KING:

Q She just asked you, in May of 2017 the results said it was marijuana. I believe that's what she asked you, correct?

A Yes.

Q Based on the SLED research, you don't know if it was marijuana or industrial hemp, correct?

A I know there was a presence of THC, which is tetrahydrocannabinol. That is all I can testify to.

Q Right.

A The presence of that substance in the sample that was provided to me.

Q Correct. So you can't tell if it's below .3 THC or above .3 percent?

A That is correct.

Q So all you can tell the jury is that there is THC in the substance?

A That is correct.

Q Okay. Sergeant Cowan, how much did you say the substance weighed?

A It was 19 grams and .66 ounces.

Q Did you weigh that in a bag or on its own?

A I emptied the contents out on to a dish I had

1 zeroed out and weight individually. I do not
2 weigh the bags. That's against SLED policy.

3 Q All right. And what you weighed was less than one
4 own?

5 A That's correct. It was .66 ounces.

6 MR. KING: No further questions.

7 THE COURT: Any redirect?

8 MS. OWEN: Nothing, Your Honor.

9 THE COURT: You may step down.

10 Anything further from the State?

11 MS. OWEN: Nothing further from the
12 State, Your Honor.

13 THE COURT: All right. So, Ladies and
14 Gentlemen, we're going to adjourn for the day.
15 I'm going to ask that you be back tomorrow morning
16 at 9:30, and we will either -- either we will hear
17 testimony from the defense, or we go to argument
18 and charge. One of the two.

19 Please, over the evening, don't discuss
20 the case. Again, your significant other, your
21 friends, your children, your parents, your
22 associates may ask you questions about what you're
23 doing, what kind of case you're on, but just tell
24 them, we'll talk about it tomorrow evening.
25 Because what happens invariably, when you answer a

1 simple innocuous question and then you get another
2 question, if your spouse is like mine, he or she
3 is sure not to be satisfied with just a couple of
4 curt responses. So what I'll tell you is, don't
5 even begin a process. Just say, hey, I can't talk
6 about it. We'll talk about it tomorrow.

7 Also, again, I'll remind you, don't do
8 any self-help. Don't do any research trying to
9 find out about the case.

10 Be back tomorrow at 9:30 and we'll resume
11 the case. Thank you very much. I appreciate it.
12 I hope you all have a good evening.

13 (Jury exits the courtroom at 4:24 p.m.)

14 THE COURT: Okay. Mr. King, do you
15 intend to offer any evidence?

16 MR. KING: At the moment, I do not. I do
17 need to speak with my client to see if she wants
18 to testify.

19 THE COURT: Okay. Do you want me to go
20 ahead and advise her of her right to testify
21 and/or to remain silent?

22 MR. KING: I would appreciate that, Your
23 Honor.

24 THE COURT: Miss Crumpton, can you raise
25 your right hand? Do you swear or affirm the

1 testimony you're about to give is the truth, the
2 whole truth, and nothing but the truth, so help
3 you God?

4 THE WITNESS: Yeah.

5 THE COURT: Okay. Miss Crumpton, you
6 have a right to remain silent. As you know, and
7 I'm sure you heard that any number of times, and
8 as I've already instructed the jury, which means
9 that you are not compelled to testify in this
10 case, or to say anything or to do anything. You
11 can remain silent, and the State would be required
12 to prove each and every element of the offense
13 beyond a reasonable doubt, just as I've already
14 instructed the jury. If you elect not to testify,
15 then I will tell the jury, specifically, that that
16 is your constitutional right. And I will tell
17 them that not only can they not hold it against
18 you, they are not even allowed to discuss it in
19 their jury room because they can't hold against
20 you your exercising a constitutional right.

21 Now, you also have the right to testify
22 if you want to. So tomorrow you can take the
23 stand and testify and you can tell the jury your
24 side of the story. You can tell them anything you
25 want to tell them. But you understand that if you

1 do testify, you would be subject to
2 cross-examination and the solicitor could ask you
3 questions about -- perhaps, about a prior record.
4 I don't know because I haven't looked to see if
5 there's anything that's admissible, but they could
6 also ask you questions about this case in an
7 attempt to throw credibility into question, that
8 is, to impeach you.

9 So, understand, if you elect to testify,
10 then you do assume certain risks. But if you
11 don't testify, you also assume risks because you
12 can't tell the jury your ride of the story. So
13 either way, there are pros and cons, and you
14 assume risks either way.

15 Now, you have to make a decision as to
16 whether you want to testify or not, and understand
17 that is your decision to make. And you can talk
18 to Mr. King about it and he can give you advice
19 one way or the other. You can talk to friends and
20 family, whomever you wish, and they can give you
21 advice one way or the other and tell you what they
22 may do in your circumstances. But, ultimately, it
23 is your decision and your decision alone as to
24 whether you're going to testify or not. Do you
25 understand that?

1 MS. CRUMPTON: Yes, sir.

2 THE COURT: Do you have any questions you
3 want to ask ME about that right?

4 MS. CRUMPTON: No, sir.

5 THE COURT: All right. And I'll let you
6 talk with Mr. King about it, and what we'll do is,
7 we'll come back on the record tomorrow at 9:30.

8 Now, what I would like for you to do is
9 to meet me back in chambers in the library at 9:00
10 and let's talk through the charge. Do you have
11 any request for the charge?

12 MR. KING: I do, Your Honor.

13 THE COURT: Okay. Anything we put on the
14 record before we adjourn this afternoon?

15 MS. OWEN: Nothing from the State, Your
16 Honor.

17 THE COURT: All right.

18 MR. KING: And, Your Honor?

19 THE COURT: Yes, sir.

20 MR. KING: I believe the State has
21 rested, so, at this time, I'll move for directed
22 verdict of not guilty. Directed verdict is to the
23 sufficiency of the evidence presented, so -- which
24 means, has the State has presented evidence as far
25 as each and every offense that Miss Crumpton is

1 charged with.

2 THE COURT: Yes, sir.

3 MR. KING: For the possession with intent
4 to distribute in proximity of a park, they must
5 present evidence that she knew she was within a
6 half mile of a park. There have been assumptions
7 and speculations based on her house location that
8 she knows the park is over there, but there was no
9 testimony about the knowledge. Therefore, we
10 think directed verdict as to the proximity charge
11 is appropriate.

12 Now, as to the possession with indent to
13 distribute charge, I think -- we think given that
14 the science is no longer legally reliable, the
15 State has not sufficiently presented to the jury
16 that the plant-like material that was confiscated
17 was marijuana. At this time, it's speculation to
18 the jury about the THC threshold that was on the
19 plant-like material in evidence. The jury has
20 nothing more than speculation to determine if it's
21 industrial hemp with lower than a .3 percent THC
22 level or .3 percent or higher.

23 As a result, a directed verdict is
24 appropriate on the possession with intent to
25 distribute charge as well.

1 Thank you.

2 THE COURT: All right. Position of the
3 State?

4 MS. OWEN: Yes, Your Honor. Thank you.
5 I believe the proper standard in the light most
6 favorable to the State. We haven't presented any
7 evidence tending to prove the defendant's guilt,
8 whether that be direct or circumstantial. Your
9 Honor, we had law enforcement testify that they
10 were getting complaints in that area, that they
11 were surveilling the home, that Mr. Harris left
12 the home. They were doing a subsequent
13 investigation on him. They then spoke to him. He
14 corroborates that he is selling marijuana to
15 Miss Crumpton almost on a daily basis, two ounces,
16 at which point they get a search warrant for her
17 home. They find marijuana, scales, \$534 in cash.
18 And, Your Honor, she does live within less than a
19 quarter of a mile of the park. Her house is
20 essentially across the street from the Hot Spot,
21 and behind the Hot Spot is the park.

22 I believe a reasonable person would know
23 that there is a park right there, especially in
24 that close proximity. We are not even talking
25 half a mile. It's less than quarter of a mile.

1 So I believe we have met our burden of
2 proof, Your Honor, to give it to the jury for them
3 to decide and determine the weight of the
4 evidence.

5 And in regards to the test in the 2017
6 charge, the 2017, this was marijuana back then.
7 This was the proper test that everybody in the
8 state was using. This was how everything tested.
9 Even SLED was testing it that way back then, Your
10 Honor.

11 THE COURT: Okay. I do think it's an
12 interesting issue with respect to the test, but I
13 do think that's a factual decision to be
14 determined by the State -- excuse me, by the jury.
15 It's established, I think, by both parties that
16 it's either hemp or it's marijuana.

17 And so, I think that there is evidence in
18 the record upon which a jury could find that the
19 State has met its burden of proof. I take no
20 position with respect to the sufficiency or the
21 weight of the evidence, however. I do find that
22 it exists, which is requisite standard for a
23 directed verdict motion.

24 Therefore, I respectfully deny the motion for
25 directed verdict.

1 MR. KING: Thank you, Judge.

2 THE COURT: Mr. King, did you get this
3 from the judge?

4 MR. KING: I did not.

5 THE COURT: You didn't. It looks like it
6 came from a judge's bench.

7 MR. KING: It was a PDF that was sent to
8 me.

9 THE COURT: Well, we'll talk about this
10 tomorrow, but that's pretty much what I got.

11 MR. KING: Thank you, Judge.

12 THE COURT: Thank you.

13 MS. OWEN: Thank you, your Honor.

14 (Proceedings adjourned at 4:33 p.m.)
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TESTIMONY OF JASON LOVELL
CERTIFICATE OF REPORTER

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I, SHARON G. HARDOON, Official Circuit Court Reporter, II for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions for Pickens County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

November 17, 2019



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, II

1 STATE OF SOUTH CAROLINA
IN GENERAL SESSIONS
2 COUNTY OF PICKENS

3 The State of South Carolina,
4
5 Plaintiff,

6 vs. Transcript of Record
2017-GS-39-03291 &
2017-GS-39-03292

7 Wanda Jane Crumpton,
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9 Defendant.

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July 23, 2019
Pickens, South Carolina

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B E F O R E:

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The Honorable ROBIN B. STILWELL

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A P P E A R A N C E S

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Megan Owen, Representing the State of South Carolina

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Daniel King, Representing the Defendant

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SHARON G. HARDOON, CSR
Official Circuit Court Reporter, II

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1 THE BAILIFF: all rise. Honorable Judge
2 Stilwell presiding.

3 THE COURT: Take a seat, Ladies and
4 Gentlemen. Hope everyone is doing good today.

5 Anything we need to put on the record before
6 we get started this morning?

7 MS. OWEN: Nothing from the State, Your
8 Honor.

9 MR. KING: Nothing from the defense, Your
10 Honor.

11 THE COURT: All right. For the record,
12 and for your edification, I am appointing
13 Mr. Richard N. Bush, juror number 21 as the
14 foreperson of the jury in this case.

15 So, it's my understanding, Mr. King, that
16 Miss Crumpton will waive her right to testify and
17 will remain silent.

18 MR. KING: That's correct, Your Honor.

19 THE COURT: Okay, good enough. So you
20 will formally rest on the record from the State
21 when the jury comes in, and then we'll proceed to
22 argument and charge. The order of argument is the
23 State will go first, and then defense will close.
24 Inasmuch as you want to put any evidence in the
25 record.

1 Okay, fair enough.

2 (Jury enters the courtroom at 9:42 a.m.)

3 THE COURT: Good morning, everybody.

4 Hope you have had a good evening. Thank you for
5 being on time. I do appreciate it.

6 Mr. Bush, I'm appointing you as foreman
7 of the jury and that's my -- only because you have
8 demonstrated yourself to be an excellent juror
9 thus far, but it's because you told me in jury
10 selection that you had been on a jury. I
11 appreciate you performing that role for us in this
12 trial. Now, the duties of a jury foreman are
13 fairly easily defined. And that is, that you have
14 responsibility for ensuring that everyone on the
15 jury has a voice during deliberations. So you
16 know that when 12 people get together who may have
17 never met one another before that some people are
18 going to be very ready and willing to offer their
19 opinion and some people are going to be more
20 reluctant and reticent about saying what they
21 think. So your job is just to make sure that
22 everyone has the opportunity to offer they
23 opinions during the deliberations.

24 Now, what other role or function you may
25 assume in deliberations is entirely up to you.

1 You can help to establish the form, the format,
2 method of deliberations. That may occur very
3 naturally once you get into the jury room. I
4 can't tell you exactly how to conduct your
5 deliberations because I'll be completely honest
6 with you, I've never been on a jury before, and
7 I'm not allowed to go into the jury room. If I
8 cross the threshold of your jury room, during the
9 conduct of the trial or deliberations, it's an
10 automatic mistrial. So I've never sat through
11 jury deliberations.

12 But I do know that I hold these jury
13 trials all over the State, and in each instance,
14 12 intelligent people usually come to the most
15 efficient and effective way of conducting
16 deliberations for themselves.

17 So to the extent you can accommodate
18 that, Mr. Bush, you may exercise that
19 responsibility.

20 So, Ladies and Gentlemen, we'll begin
21 with the trial of the case.

22 Mr. King, do you have any evidence that
23 you would like to present, sir.

24 MR. KING: No, Your Honor. At this time,
25 the defense rests.

1 THE COURT: Do you need to renew your
2 motions for directed verdict, sir?

3 MR. KING: We do, Your Honor. At this
4 time, we would renew all prior motions, including
5 our motion for directed verdict.

6 THE COURT: And those rulings remain the
7 same.

8 MR. KING: Thank you, Your Honor.
9 Appreciate it.

10 THE COURT: Okay. Ladies and Gentlemen,
11 as I told you before, the State has the burden of
12 proof and the defense has the right to remain
13 silent. The defense is presumed innocent until 12
14 deliberating jurors determine that the State has
15 met its burden of proof, so the defense does not
16 have to offer any evidence. The defense is not
17 compelled to offer any evidence. Miss Crumpton is
18 perfectly within her constitutional right to
19 remain silent.

20 Now understand that is a constitutional
21 right that we all enjoy. And because she is
22 exercising a right institutional, you cannot hold
23 against her that she has elected not to offer any
24 testimony or any evidence. As a matter of fact,
25 because that is a sacred constitutional right that

1 we all enjoy, you can't even discuss that in your
2 deliberations, because it is her constitutional
3 right to remain silent in this case, remembering,
4 of course, that the burden rests with the State to
5 prove and every element of each offense beyond a
6 reasonable doubt.

7 Now, Ladies and Gentlemen, we are going
8 to proceed to closing argument now. As I told you
9 at the beginning of the case, closing argument is
10 not evidence. You've already heard all the
11 evidence that you receive in this case. Closing
12 argument is the opportunity for the attorneys to
13 argue to you and to advocate for their respective
14 sides. The attorneys will argue and tell you what
15 their opinion of what the facts are, what the
16 facts should be, but ultimately it's your
17 determination of what the facts should be.

18 So, Ladies and Gentlemen, the State will
19 proceed first, and then the defense will have the
20 opportunity to close. So, the attorneys have
21 indicated to me that they're closing arguments
22 should be about ten minutes a piece, so we should
23 be able to wrap it up fairly quickly.

24 Thereafter, I will give you a charge on
25 the law which will probably be more like 15 to 20

1 minutes.

2 So, Ladies and Gentlemen, having said
3 that, we will proceed to the closing arguments.

4 Miss Owen.

5 MS. OWEN: Thank you, Your Honor.

6 CLOSING ARGUMENT

7 MS. OWEN: Ladies and Gentlemen, I spoke
8 to you first thing yesterday. This was a short
9 case. It's not CSI. I apologize. I wish it was,
10 but we are not technology advanced over here.

11 I asked to remember to come in here with
12 your common sense and life experience. And I'm
13 asking to take that back there when you're talking
14 about this case. I don't know if you're confused
15 about anything, but I hope to shore up any of that
16 confusion in this brief summation.

17 Ladies and Gentlemen, I told you
18 yesterday that everything you were going to hear
19 in this case was going to be from this witness
20 stand, and that was accurate. You heard from two
21 narcotics detectives. Between the two of them,
22 they have been investigating crimes for 45 years.
23 That's a lot of life experience. They told you
24 that they were getting calls and complaints about
25 heavy traffic off Darby Way.

1 Darby Way, as you heard from them, is a
2 trailer park located in the city of Easley. So
3 they started watching to see what kind of traffic.
4 And for them traffic means a lot of vehicles or
5 people on foot staying for short periods of time.

6 Detective Hamby and Captain Lovell were
7 surveilling this area and they saw Kerek Harris,
8 who they knew to be a drug dealer leaving
9 Wanda Crumpton's home. That was their ticket.

10 So then they talk to Mr. Harris. They
11 got a search warrant for his house. And as he
12 told you, and they told you, he had four pounds of
13 marijuana and about \$5,000 in cash. Mr. Harris is
14 a drug dealer, and he came in here and told you
15 that. He didn't try to hide it. He didn't lie
16 about it. He admitted, this is what I was doing.
17 And he says, I was giving Wanda Jane Crumpton two
18 ounces in a ten-day period. That's almost a pound
19 and a half, 1.4 pounds to be exact. And he said
20 that each time he sold her that, she would pay him
21 \$180. That's \$180 in cash. And I'm not great at
22 math, but I did go home and think about it last
23 night. That's \$1,980 that she spent on marijuana
24 in a ten-day period, and she wants you to believe
25 that that is for personal use.

1 If I put this into a context of you going
2 out to lunch for 10 days, I spend 10 dollars at
3 lunch everyday for 10 days, that is \$110. I eat
4 out three times a day, let's say I spend \$10 at
5 each of those meals, \$30 a day for 10 days, is
6 \$330.

7 Now, let's say I like to drink a lot, so
8 I spend \$20 a day on alcohol. That puts me at
9 \$240 for 10 days in consuming alcohol. Let's say,
10 on top of that, I smoke cigarettes. Say I smoke
11 two packs a day, it's an average age of \$12.
12 Ladies and Gentlemen, that only puts me at about
13 600-something dollars over a 10-day period on
14 personal use of items that I will consume, not
15 almost \$2,000.

16 Wanda Crumpton has been charged with
17 possession with intent to distribute. Just
18 because she doesn't have \$5,000 in cash and four
19 pounds of marijuana doesn't mean she's not
20 distributing it. She's a smart drug dealer. She
21 buys small quantities at a time and gets rid of it
22 quickly.

23 So when the police come, there is a lot
24 less than there would have been. Detective Hamby
25 and Captain Lovell told you they saw Kerek Harris

1 at her house on March 20, 2017. Kerek Harris says
2 he sells to her two ounces at a time.

3 When they were arrive the next day with
4 their search warrant, there is less than an ounce
5 left, and she wants you to believe that she smoked
6 one ounce of marijuana in less than a 12-hour
7 period.

8 Now, Mr. King asked Detective Hamby and
9 Captain Lovell if they do CI buys. That's
10 confidential informant buys. There is no direct
11 evidence that we can present to you of someone
12 buying marijuana from Miss Crumpton. What I have
13 today is circumstantial evidence. That means the
14 totality of the circumstances.

15 So we have complaints on Darby Way, we
16 have a drug dealer leaving Miss Crumpton's home on
17 the 20th, we have a drug dealer saying I have sold
18 to her, approximately, 11 times in 10 days, two
19 ounces at a time, \$180 at a time.

20 And then when the search warrant is
21 executed the next morning, there is less than an
22 ounce left.

23 Ladies and Gentlemen, Wanda Crumpton was
24 distributing marijuana from her home. She was the
25 resident. They were able to prove that by the fact

1 that they could look it up to see that she was the
2 person residing there. She was the only one home that
3 day. When they walked in and told her why they were
4 there, she said, let me show you where the drugs are.

5 These are packaged on two separate
6 baggies found in a cabinet. There are scales
7 below the cabinet. Scales are used to weigh the
8 marijuana that you then sell to someone else.
9 She's also found with \$544 in cash. She's making
10 a profit on selling marijuana out of her home.

11 Ladies and Gentlemen, Mr. King wants to
12 talk about industrial hemp. Industrial hemp is
13 packaged differently.

14 MR. KING: Objection; not in evidence.

15 THE COURT: Okay, I'll overrule. The
16 jury has seen all the evidence. They can make a
17 determination of whether that was actually a fact
18 in evidence or not.

19 MS. OWEN: Thank you, Your Honor.

20 Industrial hemp, it's in the record that it's
21 .3 percent or less for it to be industrial hemp.
22 Anything over that is marijuana.

23 If Miss Crumpton was buying industrial
24 hemp for personal use, she would not be getting
25 high. And Mr. Harris is certainly not selling her

1 industrial hemp. He's buying marijuana from
2 someone else, and then he's disputing out in the
3 community. And Miss Wanda Crumpton is buying it
4 from him and distributing out in her community.

5 She also been charged with proximity --
6 distribution within proximity of a park. I don't
7 know how familiar you are with Easley, but Darby
8 is right off Main Street. Across the street from
9 her neighborhood is Hot Spot. Directly behind Hot
10 Spot is Hagood Park.

11 It was March of 2017 when all this
12 occurred. There are no leaves on the trees.
13 Captain Lovell testified about the fact that, in
14 the winter, you can see that park right behind the
15 Hot Spot. Leaving that neighborhood every day,
16 you would see the park, especially in the winter.
17 Miss Crumpton is distributing marijuana out of her
18 home on Darby Way across from a park.

19 Ladies and Gentlemen, Mr. King also
20 talked to you about personal use. I argue this is
21 personal use (indicating). This is distribution
22 (indicating). These are two very different
23 things. It may not be four pounds, but this is
24 enough to distribute to the public.

25 Ladies and Gentlemen of the jury, I asked

1 you yesterday to come in with your common sense.
2 And I ask when you go back there to use that.
3 This is not, as I said, direct evidence. We don't
4 have someone buying from Miss Crumpton, but we
5 have all the circumstances surrounding that.
6 Heavy traffic, a drug dealer leaving
7 Miss Crumpton's house, who testified that he was
8 selling marijuana to her, and, again, \$1,980 in a
9 ten-period for personal use. That is not personal
10 use. That is a lot of money in 10 days, Ladies
11 and Gentlemen.

12 I'm going to ask you to find Miss Crumpton
13 guilty of possession with intent to distribute
14 marijuana and also distributing that within close
15 proximity to a park. The technical definition is
16 within half a mile. However, it's really .3 miles
17 from her home. It is almost directly across the
18 street from her neighborhood, Ladies and Gentlemen.

19 Thank you.

20 THE COURT: Mr. King.

21 CLOSING ARGUMENT

22 MR. KING: Thank you, Judge.

23 Okay. Let's recap from yesterday.
24 Remember I said the metaphor was like a football
25 game. The call on the field is not guilty, and

1 you all are the referees that are huddled up to
2 decide, beyond a reasonable doubt, whether or not
3 to overturn the call on the field. So, given
4 that, you all need some tools for how to come up
5 with reasonable doubt. Let me tell you, there are
6 three tools that I use and you can use too.

7 The first one is reasonable doubt comes
8 from the evidence, the second tool is reasonable
9 doubt comes from conflict between the evidence,
10 and the third one is reasonable doubt comes from a
11 lack of evidence. Okay?

12 So let's look at the evidence we have
13 here. We have State's Number 10, which is the
14 joint, and we have State's Number 11, which is the
15 pack of marijuana. Personal use, remember, like I
16 said at the beginning, State's Number 11 is like a
17 six pack of Coke you got at home. State's Number
18 10 is a single can of Coke. Just because you got
19 a six pack of Coke in your fridge doesn't mean
20 you're distributing it.

21 Now, along with just that personal use
22 evidence, we've got that State's Number 8, which
23 was the picture of the joint on the easy chair.
24 That's the easy chair she was sitting in when law
25 enforcement approached. They saw her there.

1 That's where they found it. She was smoking it
2 right beforehand. That's personal use. You light
3 up. She's using it.

4 So the State wants to claim that this is
5 -- she was possessing it with intent to distribute
6 it. They're basing that on the convicted drug
7 dealers testimony and he turned her in when he was
8 looking at 40 years in prison. He was -- we
9 didn't talk about how old he was. Probably in his
10 20s, maybe up to 30. He could be in prison until
11 he was 70. Of course he's going to tell us that
12 he sold her a whole bunch of times. That's what
13 he was trying to do because he got probation a few
14 months later. It was his -- that's how he got out
15 of going to prison, by turning on somebody else.
16 He also had guns. He had been convicted of having
17 guns beforehand, and he had a whole bunch of cash.
18 Thousands of dollars in cash.

19 Miss Owen made a big deal about how Miss
20 Crumpton had about \$500 in her pocket when police
21 found her, but then she talks about how she should
22 really have close to two grand. Well, using her
23 month with alcohol and cigarettes and needles,
24 that only gets her up to about \$1,000. It means
25 she's missing \$1,000 in evidence because she's got

1 the 500 plus 500 for personal everyday expenses.
2 That leaves that \$1,000 she's missing. That's
3 another evidence she's not distributing it.

4 And, quite frankly, if she was
5 distributing it, then Detective Hamby and Captain
6 Lovell, would have been able to see that she
7 distributing it, set up a controlled buy and catch
8 her actually distributing it.

9 MS. OWEN: Speculation.

10 THE COURT: Okay. I'll overrule that
11 too.

12 MR. KING: Thank you, Judge.

13 They both testified they were outside
14 Miss Crumpton's trailer in that trailer park
15 watching what was going on. They had plenty of
16 opportunity to catch her distributing it, and they
17 didn't. All they saw was her drug dealer, who
18 then turned on her later because he's an
19 unreliable drug dealer, at her house. Which we
20 don't deny it. It was personal use. State's 11
21 and State's 10, personal use.

22 That said, Miss Owen, one of the first
23 things she said is, we are not technologically
24 advanced here. And as a resident of Pickens
25 County, I'm not happy about that, but that's

1 exactly what happened in this case. They don't
2 have the science. They don't have the technology
3 to tell us what State's 11 and State's 10 actually
4 are. We've got a 50 percent chance that it's
5 industrial hemp. We got a 50 percent chance that
6 it's marijuana. That's illegal. That's not
7 beyond a reasonable doubt. Well, it is beyond a
8 reasonable doubt. It is not -- I'm getting
9 confused with my sayings now.

10 That is absolutely reasonable doubt
11 because only 50 percent of it is actually right.
12 All right? We don't know which one it is. We
13 might as well flip a coin. And if we're just
14 flipping a coin about what substance -- what an
15 actual substance is here, then we don't need
16 anyone of us here because it's just so arbitrary
17 that it's worthless. Okay?

18 So here, remember, use your tools. You
19 look at the evidence. That's the bad science we
20 have that can't tell us what's going on. We have
21 conflicts between the evidence. That's
22 Mrs. Harris's testimony. He's unreliable. He has
23 no credibility at all because he was looking at
24 40 years.

25 And then we look at lack of evidence, and

1 that's the simple fact that we don't know what the
2 substance is. It's a green plant-like material
3 that people thought were marijuana. That's all we
4 have. That's absolutely reasonable doubt. And,
5 therefore, the call on the field needs to stay,
6 and that's not guilty.

7 I appreciate all of you being here. I
8 ask you to take your time back in the jury room
9 and come back with a verdict of not guilty.

10 Thank you.

11 THE COURT: All right. Ladies and
12 Gentlemen, when we started the case, I told you
13 all that you had a duties to perform and I had
14 duties to perform. So my duty is to give you the
15 law that relates to the evidence that's been
16 presented in this case.

17 Now, if you come into this courtroom with
18 any predisposition or any prior opinion about what
19 the law is or what the law should be, you need to
20 disregard that, because, under your oath, you
21 swore to accept the law as I give it to you. So
22 you must accept the law as I give it to you in
23 this case.

24 Now, of course, your role is to look at
25 the evidence and determine the facts in this case,

1 the finders of facts and apply it to the law as I
2 give it to you. Now, keep in mind, of course, as
3 we discussed already, that the defendant,
4 Miss Crumpton is presumed innocent. And as I told
5 you when we began this case, imagine that she is
6 wearing a cloak of innocence and she retains that
7 cloak of innocence until 12 deliberating jurors
8 determine that the State has met its burden of
9 proving each and every of element of each offense
10 beyond a reasonable doubt. So, as we sit here,
11 Miss Crumpton retains that cloak of innocence, and
12 right now she presumed to be innocent.

13 Now, understand, as I said, the State has
14 the burden of proving each and every element of
15 the offense beyond a reasonable doubt. We got two
16 indictments before the Court today. You have the
17 distribution of marijuana, or possession with
18 distribute marijuana, and you have a possession
19 with intent to distribute marijuana within the
20 proximity of a school. Now, understand that you
21 must consider those charges separately and
22 independently.

23 So when you're looking a those charges
24 and you're determining what the facts are and
25 determining whether the State has met its burden

1 of proof, you're to look at them independently.
2 So you're going to look at the possession with
3 intent to distribute marijuana and you're going to
4 decide, has the State met its burden of proof with
5 respect to that offense. Then you're going to
6 look at the possession with intent to distribute
7 marijuana within the proximity of a school and you
8 will determine, independently, has the State met
9 its burden of proof with respect to that charge.
10 They are separate charges. And just because you
11 find someone not guilty or guilty of one does not
12 mean that you should correspondingly find someone
13 guilty and not guilty of the other. You look at
14 them independently.

15 Now, in this case, as you know, the
16 defendant is presumed innocent. She has elected
17 not to testify. I've already told you before, you
18 can't hold that against her. Not only can you not
19 hold it against her, you can't even consider it in
20 your jury room.

21 So, Ladies and Gentlemen, we talked about
22 this notion of reasonable doubt, so it's important
23 that I define for you what reasonable doubt is.
24 And proof beyond a reasonable doubt is that proof
25 which leaves you firmly convinced of defendant's

1 guilt. If, after your review of the evidence, you
2 are firmly convinced of the defendant's guilt,
3 then, under your oath, you would find the
4 defendant guilty. If, after your review of the
5 evidence, you believe that there is a real
6 possibility that the defendant is not guilty,
7 then, under your oath, you would find the
8 defendant not guilty.

9 Now, there's nothing on the face that you
10 can know with absolute certainty and the law
11 doesn't require that the State prove -- prove its
12 case beyond any possibility doubt. But, again, if
13 you are firmly convinced of the defendant's guilt,
14 then you would find her guilty. And if you feel
15 there is a real possibility that she is not
16 guilty, then you would find her not guilty. Okay?

17 So, when you're looking at the evidence
18 to determine whether the State has met its burden
19 of proof, you're going to review all of the
20 evidence and you're going to decide what has
21 weight and what has value in your own discretion.
22 That's entirely up to you. That is your role.
23 That is your prerogative.

24 In looking at evidence and looking at the
25 weight of evidence, one of the things that you're

1 going to do is look at the credibility of
2 witnesses and decide who to believe and who not to
3 believe. And when you are looking at witnesses to
4 determine who's believable or not believable, you
5 use tools that you have inherently and that use
6 every day and your every life. And you're going
7 to at witness's testimony and you'll look at what
8 they said. You also look at how they said it.
9 You will look at their facial expressions, their
10 body language, and determine whether, in fact,
11 they should be believed, just like you look at
12 people in your everyday life and determine whether
13 they should be believed or not.

14 You also look at the testimony and you
15 determine whether somebody has something to gain
16 or someone has something to lose as a consequence
17 of their testimony, and from that you decide who
18 is believable and who is not believable.

19 Now, with the witness's testimony,
20 understand, you can take a part of it and find
21 that is very believable and discount the rest.
22 You can except all of it as credible or you can
23 discount all of it. It's entirely in your
24 discretion what to believe and what weight to put
25 on the evidence that's been presented as well.

1 Now, Ladies and Gentlemen, you heard
2 evidence of a prior record of witnesses who took
3 the stand. That doesn't -- just because someone
4 has a prior record doesn't disqualify them from
5 testifying. You can consider that prior record
6 for the purposes of credibility, that is you can
7 determine -- you can look at that prior record and
8 determine whether that means they are either more
9 or less likely to be believable. Again, entirely
10 in your discretion.

11 Now, when you receive evidence in a case,
12 Ladies and Gentlemen, in any type of case that
13 comes before the Court, that evidence is either
14 going to be characterized as direct evidence or
15 circumstantial evidence.

16 Now, direct evidence is evidence which
17 immediately establishes a fact to be proven.
18 Circumstantial evidence, a distinction, is proof
19 of collateral facts or a chain of facts that when
20 taken together prove the main fact to be proven.
21 Now, that's a pretty simple definition. It's
22 pretty sterile. But I like to give jurors an
23 example because I think it helps you conceptualize
24 the distinction better.

25 So let's say that one January evening you

1 go to bed and you look out your front door or
2 front window and you look at the ground, there's
3 no precipitation on the ground at all. And then
4 the next morning you wake up and you look out that
5 same front door or front window and you see a
6 blanket of snow on the ground, and you see in that
7 snow footprints that lead to your door and then
8 lead away. Well, under that set of circumstances,
9 you've got direct evidence that it snowed last
10 night, because it's immediately established by the
11 existence of the snow on the ground. You can see
12 it, you can touch it, you can feel it. It's right
13 now. But you have circumstantial evidence that,
14 sometime early that morning or that night,
15 somebody walked to your door and walked away. You
16 can't see that person, you touch him, you can't
17 have a conversation with them, but you know as a
18 consequence of the existence of the footprints in
19 the snow and those footprints leading away that
20 someone must have come to your door and walked
21 away. That's circumstantial evidence.

22 Now understand that the law does not
23 prefer direct evidence over circumstantial
24 evidence, or circumstantial evidence over direct
25 evidence. You decide what weight -- what has

1 weight and what has value, regardless of whether
2 you characterize it as direct or circumstantial
3 evidence. Just know, to the extent that the State
4 relies on circumstantial evidence, all of those
5 circumstances when taken together must point
6 conclusively to the guilt of the accused beyond a
7 reasonable doubt.

8 All right. We are going to talk about
9 the charges now, Ladies and Gentlemen. Make sure
10 that I hit on everything. Okay. So the first
11 charge that you have before the Court is
12 possession with intent to distribute.

13 Now, to prove possession, the State must
14 prove beyond a reasonable doubt the defendant had
15 both the power and intent to control the
16 distribution or use of the marijuana. The State
17 must also prove beyond a reasonable doubt that the
18 defendant possessed the drug with the intent to
19 distribute it. So, you must prove possession, and
20 then you must also prove that there was an intent
21 to distribute the marijuana.

22 Distribute means to deliver other than by
23 administering or dispensing a drug. Intent may be
24 shown by acts and circumstances from which you may
25 actually and reasonably infer intent. In

1 determining whether the defendant had the intent
2 to distribute the marijuana, you may consider the
3 circumstances surrounding the defendant's alleged
4 possession, the manner in which it was allegedly
5 possessed, the place it was allegedly possessed,
6 and other factors which you consider to be
7 important. You must find that the defendant did
8 not intend to have the marijuana solely for her
9 own use.

10 Now, Ladies and Gentlemen, criminal
11 intent must be proven by the state beyond a
12 reasonable doubt. Criminal intent is always a
13 matter that must be determined by the jury from
14 the circumstances surrounding the situation.
15 There's no way to prove intent to a mathematical
16 certainty, and there is no way medical science can
17 dissect a person's brain and determine what the
18 person had in mind. So the law says, a criminal
19 intent may be inferred from the circumstances
20 shown to have existed. Criminal intent is a
21 mental state of conscience wrongdoing. It's up to
22 you to determine what the defendant intended to do
23 based on the circumstances known to have existed
24 at the time.

25 Now, Ladies and Gentlemen, in your review

1 of the evidence, if you find that the State has
2 not proven beyond a reasonable doubt all of the
3 elements of possession with intent to distribute,
4 then you may consider a lesser included offense of
5 possession of marijuana.

6 Now, your verdict form is going to show
7 that, and I'm going to go over the verdict form
8 with you. But when you go through your analysis,
9 your analysis of possession with intent to
10 distribute marijuana, if you determine that the
11 State has not proven beyond a reasonable doubt
12 that the defendant intended to distribute the
13 marijuana, you may consider the lesser included
14 offense of possession. And, again, a possession
15 case, the State must prove beyond a reasonable
16 doubt that the defendant knowingly and
17 intentionally possessed marijuana.

18 Ladies and Gentlemen, the next indictment
19 is for possession with intent to distribute within
20 the proximity of a school. There is going to be a
21 separate verdict form for that charge, because, as
22 I told you, you consider the charges independent
23 of one another. So, in order to prove -- let's
24 see. The defendant is charged with distribution
25 of marijuana within the proximity of school or

1 park. The State must prove beyond a reasonable
2 doubt that the defendant distributed, sold,
3 purchased, manufactured, or unlawfully possessed
4 with intent to distribute marijuana while in, on,
5 or within one half mile of the grounds of a public
6 or private elementary, middle, secondary school, a
7 public playground or park, a public vocational or
8 trade school, or technical education center, or
9 public or private college or university. The
10 person must have knowledge that he or she is in,
11 on, or within a half mile of the grounds of a
12 public school or a public park or playground.

13 All right. Ladies and Gentlemen, I'm
14 going to show you your verdict forms. The first
15 one is the verdict form for distribution within
16 the proximity or half mile proximity of a school
17 or a park. So I'm going to put that one because
18 I'm going to go through the distribution with
19 intent to distribute marijuana.

20 Okay, it's very simple. You will see it
21 has the caption and then it says verdict. It
22 starts out, "As to the charge of possession of
23 marijuana with intent to distribute, we, the jury,
24 by unanimous consent find the defendant..." Now,
25 there's one thing that's very important about that

1 and it says unanimous. Your verdict must be
2 unanimous. Twelve of you must agree on the
3 verdict. It can't be 11 to 1 and 10 to 2. It
4 must be a unanimous verdict. Understand as well,
5 as I've told you before, that verdict must be
6 based on the evidence that's been presented in the
7 case and law as I presented it to you. It can't
8 be based on passion. It can't be based on the
9 bias, prejudice. It can't be based on sympathy or
10 sentimentality. It must be based on the
11 reasonable review of the evidence and the law
12 that's been presented to you in this case.

13 So you're going to have three options on
14 this. Okay? The first one, not guilty. If you
15 feel that the State has not met its burden of
16 proof by proving each and every element of the
17 offense beyond a reasonable doubt, then, Mr. Bush,
18 you would either initial or X check not guilty.
19 You can initial, X, check. Whatever you want to
20 do just so long as it's clear to me. Okay?

21 The next option that you have is guilty
22 of possession of marijuana with intent to
23 distribute. If you feel as though the State has
24 met its burden of proof with respect to each and
25 every element of the offense beyond a reasonable

1 doubt, the, Mr. Bush, you would check
2 appropriately.

3 If you find that the State has not proven
4 each and every element of the offense, that is,
5 they have not proven beyond a reasonable doubt an
6 intent to distribute, then you may consider the
7 lesser included offense of possession of
8 marijuana, and that's your third option. So you
9 would just check one of them and one of them
10 alone. And then, Mr. Bush, you would sign as
11 foreperson of the jury indicating that the jury
12 had come to an unanimous verdict in this case, and
13 the date it for me, if you would, please.

14 The proximity charge is the same. Now
15 understand, there is no lesser included offense in
16 the proximity charge. So either the State proves
17 each and every element of the offense as it
18 exists, that is distribution of marijuana with the
19 intent to distribute within the proximity of a
20 school or they don't. There's no lesser included
21 offense included in that charge. Okay?

22 So, Ladies and Gentlemen, I'm going to
23 send you back to your jury room now, but I don't
24 want you to begin your deliberations yet. This is
25 the opportunity for the attorneys to take

1 exceptions to my charge, basically quality
2 control. So it may be that I left something out,
3 or I just inadvertently misstated some proposition
4 of law and I need to bring you back in and correct
5 myself. It happens from time to time.

6 So, what I ask you is, go back to your
7 jury room, and I will send to you a very direct
8 message by way of the bailiff to begin your
9 deliberations when it's time to begin your
10 deliberations. What you'll get is these verdict
11 forms first, and then the attorneys will have the
12 opportunity to inventory all of the evidence and
13 they'll pass back the exhibits that were admitted
14 in this case and you'll have those to review.
15 Don't get too excited about bag of green leafy
16 substance. Don't open it.

17 So you will know at point that it's time
18 to for you to begin your deliberations. So if
19 you'll return to your jury room, I'll get back to
20 you in just a minute. Thank you.

21 Any exception to the charge from the
22 State?

23 MS. OWEN: None from the State, Your
24 HOnor.

25 THE COURT: From the defense?

1 MR. KING: Your Honor, my only slight
2 confusion, we talked about how they're separate
3 indictments. I'm not sure it was clear that the
4 possession with intent to distribute within the
5 proximity of a park, I understand that could only
6 be found guilty if they find her with possession
7 with intent to distribute on the front end. So I
8 don't know that we need to recharge now, but...

9 THE COURT: Here's -- that's why I told
10 them at the very end to understand that there was
11 no lesser included offense in proximity charge.
12 That was very reason. I did not want to run a
13 foul of trying to suggest to them that the two --
14 that they had to be consistent verdicts, because I
15 wanted to make them understand that the burden was
16 proof beyond a reasonable doubt for each separate
17 indictment.

18 We will know whether I conveyed it to
19 them appropriately when and if we get consistent
20 verdict. If we get an inconsistent verdict, that
21 is a guilty on distribution within proximity and a
22 not guilty on straight distribution, we'll know
23 they didn't understand.

24 MR. KING: That was my gut reaction, but
25 I wanted to make sure I address it on the front

1 end.

2 THE COURT: Yes. We shall see. If
3 there's an inconsistent verdict, we'll have to
4 have a discussion about that. Okay?

5 All right. So, if you will take this,
6 please. Tell them they can begin their
7 deliberations. And, if you will, send the
8 alternates, Mr. Dryman -- Mrs. Dryman and
9 Mr. Rivera to the grand jury room and I'll dismiss
10 them.

11 All right, Ladies and Gentlemen, good
12 luck to you.

13 (Jury starts deliberations at 10:22 a.m.)

14 (On the record at 11:05 a.m.)

15 THE COURT: I have been advised the State
16 has reached a unanimous verdict. Is the State
17 prepared to receive the verdict?

18 MS. OWEN: Yes, Your Honor.

19 THE COURT: And the defense.

20 MR. KING: We are, Your Honor.

21 THE COURT: All right. Bring in the jury
22 in please.

23 (Jury panel enters the courtroom the 11:05 a.m.)

24 THE COURT: All right. Mr. Bush, has the
25 jury reached a unanimous verdict, sir?

1 FOREMAN: We have, Your Honor.

2 THE COURT: Would you pass the verdict
3 form to the clerk, please.

4 All right. You may publish the
5 verdict.

6 THE CLERK: This is case number
7 2017-GS-39-3291. As to the charge of possession
8 of marijuana with intent to distribute, we, the
9 jury, unanimously by consent find the defendant
10 guilty of possession of marijuana with intent to
11 distribute.

12 This is case number 2017-GS-39-3292, as
13 to the charge of distribution of marijuana within
14 close proximity of a school or park, we, the jury
15 unanimously consent and find the defendant guilty.

16 Is this your verdict and still your
17 verdict, so say you all by raising your right
18 hand?

19 JURY PANEL: (Complies.)

20 THE CLERK: Thank you very much.

21 THE COURT: Let the record reflect each
22 juror raised his or her respective right hand.

23 Anything further from the State with
24 respect to this jury?

25 MS. OWEN: Nothing, Your Honor.

1 THE COURT: From the defense?

2 MR. KING: Nothing, Your Honor.

3 THE COURT: Mr. King, do you have post
4 trial motions you'd like to pose, sir?

5 MR. KING: I do, Your Honor. Just,
6 respectfully, we renew all prior motion and
7 objections and request a mistrial.

8 THE COURT: Thank you very much. And,
9 respectfully, I'll deny those. Prior rulings
10 remain.

11 So if you'd like to stand for sentencing.
12 Miss Owen, is there anything in addition to what
13 has already been put into the record that you need
14 to place on the record for purposes of sentencing?

15 MS. OWEN: Yes, Your Honor. I would like
16 to put on the record Miss Crumpton's prior
17 record.

18 THE COURT: Yes.

19 MS. OWEN: Your Honor, she has a 1975
20 attempted armed robbery and armed robbery and
21 escape. 1986, manufacturing marijuana, obtained
22 property by false pretenses, a DUI second. A 1993
23 possession with intent to distribute cocaine. A
24 1995 driving under suspension. A 2002 forgery,
25 four counts of that, obtaining property by false

1 pretenses and financial transaction card fraud. A
2 2001 property offense. And a 2010 obtaining
3 property by false pretenses and forgery, Your
4 Honor.

5 THE COURT: All right. Mr. King, I'll be
6 happy to hear from you, sir.

7 MR. KING: Thank you, Judge. I beg the
8 Court's indulgence for one moment.

9 THE COURT: Let me make sure I'm current,
10 Miss Owen, it's by understanding that possession
11 with intent to distribute marijuana carries up to
12 five years in prison, and possession with intent
13 to distribute marijuana within the proximity of
14 school a or park carries up to ten years. Am I
15 correct?

16 MS. OWEN: That is correct, Your Honor.

17 THE COURT: Is that your understanding of
18 the maximum sentence in this case?

19 MR. KING: It is our understanding, Your
20 Honor.

21 THE COURT: I'll be happy to hear from
22 you.

23 MR. KING: Thank you, judge.

24 Judge, Miss Crumpton is 64 years old at
25 the moment. She is from Easley, but she lives in

1 Pickens now. Shortly after this incident, she
2 moved from Darby way to Pickens. She is on
3 disability, Your Honor, for both mental health
4 issues and then some ongoing issues with a cyst on
5 her bladder and a kidney leakage. She did acquire
6 her GED, and she did last work at the Dollar
7 General in 2012. As I said, at the moment, she's
8 is completely on disability.

9 Given the nature of these charges and
10 essentially the co-defendant cooperating
11 individual tips or whatever, Mr. Harris, he had
12 four counts of possession with intent to
13 distribute, second offense, Miss Crumpton has one
14 count, first offense. Mr. Harris received
15 probation. We ask you to feed Miss Crumpton out
16 of the same hand and also sentence her to
17 probation for these charges. We think that's a
18 fair and just resolution to all of these charges.

19 I understand that she has the additional
20 charge within the proximity of a park. With
21 Mr. Harris, he could have been charged because he
22 was clearly at Miss Crumpton's house. His own
23 testimony was that he was distributing it to her.
24 So we'd ask for fair and similar punishment of
25 probation in this case.

1 THE COURT: Okay. Did Miss Crumpton do
2 any time on this charge?

3 MS. OWEN: She's done an afternoon in
4 jail, Your Honor.

5 THE COURT: All right. Okay.
6 Miss Crumpton, is there anything you would like to
7 tell me, ma'am. I'm sorry, Miss Crumpton. I'll
8 speak up. Is there anything that you would like
9 to tell me, ma'am. You're not required to, but
10 you certainly may.

11 MR. KING: She decided to remain silent,
12 Your Honor.

13 THE COURT: All right. So with respect
14 to the possession with intent to distribute
15 marijuana, the sentence of the Court, Miss
16 Crumpton, you be committed to the South Carolina
17 Department of Corrections for a period of 42
18 months, concurrent with credit for time served.
19 On your possession with intent to distribute
20 marijuana within the proximity of a school or
21 park, the sentence is the same, 42 months in the
22 Department of corrections concurrent credit for
23 time served. Good luck to you, Miss Crumpton.

24 MS. OWEN: Thank you, Your Honor.

25 THE COURT: All right. Ladies and

1 Gentlemen, you can return to your jury room and
2 recollect all of your phones, and everything that
3 you may have left in the jury room. I'll come in
4 there and dismiss you very informally, give you
5 the opportunity to ask any questions that you may
6 have, or tell me anything that you think you need
7 to tell me, and I'll be happy to hear from you. I
8 don't intend to hold you for more time than it
9 takes you to collect your phones, but I'll stay as
10 long you want to me to ask me questions. So you
11 can return to the jury room.

12 (Jury exits the courtroom at 11:12 a.m.)

13 (The proceedings were concluded at 11:12 p.m.)

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CERTIFICATE OF REPORTER

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I, SHARON G. HARDOON, Official Circuit Court Reporter, II for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions for Pickens County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

November 23, 2019



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, II



**South Carolina
Law Enforcement Division**

P.O. Box 21398
Columbia, South Carolina
29221-1398

*Henry D. McMaster, Governor
Mark A. Keel, Chief*

Tel: (803) 737-9000

**FORENSIC SERVICES LABORATORY
CUSTOMER NOTICE 2018-04
December 14, 2018**

**TERMINATION OF MARIJUANA ANALYST
CERTIFICATION/TESTING PROGRAM**

Effective immediately, the SLED Forensic Services Laboratory is discontinuing the Marijuana Analyst Certification/Recertification and Testing programs. Subsequently, all law enforcement officers currently certified under the SLED Marijuana Analyst Program (Program) should discontinue testing plant material. Be advised that SLED has researched this issue extensively and has determined that due to the creation of the Industrial Hemp Program, the Marijuana Testing procedures covered in this Program (microscopic analysis and Duquenois-Levine chemical spot test) cannot differentiate between Industrial Hemp and Marijuana. In accordance with S.C. Code Ann. § 46-55-10, Industrial Hemp is defined as Cannabis that contains not more than 0.3 percent of delta-9-tetrahydrocannabinol (THC) on a dry weight basis, and S.C. Code Ann. § 46-55-50 states that Industrial Hemp is "excluded from the definition of marijuana in Section 44-53-110". However, all Cannabis plant material that contains greater than 0.3 percent of THC on a dry weight basis is still considered Marijuana and punishable accordingly. SLED's decision to discontinue the Program should not in any way be considered a change or alteration to the way that probable cause is determined in the State of South Carolina for any and all drug charges, including Marijuana.

However, in terms of confirmatory testing, in order to accurately analyze plant material and verify the THC level to distinguish between Industrial Hemp and Marijuana, cases will need to be submitted to the SLED Drug Analysis laboratory for quantitative analysis of THC. When submitting evidence through pre-log, please select the THC Quantitation (DC-THCQ) service. SLED has developed a quantitative analysis to address this issue as timely as resources allow; however, a minimum of four (4) weeks will be needed for testing.

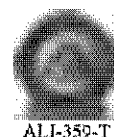
In addition, the SLED Forensic Services Laboratory is prepared to provide regional, county, and municipal drug laboratories throughout the state with our testing procedures and training for semiquantitative analysis of THC in plant material. Several sessions with hands-on training will be offered during the month of January and continuing as needed to provide information regarding validation, testing procedures and instrumental methods.

For additional questions or concerns, please contact Captain Wendy Bell, Ph.D. with the SLED Forensic Services Laboratory (803-896-7277 or wbell@sled.sc.gov).



An Accredited Law Enforcement Agency

App.224



PENGAD 800-831-8888	COURT'S
	EXHIBIT NO. <u>2</u>
	IDENTIFICATION/EVIDENCE
	DATE: <u>7/25/19</u>

THE STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF GENERAL SESSIONS

THE STATE)

Indictment #s: 2017GS3903291, 2017GS3903292

v.)

OBJECTION

Marijuana Expert Qualification

WANDA JANE CRUMPTON,)

DEFENDANT.)

Marijuana Expert Qualification: Sgt. Brian Cowan was certified under the SLED Marijuana Analyst Certification Program when he tested the confiscated substance in this case on May 18, 2017. Subsequently, SLED has discontinued this certification for all law enforcement officers who were certified under the program. Furthermore, SLED has provided direction to law enforcement in how confirmatory testing should be handled through the SLED lab. Is Sgt. Cowan still qualified to be an expert in the identification and analysis of marijuana?

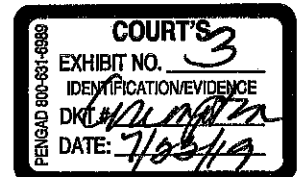
Rule 702, SCRE governs the admissibility of expert testimony, specifically: 1.) If the witness has specialized knowledge; 2.) That knowledge is based on training or experience; and 3.) That specialized knowledge can assist the jury in understanding a fact at issue; then the expert may be qualified and testify about his opinion. Furthermore, in a drug case, a qualified expert must testify about his opinion regarding the identity of the substance charged in the indictment; Rule 6, SCRCrimP.

Here, Sgt. Cowan was certified and trained as an expert by SLED under the Marijuana Analyst Certification/Recertification and Testing program (“Program”). The Program gave him the specialized training and knowledge to test marijuana through a microscopic test as well as the Duquenois-Levine chemical spot test in order to render an opinion if a substance is marijuana. His opinion would be the only evidence to assist the jury in determining if the substance the Defendant was in possession of was in fact marijuana.

Therefore, Sgt. Cowan would normally meet the barest requirements to be qualified as an expert.

However, on December 14, 2018 SLED published Customer Notice 2018-04 (“Notice”) with the subject of “Termination of Marijuana Analyst Certification/Testing Program.” The Notice was to inform the law enforcement community that SLED has immediately terminated the Marijuana Analyst Certification/Recertification and Testing program; and order that “all law enforcement officers currently certified under the [Program] should discontinue testing material.” SLED’s reasoning was that after extensive research and because of The Hemp Farming Act¹, the

¹ A version of The Hemp Farming Act was first enacted on June 2, 2014 which added Chapter 55 to Title 46 of the South Carolina Code and legalized Industrial Hemp. The Act in 2014 authorized limited permits for Industrial Hemp.



procedures in the Program (microscopic and chemical test) cannot differentiate between Industrial Hemp² and Marijuana. As a result, SLED instructed that “to accurately analyze plant material and verify the THC level... cases will need to be submitted to the SLED Drug Analysis laboratory for [testing].”

Here, Sgt. Cowan’s knowledge and training are a result of the Program. The tests he performed are all Program tests. The Program has been discontinued and deemed that it can no longer determine the difference between legal Industrial Hemp and illegal Marijuana.

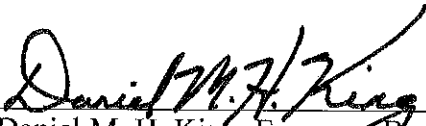
As a result, Sgt. Cowan’s qualifications are no longer valid because he can no longer render an opinion about the substance in this case given that SLED has announced that these tests are ineffective.

NOW THEREFORE, for the above stated reasons as well as any other reason which may appear to the Court, the Defendant prays that this Court grant her motion and:

1. Rule that Sgt. Cowan’s training and experience no longer qualify him as an expert for the purpose of forming an opinion about the substance in this case; and,
2. Such other relief this Court finds appropriate.

Respectfully Submitted,

July 22, 2019
Pickens, SC



Daniel M. H. King, Esq. Bar # 102292
Counsel for the Defendant
Assistant Public Defender, Pickens County

² Industrial Hemp contains not more than 0.3% of THC. S.C. Code Ann. §46-55-10.

THE STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)
THE STATE)
v.)
WANDA JANE CRUMPTON,)
DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
Indictment #: 2017GS3903291, 2017GS3903292

OBJECTION
Marijuana Analysis

Marijuana Analysis: The Defendant was found with a substance believed to be marijuana in her home. Investigators confiscated the substance and placed it into evidence. Sgt. Brian Cowan with the Easley Police Department tested the confiscated substance on May 18, 2017 using the standard microscopic and chemical tests. On December 14, 2018 SLED announced that it has discontinued the Marijuana Testing program. Sgt. Cowan's analysis was part of that program. Are the test results of the discontinued program still admissible for the purpose of proving the substance was marijuana?

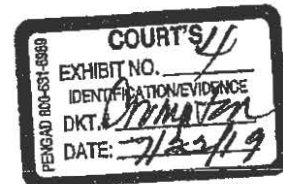
The State must prove beyond a reasonable doubt that the Defendant was in possession of the contraband substance charged in the indictment. An actual test of the substance is required to make sure the alleged substance is in fact contraband; Rule 6, SCRCrimP. The Rules of Criminal Procedure set forth that requirement thereby making it an essential part of the due process of law in every drug case. Stated concisely, Rule 6 requires three elements: 1.) A proper test, 2.) A legally reliable test, and 3.) An opinion as to the identity of the substance.

On December 14, 2018 SLED published Customer Notice 2018-04 ("Notice") with the subject of "Termination of Marijuana Analyst Certification/Testing Program." The Notice was to inform the law enforcement community that SLED has immediately terminated the Marijuana Analyst Certification/Recertification and Testing program ("Program"). SLED's reasoning was that after extensive research and because of The Hemp Farming Act¹, the procedures in the Program (microscopic and chemical test) cannot differentiate between Industrial Hemp² and Marijuana. As a result SLED has determined that to accurately analyze plant material and verify the THC level to distinguish between Industrial Hemp and Marijuana, all testing will need to be submitted to the SLED lab for quantitative analysis of THC.

Here, Sgt. Brian Cowan, formerly a chemical analyst with the Easley Police Department, performed an analysis on the confiscated substance in this case. That analysis was performed on May 18, 2017. Sgt. Cowan tested the substance under the normal Program procedures,

¹ A version of The Hemp Farming Act was first enacted on June 2, 2014 which added Chapter 55 to Title 46 of the South Carolina Code and legalized Industrial Hemp. The Act in 2014 authorized limited permits for Industrial Hemp.

² Industrial Hemp contains not more than 0.3% of THC. S.C. Code Ann. §46-55-10.



specifically a microscopic test and the Duquenois-Levine chemical spot test. The results of those tests were that the substance was marijuana. However, SLED has now discontinued the Program because those tests are insufficient to identify marijuana. Therefore, his tests are no longer proper, and those tests are no longer legally reliable.

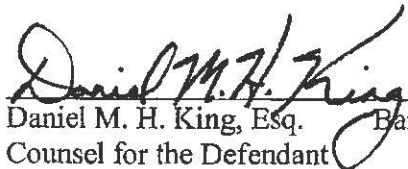
As a result, Sgt. Cowan's results are not admissible for proving that the substance was marijuana.

NOW THEREFORE, for the above stated reasons as well as any other reason which may appear to the Court, the Defendant prays that this Court grant her motion and:

1. Rule that Sgt. Cowan's marijuana analysis from May 18, 2017 is inadmissible;
2. Exclude Sgt. Cowan's marijuana analysis results from evidence; and,
3. Such other relief this Court finds appropriate.

Respectfully Submitted,

July 22, 2019
Pickens, SC


Daniel M. H. King, Esq. Bar # 102292
Counsel for the Defendant
Assistant Public Defender, Pickens County

WITNESSES

David J Lovell

Easley Police Department

3/21/2017

ARREST WARRANT NUMBER

2017A3920400345

ACTION OF GRAND JURY

TRUE BILL
Date: JUL 16 2019

Tia R Probst
Foreperson of Grand Jury

VERDICT

Guilty

Richard Burr
Foreperson of Petit Jury
Date: 7/23/19

DOCKET NO. 2017-GS-39-3291
DGB

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JUL 16 2019 TERM 2017

THE STATE

vs.

WANDA JANE CRUMPTON

Indictment for

0186

POSSESSION OF MARIJUANA WITH INTENT TO
DISTRIBUTE

VIOLATION § 44-53-0370(B)(2)

App. 230

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

At a Court of General Sessions, convened on **JUL 16 2019** the Grand Jurors of Pickens
County present upon their oath:

That WANDA JANE CRUMPTON did in Pickens County, on or about the 21st day of March, 2017, possess with
intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Marijuana, a
controlled substance, such possession not having been authorized by law. This is in violation of §44-53-370 of
the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR BAR # 100344

WITNESSES

David J Lovell

Easley Police Department

3/21/2017

ARREST WARRANT NUMBER
2017A3920400346

ACTION OF GRAND JURY

TRUE BILL

Date ~~1/11/19~~ 6 2019

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Foreperson of Grand Jury

VERDICT

Guilty

Rubad Bur

Foreperson of Petit Jury

Date: 7/23/19

DOCKET NO. 2017-GS-39-3292

DGB

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JUL 16 2019 TERM 2017

THE STATE

vs.

WANDA JANE CRUMPTON

Indictment for

0107

DISTRIBUTION OF MARIJUANA WITHIN CLOSE
PROXIMITY OF A SCHOOL/PARK

VIOLATION § 44-53-0445(B)(1)

App. 232

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
DISTRIBUTION OF MARIJUANA WITHIN CLOSE PROXIMITY OF
A SCHOOL/PARK

At a Court of General Sessions, convened on **JUL 16 2019** the Grand Jurors of Pickens

County present upon their oath:

That WANDA JANE CRUMPTON did in Pickens County, on or about the 21st day of March, 2017, distribute a quantity of Marijuana, a controlled substance, while being within one-half (1/2) mile proximity of HAGOOD PARK. This is in violation of §44-53-445 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 100344

COUNTY OF Pickens
STATE VS.
Wanda Jane Crumpton

INDICTMENT/CASE#: 2017GS3903291
A/W#: 2017A3920400345
Date of Offense: 3/21/2017
S.C. Code § 44-53-0370(B)(2)
CDR Code #: 0186

AKA:
Race: WHITE Sex: F Age: 64
DOB: SS#
Address: Darby Way
City, State, Zip: Easley, SC 29640
DL#: SID#

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
FO: Possession with Intent to Distribute Marijuana

CONVICTED OF or PLEADS

in violation of § 44-53-0370(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0186
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45
w/minor 1st or Lowd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Owen, Megan Moricre 100822 SC Bar#
Wanda Jane Crumpton Defendant
Daniel M.A. King 102292 SC Bar#
KING, DANIEL Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 42 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. / DAY

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like §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, Proviso (Public Def/Probation) \$500, §14-1-212 (Law Enforce. Funding) \$25, §14-1-213 (Drug Court Surcharge) \$150, §50-21-114(BUI Breath Test Fee) \$50, §56-5-2942(I) (Vehicle Assessment) \$40/ca, 3% to County (if paid in installments) \$ 8.25. TOTAL \$ 293.25

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
prmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/ Deputy Clerk: Harold P. Williams
Court Reporter: Sharon Handman

Presiding Judge: [Signature]
Judge Code: 7158
Sentence Date: 7/23/19

STATE OF SOUTH CAROLINA)
 COUNTY OF Pickens)
 STATE VS.)
 Wanda Jane Crumpton)
 AKA:)
 Race: WHITE Sex: F Age: 64)
 DOB: [REDACTED] SS#: [REDACTED])
 Address: [REDACTED] Darby Way)
 City, State, Zip: Easley, SC 29640)
 DL#: SID#)

IN THE COURT OF GENERAL SESSIONS 10-10415

INDICTMENT/CASE#: 2017GS3903292
 A/W#: 2017A3920400346
 Date of Offense: 3/21/2017
 S.C. Code § : 44-53-0445(B)(1)
 CDR Code #: 0107

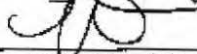
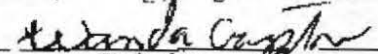

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Distribution of marijuana Within Prox Of School or Park

CONVICTED OF or PLEADS

In violation of § 44-53-0445(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0107
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:  100822  Defendant 102292  KING, DANIEL, Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 90 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. 1 DAY.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

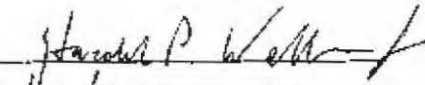
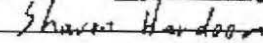
Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§50-21-114(B)(1) (Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 8.25
TOTAL	\$	\$ 283.25

Obtain GFD
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Clerk of Court/ Deputy Clerk 
 Court Reporter: 

Presiding Judge 
 Judge Code: _____
 Sentence Date: 7/23/19

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully Submitted,

s/ Joanna K. Delany

Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 24th day of August, 2020.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WANDA JANE CRUMPTON,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Scott Matthews, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 24th day of August, 2020.

s/ Joanna K. Delany
Joanna K. Delany
Appellate Defender

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WANDA JANE CRUMPTON,

APPELLANT

APPELLATE CASE NO. 2019-001246

FINAL BRIEF OF APPELLANT

JOANNA K. DELANY
Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the trial court erred where it qualified Robert Cowan of the Easley Police Department as an expert in marijuana analysis and ruled the reliability of Cowan's procedures for analyzing suspected marijuana was a matter to be determined by the jury, where SLED had revoked Cowan's certification to analyze marijuana because the testing procedures used by Cowan could not determine whether a substance was marijuana or hemp, since Rule 702, SCRE requires the trial court to find proposed expert testimony meets a reliability threshold before it may be considered by the jury, and since Cowan's testimony was not reliable?

2.

Whether the trial court erred where it admitted evidence that Robert Cowan of the Easley Police Department analyzed the substance possessed by Appellant and determined it was marijuana, where Cowan admitted the testing procedures that he used could not confirm whether the substance was marijuana or hemp, since the evidence was not reliable and was inadmissible under Rule 702, SCRE?

STATEMENT OF THE CASE

On July 16, 2019, a Pickens County Grand Jury indicted Appellant for the offenses of possession of marijuana with intent to distribute and distribution of marijuana within close proximity of a school or park. R. 230 – R. 231; R. 232 – R. 233. Appellant was tried before the Honorable Robin B. Stilwell and a jury, from July 22 – 23, 2019. R. 1; R. 183. Daniel King represented Appellant. R. 1. Megan Owen represented the State. R. 1.

Appellant was convicted as indicted and she was sentenced to serve concurrent terms of imprisonment for forty-two months on each offense. R. 221, ll. 13-23; R. 234 – R. 235.

This appeal follows.

STATEMENT OF FACTS

Appellant, Wanda Jane Crumpton, was tried for the offenses of possession of marijuana with intent to distribute and distribution of marijuana within close proximity of a school or park from July 22 – 23, 2019. R. 230 – R. 231; R. 232 – R. 233; R. 1; R. 183.

On March 21, 2017, pursuant to a search warrant, officers with the Easley Police Department went to Appellant's home to look for marijuana. R. 121, ll. 4-25. Appellant's home was near Hagood Park. R. 147, l. 25 – 147, l. 18. Appellant cooperated and led officers to a kitchen cabinet, where they found what appeared to be marijuana. R. 122, ll. 5-20. The substance weighed less than one ounce. R. 229. A digital scale was found in another kitchen cabinet. R. 122, ll. 22-24. Appellant also showed officers a partially smoked joint in her recliner. R. 123, ll. 7-11. A drug dealer testified that he sold Appellant two ounces of marijuana daily over an eleven day period in the days immediately preceding the execution of the search warrant. R. 132, ll. 11-18.

The State offered Officer Robert Cowan of the Easley Police Department as an expert in marijuana analysis. R. 156, ll. 4-6. Cowan was, at one time, a certified marijuana analyst. R. 151, ll. 9-12. However, his certification had been revoked by the time he testified at Appellant's trial. R. 152, ll. 5-8. Cowan said he was originally certified in marijuana analysis by SLED in 2002 after completing SLED's class and renewing his certification every three years. R. 152, ll. 3-6. Cowan said the tests that he performed to determine if a substance was marijuana were a microscopic examination and a Duquenois-Levine chemical test. R. 152, ll. 18-21; R. 153, l. 22 – 154, l. 23.

Cowan admitted that SLED had "revoked all certifications about analyzing marijuana" the previous year. R. 152, ll. 5-8. On voir dire, Cowan said he was aware of SLED's December

14, 2018 announcement which revoked his certification. R. 157, ll. 9-13. Cowan agreed that the testing processes he performed were no longer considered to be accurate since the processes “cannot differentiate between industrial hemp and marijuana.” R. 158, l. 18 – 159, l. 2. Cowan said that industrial hemp was legal “[a]s long as it does not have a percentage of THC¹ above .3 percent . . .” R. 159, ll. 8-13. However, Cowan admitted the tests he performed could only tell whether the substance contained THC, not whether the amount of THC exceeded 0.3 percent of the substance. R. 159, ll. 17-23.

SLED’s announcement was entered into the record as Court’s Exhibit #2. R. 160, ll. 20-21; R. 224. The announcement stated that all analysts certified under SLED’s marijuana testing program should discontinue testing suspected marijuana because “microscopic analysis and Duquenois-Levine chemical spot test” “cannot differentiate between Industrial Hemp and Marijuana.” R. 224. The announcement provided that “SLED’s decision to discontinue the Program should not in any way be considered a change or alteration to the way that **probable cause** is determined in the State of South Carolina for any and all drug charges, including Marijuana.” R. 224. (emphasis added). “However, in terms of confirmatory testing, in order to accurately analyze plant material and verify the THC level to distinguish between Industrial Hemp and Marijuana, cases will need to be submitted to the SLED Drug Analysis laboratory for quantitative analysis of THC.” R. 224.

Court’s Exhibit #3 was the defense’s written objection to Cowan’s qualification as an expert in marijuana analysis. R. 225. Defense counsel’s written objection was based on the above-referenced announcement by SLED and argued that the would-be expert’s qualification

¹ Tetrahydrocannabinol, more commonly known as THC, is the pharmacologically active component of marijuana. *State v. Horton*, 359 S.C. 555, 560–61, 598 S.E.2d 279, 282 (Ct. App. 2004).

was improper under Rule 702, SCRE, and Rule 6, SCRCrimP. Defense counsel noted that in 2014, the General Assembly excluded industrial hemp from the definition of marijuana. R. 225. *See* 2014 Act No. 216 (S. 839), § 2, eff. June 2, 2014 (former § 46-55-30 was titled: Industrial hemp excluded from Section 44-53-110).

Defense counsel objected to Cowan’s qualification as an expert and argued that the testing processes performed by Cowan were taught to him by SLED, and that SLED “has terminated that program and says that was bad science . . . So he has prior training and experience, but that training and experience is no longer valid because the science used in 2017 has been disproven.” R. 162, ll. 5-18.

Confusingly, the solicitor argued that Cowan should be qualified because it was illegal to possess industrial hemp in 2017, when the substance was tested. R. 163, ll. 3-17. However, Appellant was not on trial for illegally possessing industrial hemp. Regardless, defense counsel responded, “Judge, respectfully that is incorrect. Industrial hemp was first passed in 2014. It was restricted at that time, but has been legal in South Carolina since 2014.” R. 163, ll. 19-23.

The judge ruled that Cowan was qualified as an expert in marijuana analysis.

Well, here’s the deal: When I charge the jury as to the law, the question is going to be marijuana. Hemp is not part of the equation. Okay? And the State, it has to be proven beyond a reasonable doubt that she possessed marijuana with intent to distribute the same. Okay?

So with respect to his qualification as an expert witness, I will allow him to testify as an expert witness.

Now, the reliability of the testing procedure is a matter to be determined by the jury. They will weigh the credibility of the witness’s testimony, and determine, in fact, whether it should be relied upon or not in their capacity as finders of fact.

R. 163, l. 24 – 164, l. 14 (emphasis added). The court then instructed the jury regarding expert testimony. R. 164, l. 15 – 165, l. 15.

Cowan went on to testify about how he tested the substance seized from Appellant’s home. R. 165, l. 19 – 168, l. 13. The solicitor asked Cowan to identify State’s Exhibit #7, the marijuana analysis form generated by Cowan, and asked Cowan to “tell the jury what you found.” R. 168, ll. 14-21. Defense counsel objected and asked to have his written objection made part of the record. R. 168, l. 22 – 169, l. 2. Court’s Exhibit #4 was the defense’s written objection to the admission of Cowan’s analysis. R. 227.

Defense counsel argued, “Your Honor, Rule 6 of the rules of criminal procedure require a proper test and a legally reliable test. In this case, we do not have a legally reliable test. Specifically, SLED has said that it is unreliable for the determination of marijuana, because it cannot determine the THC threshold of .3 percent. As a result, these tests are inadmissible.” R. 169, ll. 9-17.

The solicitor responded that SLED’s December 2018 announcement “doesn’t say anything about any of the tests previously being unreliable or that they were to be thrown out . . . Yes, they are no longer using that test but it was still reliable at that time of the test, Your Honor.” R. 169, l. 20 – 170, l. 8. However, this argument misled the trial court because, as seen, the SLED announcement said that the old tests should still be used for probable cause determinations, not confirmatory testing.

The court overruled defense counsel’s objection and ruled that “it goes to the weight of the evidence. The jury can make a determination as to—whether based on the exceptions the defense takes to the test, whether the State has proven beyond a reasonable doubt that it was, in fact, marijuana . . .” R. 170, ll. 9-16.

Cowan went on to testify that he determined the substance found in Appellant's home was 0.66 ounces or 19 grams of marijuana. R. 170, l. 23 – 171, l. 20. State's Exhibit #7, the marijuana analysis form, was admitted over defense counsel's objection. R. 171, ll. 6-15; R. 229.

In closing argument, the solicitor admitted the case against Appellant was circumstantial. "There is no direct evidence that we can present to you of someone buying marijuana from Miss Crumpton. What I have today is circumstantial evidence." R. 193, ll. 10-13.

Appellant was convicted as indicted and she was sentenced to serve concurrent terms of imprisonment for forty-two months on each offense. R. 221, ll. 13-23; R. 234 – R. 235.

ARGUMENT

1.

The trial court erred where it qualified Robert Cowan of the Easley Police Department as an expert in marijuana analysis and ruled the reliability of Cowan's procedures for analyzing suspected marijuana was a matter to be determined by the jury, where SLED had revoked Cowan's certification to analyze marijuana because the testing procedures used by Cowan could not determine whether a substance was marijuana or hemp, since Rule 702, SCRE requires the trial court to find proposed expert testimony meets a reliability threshold before it may be considered by the jury, and since Cowan's testimony was not reliable.

Standard of review

The decision of whether to admit or exclude testimony from an expert witness is within the sound discretion of the circuit court. *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006) (citations omitted). The circuit court's decision to admit expert testimony will not be reversed on appeal absent "a manifest abuse of discretion accompanied by probable prejudice." *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006) (citations omitted). An abuse of discretion occurs when the circuit court's conclusions "either lack evidentiary support or are controlled by an error of law." *State v. Kromah*, 401 S.C. 340, 349, 737 S.E.2d 490, 495 (2013) (quoting *Douglas*, 369 S.C. at 429–30, 632 S.E.2d at 848) (internal quotation marks omitted). "A [circuit] court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion where the ruling is manifestly arbitrary, unreasonable, or unfair." *State v. Grubbs*, 353 S.C. 374, 379, 577 S.E.2d 493, 496 (Ct. App. 2003) (citing *Means v. Gates*, 348 S.C. 161, 166, 558 S.E.2d 921, 924 (Ct. App. 2001)). To show prejudice, the appellant must prove "that there is a reasonable probability the jury's verdict was influenced by the challenged

evidence or the lack thereof.” *Fields v. Reg’l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) (citing *Means*, 348 S.C. at 166, 558 S.E.2d at 924).

Discussion

The trial court erred where it found that the reliability of expert testimony was a matter for the jury, since the trial judge is required, pursuant to Rule 702, SCRE, to perform a gatekeeping function as regards expert testimony and must find the subject of the testimony is reliable before it may be submitted to the jury. Here, the proposed expert testimony was not reliable since SLED had revoked Cowan’s certification based on the inability of the testing procedures he employed to determine whether a substance was, in fact, marijuana.

The trial court improperly abandoned its gatekeeping role when it ruled the reliability of Cowan’s testimony was a matter for the jury. “[A]ll expert testimony under Rule 702, SCRE, imposes on the trial courts an affirmative and meaningful gatekeeping duty.” *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009). “All expert testimony must satisfy the Rule 702 criteria, and that includes the trial court’s gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury’s ultimate consideration.” *Id.*

“[O]nly **after** the trial court has found that expert testimony is necessary to assist the jury in resolving factual questions, the expert is qualified in the particular area, and the testimony is reliable, may the trial court admit the evidence and permit the jury to assign it such weight as it deems appropriate.” *Watson v. Ford Motor Co.*, 389 S.C. 434, 446-47, 699 S.E.2d 169, 175 (2010) (emphasis added). The trial court’s abdication of its discretion in this regard (leaving the matter of reliability for the jury) was an abuse of discretion. “When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred.” *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987).

Rule 702, SCRE provides: “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.”

“[E]xpert testimony receives additional scrutiny relative to other evidentiary decisions. Specifically, in executing its gatekeeping duties, the trial court must make three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony.” *Watson v. Ford Motor Co.*, 389 S.C. at 446, 699 S.E.2d at 175. “First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury.” *Id.* “Next, while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter.” *Id.* “Finally, the trial court must evaluate the substance of the testimony and determine whether it is reliable.” *Id.*

“Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability.” *Id.* Here, because the substance of Cowan’s testimony failed the reliability prong of *Watson*, it was inadmissible.

“Reliability is a central feature of Rule 702 admissibility, and our jurisprudence is in complete accord.” *State v. White*, 382 S.C. at 270, 676 S.E.2d at 686. “[E]xpert testimony must pass a threshold reliability determination by the trial court prior to its admission in evidence.” *Id.* at 273, 676 S.E.2d at 688. Here, the trial court’s rulings that Cowan was qualified as an expert but “the reliability of the testing procedure is a matter to be determined by the jury” were fundamentally incompatible rulings. R. 163, l. 24 – 164, l. 14.

“Scientific evidence is admissible under Rule 702, SCRE, if the trial judge determines: (1) the evidence will assist the trier of fact; (2) the expert witness is qualified; (3) **the underlying science is reliable**, applying the factors found in *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979); and (4) the probative value of the evidence outweighs its prejudicial effect.” *State v. Jones*, 343 S.C. 562, 572, 541 S.E.2d 813, 818 (2001) (citing *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999)) (emphasis added) (hereinafter the *Council* factors).

As to the third *Council* factor, *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979) requires that: (1) the technique be published and peer-reviewed; (2) the method has been applied to this type evidence; and (3) the method be consistent with recognized scientific laws and proceedings. *State v. Jones*, 343 S.C. 562, 573, 541 S.E.2d 813, 819 (2001). “Once the evidence is admitted under these standards, the jury may give it such weight as it deems appropriate.” *State v. Council*, 335 S.C. at 20-21, 515 S.E.2d at 518.

Had the court properly acted as gatekeeper, it should not have qualified Cowan as an expert in drug analysis because reliability is central to a proper analysis under Rule 702, SCRE, and Cowan’s opinion was unreliable. SLED cancelled the program that certified Cowan precisely because the scientific techniques the program employed to analyze suspected marijuana were no longer reliable by the time Appellant stood trial. The methods Cowan used were no longer recognized within the scientific community as reliably able to determine whether a substance was marijuana, given the existence of industrial hemp in South Carolina. The evidence also had little probative value since Cowan’s testing could not confirm the substance was marijuana, and it should have been excluded. *State v. Council*, 335 S.C. at 20, 515 S.E.2d at 518; *State v. Jones*, 343 S.C. at 573, 541 S.E.2d at 819.

When Cowan analyzed the substance in 2017, the tests he performed could not differentiate between hemp and marijuana, and the General Assembly had recognized that hemp was scientifically distinguishable from marijuana in South Carolina as early as 2014. *See* 2014 Act No. 216, § 1, findings, which provides as follows:

SECTION 1. The General Assembly finds that: (1) Hemp is a fiber and oilseed crop with a wide variety of uses, including twine, rope, paper, construction materials, carpeting, and clothing, and has the potential for use as a cellulosic ethanol biofuel. (2) Hemp seeds have been used in making industrial oils, cosmetics, medicines, and food. (3) **Hemp and marijuana** are genetically different cultivars of the same plant species and **are scientifically distinguishable from each other**. (4) Hemp is grown for scientific, economic, and environmental uses while marijuana is grown for narcotic use. (5) Research and development related to hemp has the potential to provide a cash crop for South Carolina's farmers with broad commercial application that will enhance the economic diversity and stability of our state's agricultural industry.

S.C. Code Ann. tit. 46, Ch. 55, Refs & Annos (emphasis added).

Cowan admitted that the tests he performed on the substance recovered from Appellant's home could not reveal the level of THC the substance contained—the tests could only reveal the presence or absence of THC. Cowan also admitted that both hemp and marijuana contain THC—the difference is a matter of percentage, not one of presence. Therefore, Cowan's analysis could not reliably conclude the substance was marijuana, and the trial court's admission of the drug analysis evidence here was error. *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999); *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979).

It was undisputed that in 2018, SLED announced that its marijuana analysis program, under which Cowan was certified, was no longer reliable for assuring a substance was marijuana. The announcement stated that “SLED's decision to discontinue the Program should not in any way be considered a change or alteration to the way that **probable cause** is determined in the

State of South Carolina for any and all drug charges, including Marijuana.” R. 224. (emphasis added). “However, in terms of **confirmatory testing**, in order to accurately analyze plant material and verify the THC level to distinguish between Industrial Hemp and Marijuana, cases will need to be submitted to the SLED Drug Analysis laboratory for quantitative analysis of THC.” R. 224.

In other words, the tests Cowan performed were, in SLED’s opinion, good enough for probable cause to arrest but not good enough for trial, as of December 2018. Appellant was tried in July of 2019. Court’s Exhibit #2 plainly shows that at the time of Appellant’s trial, SLED no longer considered the testing procedures used by Cowan able “accurately analyze” suspected marijuana. Here, Cowan’s testimony was not reliable since his methods could not confirm whether a given substance was marijuana or hemp. Therefore, Cowan should not have been qualified as an expert witness.

The erroneous qualification of Cowan as an expert in marijuana analysis was not harmless. “As part of our harmless error analysis, we review the materiality and prejudicial character of the error in the context of the entire trial.” *State v. Phillips*, Op. No. 27978 (S.C. Sup. Ct. filed June 3, 2020) (Shearouse Adv. Sh. No. 22 at 19) (internal quotations omitted). “Improper ‘expert’ evidence which goes to the heart of the case is not harmless.” *State v. Tapp*, 398 S.C. 376, 393, 728 S.E.2d 468, 477 (2012) (Pleicones, J., dissenting). *See also State v. Ellis*, 345 S.C. 175, 178, 547 S.E.2d 490, 491 (2001) (police officer’s improper “expert” opinion which goes to the heart of the case is not harmless, particularly where the trial court’s imprimatur of the witness as an expert was exploited by the solicitor).

Here, Cowan provided the only drug analysis evidence in the case, and the trial court’s imprimatur of him as an expert allowed Cowan, unlike other witnesses, to render an opinion that

the substance recovered from Appellant's home was actually marijuana. The solicitor admitted in closing argument that the evidence against Appellant was circumstantial—the State presented no evidence that anyone bought marijuana from Appellant. An expert's opinion on whether the substance seized from Appellant's home was marijuana went to the heart of the case.

2.

The trial court erred where it admitted evidence that Robert Cowan of the Easley Police Department analyzed the substance possessed by Appellant and determined it was marijuana, where Cowan admitted the testing procedures that he used could not confirm whether the substance was marijuana or hemp, since the evidence was not reliable and was inadmissible under Rule 702, SCRE.

Standard of review

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *Id.*; see also *State v. Brockmeyer*, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013). “A trial court’s decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion.” *State v. White*, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009).

Discussion²

The science underpinning Cowan’s drug analysis was no longer reliable by the time the State called Appellant’s case to trial, which was two years after Appellant was arrested and the substance was seized. SLED had revoked Cowan’s certification as a marijuana analyst and announced that the types of testing performed by Cowan were only suitable for probable cause determinations, not for final conclusions seven months before Appellant’s trial was held.

² Appellant hereby incorporates the legal discussion section from Issue 1, *supra*, into Issue 2.

However, instead of taking SLED up on its offer to submit suspected drug evidence to SLED for confirmatory testing, the State chose to go forward with the Easley Police Department's unreliable analysis, and incorrectly convinced the trial judge that SLED's December 2018 announcement did not mean that prior tests were unreliable or unsuitable for admission at trial. R. 169, l. 20 – 170, l. 8.

“Scientific evidence is admissible under Rule 702, SCRE, if the trial judge determines: (1) the evidence will assist the trier of fact; (2) the expert witness is qualified; (3) the underlying science is reliable, applying the factors found in *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979); and (4) the probative value of the evidence outweighs its prejudicial effect.” *State v. Jones*, 343 S.C. 562, 572, 541 S.E.2d 813, 818 (2001) (citing *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999)) (hereinafter the *Council* factors).

As to the third *Council* factor, *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979) requires that: (1) the technique be published and peer-reviewed; (2) the method has been applied to this type evidence; and (3) the method be consistent with recognized scientific laws and proceedings. *State v. Jones*, 343 S.C. 562, 573, 541 S.E.2d 813, 819 (2001) (hereinafter the *Jones* factors).

Here, Cowan's drug analysis evidence (his testimony and his drug analysis report) should not have been admitted because this evidence could not satisfy the *Council* factors and *Jones* factors. While drug analysis evidence would undoubtedly (1) assist the trier of fact to know whether the substance at issue was marijuana, Cowan could not confirm it was marijuana; (2) as seen in Issue 1, *supra*, Cowan should not have been qualified as an expert witness; (3) the underlying scientific methods were no longer recognized within the scientific community as reliably able to determine whether a substance was marijuana, given the presence of hemp in

South Carolina; and (4) given the inability of Cowan’s testing to determine whether the substance was marijuana, the probative value of Cowan’s drug analysis did not outweigh the prejudicial effect of attaching an “expert” label to his unreliable opinion. *State v. Council*, 335 S.C. at 20, 515 S.E.2d at 518; *State v. Jones*, 343 S.C. at 573, 541 S.E.2d at 819.

Defense counsel properly objected to the admission of Cowan’s opinion on whether the substance was marijuana and to his drug analysis report. Additionally, Rule 6, SCRCrimP, recognizes the importance of SLED’s approval that the procedures employed in chemical analysis of suspected drugs “are legally reliable and that the material is or contains the substance or substances stated.” Here, SLED had determined the microscopic and chemical analysis procedures such as were done by Cowan were unreliable.

As defense counsel correctly argued, because the General Assembly exempted hemp from the definition of marijuana in 2014, thereafter, a substance which might have appeared to be marijuana using the testing procedures employed by Cowan was no longer sure to be marijuana—it might be hemp. *See* 2014 Act No. 216 (S. 839), § 2, eff. June 2, 2014 (former § 46-55-30 was titled: Industrial hemp excluded from Section 44-53-110). S.C. Code Ann. § 44-53-110 is the provision which defines marijuana for purposes of the drug laws.

When Cowan analyzed the substance in 2017, the tests he performed could not differentiate between hemp and marijuana, and the legislature had recognized that hemp was scientifically distinguishable from marijuana in South Carolina as early as 2014. *See* 2014 Act No. 216, § 1, eff. June 2, 2014, findings, which provides as follows:

SECTION 1. The General Assembly finds that: (1) Hemp is a fiber and oilseed crop with a wide variety of uses, including twine, rope, paper, construction materials, carpeting, and clothing, and has the potential for use as a cellulosic ethanol biofuel. (2) Hemp seeds have been used in making industrial oils, cosmetics, medicines, and food. (3) **Hemp and marijuana** are genetically different

cultivars of the same plant species and **are scientifically distinguishable from each other**. (4) Hemp is grown for scientific, economic, and environmental uses while marijuana is grown for narcotic use. (5) Research and development related to hemp has the potential to provide a cash crop for South Carolina's farmers with broad commercial application that will enhance the economic diversity and stability of our state's agricultural industry.

S.C. Code Ann. tit. 46, Ch. 55, Refs & Annos (emphasis added).

Cowan admitted that the tests he performed could not reveal the level of THC in the substance tested—it could only reveal the presence or absence of THC. Cowan also admitted that both hemp and marijuana contain THC—the difference is a matter of percentage, not one of presence. Therefore, Cowan’s analysis could not reliably confirm the substance was marijuana, and the trial court’s admission of the drug analysis evidence here was error. *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999); *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979).

The erroneous admission of the drug analysis evidence here was not harmless. “As part of our harmless error analysis, we review the materiality and prejudicial character of the error in the context of the entire trial.” *State v. Phillips*, Op. No. 27978 (S.C. Sup. Ct. filed June 3, 2020) (Shearouse Adv. Sh. No. 22 at 19) (internal quotations omitted). “Improper ‘expert’ evidence which goes to the heart of the case is not harmless.” *State v. Tapp*, 398 S.C. 376, 393, 728 S.E.2d 468, 477 (2012) (Pleicones, J., dissenting). *See also State v. Ellis*, 345 S.C. 175, 178, 547 S.E.2d 490, 491 (2001) (police officer’s improper “expert” opinion which goes to the heart of the case is not harmless, particularly where the trial court’s imprimatur of of the witness as an expert was exploited by the solicitor).

Here, Cowan provided the only scientific testimony regarding the composition of the substance, and the trial court improperly granted Cowan the mantle of expert. The solicitor admitted in closing argument that the evidence against Appellant was circumstantial—the State

presented no evidence that anyone bought marijuana from Appellant. Evidence of whether the substance seized from Appellant's home was marijuana went to the heart of the case.

CONCLUSION

Based on the foregoing arguments, Appellant respectfully requests this Court reverse her convictions and sentences and remand for a new trial.

s/ Joanna K. Delany

Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of September, 2020.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

September 14, 2020.

sl Joanna K. Delany

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WANDA JANE CRUMPTON,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above referenced case has been served upon Scott Matthews Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 14th day of September, 2020.

s/ Joanna K. Delany

Joanna K. Delany
Appellate Defender
ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
The Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-001246

THE STATE,

Respondent,

v.

WANDA JANE CRUMPTON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Assuming for the sake of argument that the trial judge erred in qualifying Robert Cowan as an expert in marijuana analysis, whether any error was harmless in light of the evidence produced against Appellant at trial and Appellant's defense to the charges she faced? (Appellant's issues I and II)

STATEMENT OF THE CASE

In July 2019, the Pickens County Grand Jury indicted Appellant for one count of possession with intent to distribute marijuana and one count of distribution of marijuana within close proximity of a school or park. On July 22-23, 2019, a jury trial was held in the Pickens County Court of General Sessions with the Honorable Robin B. Stilwell presiding. Appellant was represented by Daniel King, Esq. The State was represented by Assistant Solicitor Megan Owen of the Thirteenth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant of both counts. The trial judge sentenced Appellant to two concurrent terms of forty-two months' imprisonment. Appellant timely filed a notice of appeal and an initial brief.

STATEMENT OF FACTS

In March 2017, the Easley Police Department began to receive complaints from local citizens and businesses of heavy traffic occurring in the vicinity of a trailer located at 102 Darby Way in the city of Easley. (R. 119-20). Law enforcement also received a complaint from a mother who claimed her child had purchased marijuana from the trailer. (R. 68). In response, Detective Jonathan Hamby conducted surveillance of the residence at 102 Darby Way. (R. 120). Hamby discovered Appellant resided at the address. (R. 120). On the afternoon of March 20, 2017, Hamby observed Kerek Harris leaving Appellant's residence. (R. 120). Harris was already the subject of an active drug investigation by the Easley Police Department. (R. 69). On March 21, 2017, Law enforcement executed a search warrant on Harris' apartment. (R. 69). Inside the apartment, five pounds of marijuana were found. (R. 63). Harris was placed under arrest and agreed to talk with law enforcement. (R. 69). Harris admitted he knew Appellant and told law enforcement he sold marijuana to her frequently. (R. 57, 69). Between March 11 and March 21 Harris sold Appellant two ounces of marijuana approximately eleven different times. (R. 132). Harris charged Appellant \$90 per ounce. (R. 58, 132). Harris allowed law enforcement to search his cell phone. Hamby located multiple text messages between Harris and Appellant that confirmed the information given by Harris. (R. 69).

After completing their search of Harris' apartment, law enforcement drafted a search warrant for Appellant's trailer at 102 Darby Way and executed the search later the same day. (R. 70). Appellant cooperated with law enforcement during the search of her home. Appellant led officers to a cabinet that contained a bag of suspected marijuana and a set of scales. (R. 122). Appellant also had \$534 with her and a joint that she was in the process of smoking when law enforcement arrived. (R. 123). The suspected marijuana weighed .66 ounces. (R. 229). The

suspected marijuana was analyzed by Robert Cowan of the Easley Police Department and determined to be marijuana. (R. 170-71, 229). Cowan was certified as a marijuana analyst through a SLED program that Cowan conceded had been discontinued in 2018. (R. 152, 224). Cowan analyzed the marijuana found in Appellant's home using the Duquenois-Levine test. (R. 154). Cowan admitted the test he used could determine the presence of THC¹, but could not specify a quantitative amount of THC. (R. 159). At the conclusion of trial, Appellant was convicted of both counts.

¹ THC refers to tetrahydrocannabinol which is a chemical that is found in marijuana. Cowan testified that a substance which contains less than 0.3 percent THC is classified as industrial hemp as opposed to marijuana and is not prohibited under S.C. Code § 44-53-370(B). (R. 154, 159). See also S.C. Code § 46-55-10(6) (“‘Federally defined THC level for hemp’ means a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis, or the THC concentration for hemp defined in 7 U.S.C. SECTION 5940, whichever is greater.”)

STANDARD OF REVIEW

“The decision to admit or exclude testimony from an expert witness rests within the trial court’s sound discretion. The trial court’s decision to admit expert testimony will not be reversed on appeal absent an abuse of discretion.” State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ARGUMENT

Even assuming for the sake of argument that the trial judge erred in qualifying Robert Cowan as an expert in marijuana analysis, any error was harmless in light of the evidence produced against Appellant at trial and Appellant's defense to the charges she faced. (Appellant's issues I and II)

Appellant contends the trial judge erred by qualifying Robert Cowan as an expert in marijuana analysis and by allowing him to offer his opinion regarding the suspected marijuana found in Appellant's home. Assuming for the sake of argument that the trial judge erred in qualifying Cowan as an expert in marijuana analysis, any error is harmless in light of the evidence presented against Appellant and Appellant's defense at trial. Appellant never claimed the substance she possessed was anything but marijuana. In fact, Appellant explicitly argued that she possessed marijuana, but it was merely for her personal use and not for distribution. While Appellant challenged Cowan's qualifications based on the limitations of his testing method², Appellant never maintained that she possessed industrial hemp rather than marijuana. Therefore, any error committed by the trial judge in allowing Cowan to offer his opinion regarding the substance found in Appellant's home did not affect the outcome of the trial and was entirely harmless.

"Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed." State v. Thompson, 352 S.C. 552, 562,

² Notably, as of March 21, 2017, S.C. Code § 46-55-10 did not specify a level of THC concentration that differentiated industrial hemp from marijuana. As Appellant acknowledges in her brief, the applicable law on the date of offense merely stated "Hemp and marijuana are genetically different cultivars of the same plant species and are scientifically distinguishable from each other." 2014 Act No. 216 (S. 839), (Initial Brief of Appellant 12, 17). Two months after the date of offense, the General Assembly enacted 2017 Act No. 37 (H. 3559) which specified that the THC concentration in industrial hemp must not exceed 0.3 percent on a dried weight basis. Therefore, the State was not required to prove the level of THC concentration in the marijuana that Appellant possessed based on the applicable law on the date of offense.

575 S.E.2d 77, 83 (Ct. App. 2003). “No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.” State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). “Error is harmless when it could not reasonably have affected the result of the trial.” State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990). “[W]here guilt is conclusively proven by competent evidence and no rational conclusion can be reached other than the accused is guilty, a conviction will not be set aside because of insubstantial errors not affecting the result.” State v. Livingston, 282 S.C. 1, 6, 317 S.E.2d 129, 132 (1984).

Here, Appellant never claimed that she did not possess marijuana. In his opening statement and closing argument, counsel for Appellant admitted that Appellant possessed marijuana for her personal use but she was not distributing it. (R. 113-14, 197-98). In his opening statement, counsel for Appellant stated:

Mr. King: ...personal use, that’s what you’re going to hear about today. It’s personal use and personal use only. The evidence is going to show that [Appellant] was in her home, **she had a small amount of marijuana**, less than an ounce, which is perfectly legal in other states. She had a blunt in her house, in her easy chair. Her easy chair she was sitting in when law enforcement came up to her house. It was personal use.

(R. 113, lines 24-25- R. 114, lines 1-8)(emphasis added). Similarly, in closing argument counsel for Appellant argued:

Mr. King: So let’s look at the evidence we have here. We have State’s Number 10, which is the joint, and we have State’s Number 11, **which is the pack of marijuana. Personal use**, remember, like I said at the beginning, State’s Number 11 is like a six pack of Coke you got at home. State’s Number 10 is a single can of Coke. Just because you got a six pack of Coke in your fridge doesn’t mean you’re distributing it. Now, along with just that personal use evidence, we’ve got that State’s Number 8, which was that picture of the joint on the easy chair. That’s the easy chair she was sitting in when law enforcement approached. They saw her there. That’s where they found it. **She was smoking it right beforehand**. That’s personal use. You light up. She’s using it.

(R. 197, lines 12-25- R. 198, lines 1-3)(emphasis added). Thus, the theme of Appellant's defense remained consistent from her opening statement through her closing argument. Appellant argued that she possessed marijuana, but she was using it herself and not distributing it. Appellant never claimed that she possessed industrial hemp. In fact, Appellant acknowledged to the trial judge before trial that she was "100 percent" guilty of smoking marijuana. (R. 8, line 11). Furthermore, Kerek Harris testified he sold Appellant two ounces of marijuana approximately eleven different times. (R. 132). Harris acknowledged being a drug dealer and claimed to have sold Appellant marijuana, not industrial hemp. (R. 131-36). The closest Appellant came to suggesting the substance she possessed was industrial hemp occurred at the very end of her closing argument when trial counsel questioned the accuracy of the State's testing methods. (R. 200, lines 1-17).

The jury was convinced of Appellant's guilt based on her own defense and the testimony of Kerek Harris, not based on the testing method of Robert Cowan. Any error by the trial judge in allowing Cowan to offer his opinion regarding the substance found in Appellant's home was entirely harmless. Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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August 26, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
The Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-001246

THE STATE,

Respondent,

v.

WANDA JANE CRUMPTON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule .
211(b), SCACR.

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ATTORNEYS FOR RESPONDENT

August 26, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
The Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-001246

THE STATE,

Respondent,

v.

WANDA JANE CRUMPTON,

Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent on Appellant by email to the address listed in AIS and with a copy of the same to be deposited in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This twenty-sixth day of August, 2020.



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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Wanda Jane Crumpton, Appellant.

Appellate Case No. 2019-001246

Appeal From Pickens County
Robin B. Stilwell, Circuit Court Judge

Opinion No. 6075
Heard June 7, 2022 – Filed July 31, 2024

REVERSED

Appellate Defender Joanna Katherine Delany, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Mark R. Farthing,
both of Columbia, and Solicitor William Walter Wilkins,
III, of Greenville, all for Respondent.

MCDONALD, J.: In this case, we are asked to consider whether an expert witness may identify a substance as marijuana after admittedly using a testing protocol the South Carolina Law Enforcement Division (SLED) deemed unreliable several months before the defendant's trial. The circuit court admitted such testimony in Wanda Crumpton's trial, and she was convicted of possession of marijuana with intent to distribute and distribution of marijuana within close proximity of a school

or park. Crumpton challenges her convictions, arguing the circuit court erred in (1) allowing the witness to identify the substance as marijuana; (2) ignoring Rule 702's gatekeeping requirements; and (3) admitting into evidence the expert's report. We reverse the convictions.

Facts and Procedural History

In 2017, the Easley Police Department (EPD) began to surveil Crumpton's neighborhood after receiving citizen complaints about heavy traffic in the area. During its March 20 surveillance, EPD observed people, including Kerek Harris—who was already the subject of a separate EPD investigation—visiting Crumpton.

The following day, EPD narcotics officers executed a search warrant at Harris's home. Harris cooperated with the search—he told officers the location of his cell phone, cash, and marijuana; he also completed a consent to search form to allow law enforcement to access his phone. Officers recovered approximately five pounds of marijuana in five separate gallon-sized bags and almost six thousand dollars in cash from the search of Harris's home.

Based on information Harris provided, the officers next obtained a warrant to search Crumpton's home for drugs. EPD Narcotics Officer Jonathan Hamby testified that when officers arrived to execute the warrant, Crumpton was sitting in her recliner, and she allowed them in to search. As they explained the search warrant to her, Crumpton asked if she could just show the officers "where the drugs were." She then directed them to a kitchen cabinet and a small bag containing a green leafy substance. Officer Hamby also asked Crumpton "about any scales she would have to weigh the marijuana out with. She admitted she had scales and pulled out a cabinet drawer on the bottom where her scales were located." The officers seized the bag of plant material, \$534 in cash, a cell phone, food storage baggies, and the kitchen scales. They also retrieved a partially smoked joint from Crumpton's recliner.

A Pickens County grand jury indicted Crumpton for possession of marijuana with intent to distribute and a proximity charge. She was convicted on both counts, and the circuit court sentenced her to forty-two months, concurrent, on each charge.¹

¹ Crumpton had already served her sentences at the time of oral argument.

Standard of Review

Appellate courts review trial court rulings on the admissibility of evidence pursuant to an abuse of discretion standard. *State v. Herrera*, 425 S.C. 558, 562, 823 S.E.2d 923, 924 (2019). A circuit court's "decision to admit expert testimony will not be reversed on appeal absent an abuse of discretion." *Id.* (quoting *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006)). "An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." *State v. Chavis*, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015).

Analysis

I. Expert testimony

The State offered retired EPD Sergeant Robert Brian Cowan as its expert in marijuana analysis. Cowan began working in law enforcement in 1994 and worked for EPD for twenty-five years; he was an evidence technician for eighteen. In January 2002, Cowan completed SLED's Marijuana Analyst Certification program and became a certified marijuana analyst. However, on December 14, 2018—seven months before Crumpton's trial—SLED revoked all certifications awarded pursuant to this program. SLED also sent a notice advising law enforcement agencies and certified individuals to cease using the program's testing procedures because the tests could not differentiate between illegal marijuana and industrial hemp, which may legally contain up to three-tenths of a percent of THC, the main psychoactive ingredient in marijuana. The SLED notice stated, in pertinent part:

Effective immediately, the SLED Forensic Services Laboratory is discontinuing the Marijuana Analyst Certification/Recertification and Testing programs. Subsequently, all law enforcement officers currently certified under the SLED Marijuana Analyst Program (Program) should discontinue testing plant material. Be advised that SLED has researched this issue extensively and has determined that due to the creation of the Industrial Hemp Program, the Marijuana Testing procedures covered in this Program (microscopic analysis and Duquenois-Levine chemical spot test)

cannot differentiate between Industrial Hemp and Marijuana. In accordance with S.C. Code Ann. § 46-55-10, Industrial Hemp is defined as Cannabis that contains not more than 0.3 percent of delta-9-tetrahydrocannabinol (THC) on a dry weight basis, and S.C. Code Ann. § 46-55-50 states that Industrial Hemp "is excluded from the definition of marijuana in S.C. Code Ann. § 46-53-110[.]" However, all Cannabis plant material that contains greater than 0.3 percent of THC on a dry weight basis is still considered Marijuana and punishable accordingly. SLED's decision to discontinue the Program should not in any way be considered a change or alteration to the way that probable cause is determined in the State of South Carolina for any and all drug charges, including Marijuana.

However, in terms of confirmatory testing, in order to accurately analyze plant material and verify the THC level to distinguish between Industrial Hemp and Marijuana, cases will need to be submitted to the SLED Drug Analysis laboratory for quantitative analysis of THC.

Crumpton filed separate written objections to the admission of Sergeant Cowan's "Marijuana Analysis" and his qualification as a "Marijuana Expert." In the written objection to Cowan's analysis, Crumpton argued,

An actual test of the substance is required to make sure the alleged substance is in fact contraband[.] Rule 6, SCRCrimP.^[2] The Rules of Criminal Procedure set forth

² Rule 6 addresses chemical analyses and chain of custody in drug cases. It provides, in pertinent part, that for the purpose of establishing the physical evidence of a controlled substance or other substance regulated by Title 44, Chapter 53,

a report signed by the chemist or analyst who performed the test or tests required concerning its nature shall be evidence that the material delivered to him or her was

that requirement thereby making it an essential part of the due process of law in every drug case. Stated concisely, Rule 6 requires three elements: 1) A proper test, 2) A legally reliable test, and 3) An opinion as to the identity of the substance.

Pretrial, the circuit court addressed Crumpton's objections to the validity of the search warrant and the admissibility of Harris's testimony and text messages regarding Crumpton's prior purchases from him. Crumpton challenged the evidence of any such prior purchases, arguing it was inadmissible under Rules 403 and 404(b), SCRE.³ Although the circuit court found Harris's testimony was admissible, the court declined to admit his text messages. The circuit court further found probable cause existed to support the magistrate's issuance of the search warrant. The circuit court did not, however, address Crumpton's pretrial challenge to the expert's testimony, presumably because her trial counsel stated, "And when it comes up, we're going to be objecting to the expert."

After two law enforcement witnesses and Harris testified, the State called Sergeant Cowan. As Cowan began to testify about the marijuana testing process he used, Crumpton objected, stating, "Judge, I'm going to—I'd like to object to his—I'm not sure how to put it. May we approach, please?" The circuit court responded:

THE COURT: Yeah, I think I know what you're saying. You want to object to his qualifications as an expert; is that correct?

MR. KING: I do, and I'm not sure we need to get into the testing procedure until we get over that hurdle.

properly tested under procedures approved by the State Law Enforcement Division (SLED), that those procedures are legally reliable and that the material is or contains the substance or substances stated.

³ Rule 403 addresses the exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time; Rule 404(b) addresses evidence of other crimes or bad acts.

THE COURT: Okay. I'm going to allow you to voir dire on the record in open court. One of the tests [is] not only whether he is qualified as an expert, but also that [the] methodology is an accepted and recognized scientific method. So I think all of this goes to whether that evidence is admissible or not. I suspect that you're going to want to voir dire him with respect to methodology as well.

MR. KING: That's correct, Your Honor. I apologize. I just want to get a ruling on where we're going.

THE COURT: I got you. I got you. Okay, you can proceed.

With the jury still present, the State asked Cowan how he tested for marijuana, and he explained his testing methods, noting he had "analyzed probably roughly 1600 cases" from 2010 until 2018. The State then moved to qualify Cowan an expert in "chemical analysis for marijuana." The circuit court gave a brief instruction on expert witnesses and told the jury that the purpose of giving the defense the opportunity to question such a witness is "to determine whether, in fact, they are qualified, and whether the methodology is appropriate."

The defense then questioned Cowan about SLED's termination of the marijuana handling, certification, and testing program. Cowan discussed the December 2018 SLED announcement and explained "they are saying they cannot differentiate between industrial hemp and marijuana." Cowan admitted the test he performed could not quantify a substance's THC level and "it was just positive or negative."

Defense counsel again objected to Cowan being qualified as an expert and asked to make the SLED notice a court's exhibit. He continued:

MR. KING: Would you like to hear my argument now?

THE COURT: Yes.

MR. KING: Or do that outside the presence of the jury?

THE COURT: If we're talking about the qualifications of this expert witness, I'm happy to hear from you right now.

At no point during this discussion was the jury excused, and the arguments conducted in the jury's presence continue for four pages in the trial transcript. Crumpton argued Cowan's testing method was not reliable under Rule 702, and the State responded that Cowan tested the substance using the SLED protocol in effect at the time of the testing. The State further argued that when Crumpton's substance was tested in 2017, SLED's procedures were the standard for testing substances believed to contain marijuana, noting SLED had not instructed law enforcement agencies regarding the reliability of prior test results. The State continued, rather inaccurately:

In December of 2018 is when they asked law enforcement to stop performing this test. It doesn't say anything about any of the tests previously being unreliable or that they were to be thrown out or that they meet the minimum threshold, Your Honor. At this point in time, it was still marijuana Yes, they are no longer using that test, but it was still reliable at the time of the test, Your Honor.

In the presence of the jury and without further inquiry or analysis, the circuit court qualified Cowan as an expert and declared the reliability of the testing method was a jury question. In overruling Crumpton's objection, the circuit court stated,

When I charge the jury as to the law, the question is going to be marijuana. Hemp is not part of the equation. Okay? And, the State, it has to be proven beyond a reasonable doubt that she possessed marijuana with intent to distribute the same. Okay?

So, with respect to his qualification as an expert witness, I will allow him to testify as an expert witness.

Now, the reliability of the testing procedure is a matter to be determined by the jury. They will weigh the credibility of the witness's testimony, and determine, in

fact, whether it should be relied upon or not in their capacity as the finders of fact.

So, Ladies and Gentlemen, this gentleman is being offered as an expert witness

The circuit court then completed its instruction as to the role of an expert witness, and Cowan identified the marijuana analysis form containing his test result. Although Cowan found the seized substance contained THC, he could not say whether the substance was actually marijuana as opposed to industrial hemp. Nor could he determine whether the THC level of the substance was over 0.3% because the now-defunct procedure used could detect only the existence of THC, not a THC level. Despite this, Cowan testified he found nineteen grams, or 0.66 ounces, of marijuana.

Crumpton argues Cowan's testimony identifying the substance as marijuana was inadmissible because SLED had previously deemed unreliable the testing protocol Cowan used to identify it.⁴ More fundamentally, Crumpton contends the circuit court erred in finding Cowan's reliability was an issue for the jury because Rule 702, SCRE, requires the circuit court to conduct this gatekeeping function outside the presence of the jury **before** permitting the offered expert to testify. *See e.g., State v. Tapp*, 398 S.C. 376, 388, 728 S.E.2d 468, 474 (2012) ("The familiar evidentiary mantra that a challenge to evidence goes to 'weight, not admissibility' may be invoked only after the trial judge has vetted the matters of qualification and reliability and admitted the evidence." (quoting *State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009))).

"Scientific evidence is admissible under Rule 702, SCRE,^[5] when '(1) the evidence will assist the trier of fact; (2) the expert witness is qualified; (3) the

⁴ Crumpton initially argued the circuit court erred in finding Sergeant Cowan was sufficiently qualified and in failing to properly analyze reliability; however, at oral argument, she acknowledged Cowan's qualifications and focused on the circuit court's failure to vet reliability.

⁵ Rule 702 provides that where "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience,

underlying science is reliable . . . ; and (4) the probative value of the evidence outweighs its prejudicial effect." *State v. Mealor*, 425 S.C. 625, 647, 825 S.E.2d 53, 65 (Ct. App. 2019) (quoting *State v. Jones*, 343 S.C. 562, 572, 541 S.E.2d 813, 818 (2001)). "All expert testimony must satisfy the Rule 702 criteria, and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration." *White*, 382 S.C. at 270, 676 S.E.2d at 686. "Reliability is a central feature of Rule 702 admissibility, and our jurisprudence is in complete accord." *Id.*

When Cowan tested this substance in 2017, section 46-55-50 already excluded industrial hemp from section 44-53-110's definition of marijuana. *See* Act No. 216, 2014 S.C. Acts 2317–20 (legalizing the growing of industrial hemp and excluding it from the definition of marijuana); Act No. 37, 2017 S.C. Acts 149–54 (amending industrial hemp statutes and renumbering the code section excluding industrial hemp from the definition of marijuana). In 2019, the General Assembly amended Chapter 55 of Title 46 upon passing "The Hemp Farming Act" to address industrial hemp licenses and Cannabidiol (CBD). Section 46-55-10(8) was also amended; it now states:

'Hemp' or 'industrial hemp' means the plant *Cannabis sativa* L. and any part of that plant, including the nonsterilized seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with the federally defined THC level for hemp. Hemp shall be considered an agricultural commodity.

"'Federally defined THC level for hemp' means a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis, or the THC concentration for hemp defined in 7 U.S.C. SECTION 5940, whichever is greater." S.C. Code Ann. § 46-55-10(6) (Supp. 2023).

Crumpton properly emphasizes that the qualifications of a proposed expert and the reliability of the expert's methods are distinct requirements for admissibility. *See Tapp*, 398 S.C. at 388, 728 S.E.2d at 474–75 ("To be clear, the reliability of a

training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE.

witness's testimony is not a pre-requisite to determining whether or not the witness is an expert. The expertise, reliability, and the ability of the testimony to assist the trier of fact are all threshold determinations to be made prior to the admission of expert testimony, and generally, a witness's expert status will be determined prior to determining the reliability of the testimony."). Cowan began his law enforcement career in 1994, he worked for EPD for twenty-five years, and he was an evidence technician for eighteen. He was previously certified as a marijuana analyst by SLED (before the program was revoked), and from 2010—when he began keeping track—through 2019, he analyzed approximately 1600 samples. Therefore, we find the circuit court acted within its discretion in finding Sergeant Cowan had the qualifications necessary to testify as an expert.

But the circuit court clearly erred in admitting Cowan's testimony because his analysis was based on a testing method SLED itself had deemed unreliable some seven months before Crumpton's trial. And, in addition to conducting the reliability arguments in the jury's presence, the circuit court erroneously declared the initial reliability determination was an issue for the jury. Our appellate courts have long cautioned that the reliability of an expert's testimony is a threshold gatekeeping matter for the court. *See id.* at 388, 728 S.E.2d at 474 ("The familiar evidentiary mantra that a challenge to evidence goes to 'weight, not admissibility' may be invoked only after the trial judge has vetted the matters of qualification and reliability and admitted the evidence." (quoting *White*, 382 S.C. at 274, 676 S.E.2d at 689)). As declared in SLED's notice and by Cowan's own admission, the testing method used here could not differentiate between legal industrial hemp and illegal marijuana. The fact that this methodology was acceptable in the past is irrelevant.

II. Harmless Error

The State next asserts any error by the circuit court in admitting Cowan's testimony was harmless. We disagree.

"Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result." *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006). "The harmless error rule generally provides that an error is harmless beyond a reasonable doubt if it did not contribute to the verdict obtained." *State v. Collins*, 409 S.C. 524, 537, 763 S.E.2d 22, 29 (2014). "As part of our harmless error analysis, we review 'the materiality and prejudicial character of the error' in the context of the entire trial." *State v. Phillips*, 430 S.C. 319, 342, 844 S.E.2d

651, 663 (2020) (quoting *State v. Byers*, 392 S.C. 438, 447-48, 710 S.E.2d 55, 60 (2011)).

Harris testified he sold marijuana, typically two ounces, to Crumpton eleven different times between March 11 and 21, 2017. Cowan subsequently identified the seized substance, found it weighed nineteen grams (0.66 ounces), and described in detail the obsolete testing procedure he used to identify the plant material as marijuana and determine its weight.

Sergeant Cowan's testimony about the admittedly unreliable testing method was undoubtedly problematic, but we also cannot ignore the effect the arguments addressing Sergeant Cowan's qualifications and the matter of reliability may have had on the jury. These arguments should have been made on the record, outside of the jury's presence, *before* the circuit court qualified Sergeant Cowan as an expert. And, certainly, the jury should have been removed before any threshold question of reliability was discussed. The circuit court's reference to "the familiar evidentiary mantra" regarding the weight of such testimony and its declaration that "[h]emp is not part of the equation" further compounded this prejudice.

Notably, although law enforcement seized scales and baggies and a partially smoked joint from Crumpton's home, Detective Hamby admitted officers attempted, but were unable to execute, a controlled buy from her, and no witness testified they purchased (or otherwise obtained) drugs from Crumpton. Thus, the identification of the substance seized from her trailer was critical to her conviction.

"Improper 'expert' evidence which goes to the heart of the case is not harmless." *Tapp*, 398 S.C. at 393, 728 S.E.2d at 477 (Pleicones, J., dissenting). Similarly, a police "officer's improper opinion which goes to the heart of the case is not harmless." *State v. Ellis*, 345 S.C. 175, 178, 547 S.E.2d 490, 491 (2001). Sergeant Cowan provided the only scientific testimony identifying the seized substance as marijuana, and he did so after the circuit court conducted the reliability arguments in the presence of the jury. As our supreme court has recognized, "although an expert's testimony theoretically is to be given no more weight by a jury than any other witness, it is an inescapable fact that jurors can have a tendency to attach more significance to the testimony of experts." *State v. Kromah*, 401 S.C. 340, 357, 737 S.E.2d 490, 499 (2013); *see also State v. Whitner*, 399 S.C. 547, 559, 732 S.E.2d 861, 867 (2012) (referencing vouching by a forensic interviewer as "improperly imbued with the imprimatur of an expert witness").

The State's other evidence included testimony from Harris and from the police officers who admittedly were unable to complete a successful controlled buy from Crumpton.⁶ Still, the officers also testified Crumpton voluntarily showed them where she kept "the drugs" when EPD arrived to search her home.⁷ Nevertheless, because we cannot say beyond a reasonable doubt that the errors here did not contribute to the verdicts, the errors cannot be harmless.

Conclusion

Based on the foregoing, Crumpton's convictions are reversed.

REVERSED.

THOMAS and HEWITT, JJ., concur.

⁶ Harris was undoubtedly the bigger fish—he admitted he repeatedly sold Crumpton marijuana in relatively small amounts in the days leading up to her arrest. In addition to the five gallon-sized bags of marijuana and nearly six thousand dollars in cash seized from his home, officers found photographs of a firearm on Harris's cell phone. Harris admitted he owned the firearm despite his status as a convicted felon. He also testified that due to the seizure of the five pounds "and some ounces" of marijuana, he was charged with four counts of second offense possession with intent to distribute. While each of those four counts carried a potential ten-year sentence, Harris was sentenced to probation and ordered to attend a drug class.

⁷ The State asserts Crumpton's own admission to the circuit court that she possessed marijuana further supports a finding of harmless error. But Crumpton's admission occurred pretrial, and she merely noted she "smoked it"—she never admitted she sold drugs or provided marijuana to others. The State further argues defense counsel's opening statements referencing Crumpton's "personal use," admitting "she had a small amount of marijuana, less than an ounce," and asking the jury to "look for the blunt" officers found in her easy chair mandate a finding of harmless error. We disagree. Such statements by Crumpton's attorney certainly may have mitigated the prejudice, but we cannot say beyond a reasonable doubt that the verdicts here were not influenced by the circuit court's decisions to forego a proper gatekeeping analysis, conduct the Rule 702 arguments in the jury's presence, and admit Cowan's testimony and analysis report.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-001246

THE STATE,RESPONDENT,

v.

WANDA JANE CRUMPTON,APPELLANT.

PETITION FOR REHEARING

On July 31, 2024, this Court issued a published opinion that reversed Appellant Wanda Jane Crumpton’s convictions and concurrent sentences of forty-two (42) months’ imprisonment for possession of marijuana with intent to distribute and distribution of marijuana within close proximity of a school or park. *State v. Crumpton*, Op. No. 6075 (S.C. Ct. App. filed July 31, 2024). In reversing Crumpton’s convictions, this Court held the circuit court erred in ignoring Rule 702’s gatekeeping requirements and in admitting into evidence the testimony of an expert witness—Sergeant Robert Brian Cowan (Cowan)—who identified a substance as marijuana, along with his written report, because his analysis was based on a testing method SLED had deemed unreliable seven months before trial. This Court further held these errors were not

harmless because the Court could not say beyond a reasonable doubt that the errors did not contribute to the verdicts.

Respondent (the State) respectfully petitions the Court for rehearing pursuant to Rule 221(a), SCACR, on grounds that this Court may have misapprehended or overlooked the proper application of the “harmless error rule” in Crumpton’s case in two respects. First, this Court seems to have misapplied the harmless error standard of review despite correctly citing that standard in its opinion by: (1) presuming prejudice, without analysis, because the arguments addressing Cowan’s qualification and the matter of reliability occurred in the presence of the jury; and (2) assigning specific prejudicial weight, without analysis, to the court’s declaration that “hemp is not part of the equation.” Second, and more problematically in the context of its published opinion, this Court seems to misleadingly quote language from two cases¹ for a proposition that does not mesh with a proper harmless error analysis, even though that analysis was applied by the majority opinions in the two cases cited, and by this Court in considering Crumpton’s case. The State respectfully submits these citations may have contributed to the analytical misapplication of the harmless error rule in Crumpton’s case or, at the very least, may be misleading to the bench and bar.

For all of these reasons, the State respectfully requests that this Court grant this petition for rehearing, reconsider and rehear this matter, and either issue an order affirming Crumpton’s convictions and sentence on grounds that any error was harmless, or alternatively issue a substituted opinion that, while finding the errors were not harmless, removes the references to *Ellis* and the dissent in *Tapp*, as well as any implication that improper opinion testimony from an expert or law enforcement officer always requires reversal as a matter of law.

¹ *State v. Tapp*, 398 S.C. 376, 728 S.E.2d 468 (2012) (Pleicones, J., dissenting) & *State v. Ellis*, 345 S.C. 175, 547 S.E.2d 490 (2001).

Relevant Facts & Procedural History

In March of 2017, the Easley Police Department began to receive complaints from local citizens and businesses of heavy traffic occurring in the vicinity of a trailer located in the city of Easley. (R.p.119-p.120). Law enforcement also received a complaint from a mother who claimed her child had purchased marijuana from the trailer. (R.p.68). In response, Detective Jonathan Hamby conducted surveillance of the residence and discovered Crumpton resided at the address. (R.p.120). On the afternoon of March 20, 2017, Hamby observed Kerek Harris leaving Crumpton's residence. (R.p.120). Harris was already the subject of an active drug investigation by the Easley Police Department. (R.p.69). On March 21, 2017, Law enforcement executed a search warrant on Harris' apartment. (R.p.69). Inside the apartment, five pounds of marijuana were found. (R.p.63). Harris was placed under arrest and agreed to talk with law enforcement. (R.p.69). Harris admitted he knew Crumpton and told law enforcement he sold marijuana to her frequently. (R.p.57; p.69). Between March 11th and March 21st Harris sold Crumpton two ounces of marijuana approximately eleven different times. (R.p.132). Harris charged Crumpton \$90 per ounce. (R.p.58; p.132). Harris allowed law enforcement to search his cell phone. Hamby located multiple text messages between Harris and Crumpton that confirmed the information given by Harris. (R.p.69).

After completing their search of Harris' apartment, law enforcement drafted a search warrant for Crumpton's trailer and executed the search later the same day. (R.p.70). Crumpton cooperated with law enforcement during the search of her home. She led officers to a cabinet "where the drugs were" that contained baggies of suspected marijuana and a set of scales. (R.p.122). Crumpton also had \$534 with her and a joint that she was in the process of smoking when law enforcement arrived. (R.p.123). The suspected marijuana weighed .66 ounces.

(R.p.229). It was analyzed by Robert Cowan of the Easley Police Department and, based on a testing method whose unreliability is the centerpiece of this appeal, determined to be marijuana. (R.p.170-71; p.229). Cowan was previously certified as a marijuana analyst through a SLED program that Cowan conceded had been discontinued in 2018. (R.p.152; p.224). Cowan analyzed the marijuana found in Appellant's home using the Duquenois-Levine test. (R.p.154). He acknowledged the test he used could determine the presence of THC², but could not specify a quantitative amount of THC which meant he could not say whether it was actually marijuana rather than industrial hemp. (R.p.59).

In July of 2019, the Pickens County Grand Jury indicted Crumpton for one count of possession with intent to distribute (PWID) marijuana (2017-GS-39-3291) and one count of distribution of marijuana within close proximity of a school or park. (2017-GS-39-3292). On July 22-23, 2019, Crumpton proceeded to a jury trial before the Honorable Robin B. Stilwell at the conclusion of which she was convicted as indicted. Judge Stilwell sentenced Crumpton to concurrent terms of forty-two months' imprisonment, sentences she has already completed serving.

Argument

Any error in qualifying Cowan as an expert in marijuana analysis and admitting his testimony and report was harmless in light of the evidence presented against Crumpton at trial and Crumpton's defense to the charges she faced.

"Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result." *State v. Pagan*, 369 S.C. 201, 212, 631 S.E2d 262, 267 (2006). "Where a

² THC refers to tetrahydrocannabinol which is a chemical that is found in marijuana. Cowan testified that a substance which contains less than 0.3 percent THC is classified as industrial hemp as opposed to marijuana and is not prohibited under S.C. Code § 44-53-370(B). (R. 154, 159). See also S.C. Code § 46-55-10(6) ("'Federally defined THC level for hemp' means a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis, or the THC concentration for hemp defined in 7 U.S.C. SECTION 5940, whichever is greater.").

review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed.” *State v. Thompson*, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003). “The harmless error rule generally provides that an error is harmless beyond a reasonable doubt if it did not contribute to the verdict obtained.” *State v. Collins*, 409 S.C. 524, 537, 763 S.E.2d 22, 29 (2014). “No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.” *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985).

As argued in its final brief, the State maintains that any error related to the Cowan’s testimony or evidence was harmless in light of the evidence presented against Crumpton and Crumpton’s defense at trial. Crumpton never claimed the substance she possessed was anything but marijuana. In fact, Crumpton explicitly argued that she possessed marijuana, but it was merely for her personal use and not for distribution. While Crumpton challenged Cowan’s qualifications based on the limitations of his testing method, Crumpton never maintained that she possessed industrial hemp rather than marijuana. Furthermore, Cowan admitted to the jury that he could **not** say whether the substance discovered was in fact marijuana. Therefore, any error committed by the trial judge in allowing Cowan to offer his opinion regarding the substance found in Crumpton’s home did not affect the outcome of the trial and was entirely harmless.

At trial, Crumpton never suggested that she did not possess marijuana or that the substance found in her house and weighed was anything but marijuana. Indeed, in both her opening statement and closing argument, Crumpton admitted she possessed marijuana for her personal use but claimed she was not distributing it. (R.p.113-p.114, p.197-p.198). In her opening statement Crumpton’s counsel stated:

[P]ersonal use, that’s what you’re going to hear about today. It’s personal use and personal use only. The evidence is going to show

that [Crumpton] was in her home, **she had a small amount of marijuana**, less than an ounce, which is perfectly legal in other states. She had a blunt in her house, in her easy chair. Her easy chair she was sitting in when law enforcement came up to her house. It was personal use.

(R.p.113, line 24-p.114, line 8) (emphasis added). Similarly, in closing argument Crumpton's counsel argued:

So let's look at the evidence we have here. We have State's Number 10, which is the joint, and we have State's Number 11, **which is the pack of marijuana. Personal use**, remember, like I said at the beginning, State's Number 11 is like a six pack of Coke you got at home. State's Number 10 is a single can of Coke. Just because you got a six pack of Coke in your fridge doesn't mean you're distributing it. Now, along with just that personal use evidence, we've got that State's Number 8, which was that picture of the joint on the easy chair. That's the easy chair she was sitting in when law enforcement approached. They saw her there. That's where they found it. **She was smoking it right beforehand.** That's personal use. You light up. She's using it.

(R.p.197, line 12-p.198, lines 3) (emphasis added). Thus, the theme of Crumpton's defense remained consistent from her opening statement through her closing argument. Crumpton argued that she possessed marijuana, but she was using it herself and not distributing it. Crumpton never claimed that she possessed industrial hemp. In fact, Crumpton acknowledged to the trial judge before trial that she was "100 percent" guilty of smoking marijuana. (R.p.8, line 11).

During the trial itself, the jury heard testimony from Detective Jonathan Hamby that during the execution of the search warrant for Crumpton's residence, Crumpton offered to show the police "where the drugs were," then took them "to the cabinet where her marijuana was" where indeed "there was a bag of marijuana." (R.p.122, lines 2-20). When Hamby asked Crumpton about "any scales she would have to weigh the marijuana," she admitted she had such scales and showed the police where those scales were located. (R.p.122, lines 21-24). Crumpton also admitted to Hamby she was smoking a joint when the police approached the residence and

had stuffed it down into the chair when they came to the front door. The partially smoked joint was recovered and seized along with the bags of marijuana from the cabinet. (R.p.123, lines 7-11). Based on his experience with scales, the quantity of marijuana discovered, and the discovery of a significant amount of cash, Hamby opined these items could be an indication of someone selling marijuana. (R.p.126, lines 21-25). The jury also heard testimony from Captain Jason Lovell, who was present during execution of the search warrant and confirmed Crumpton took the police to baggies containing what Crumpton herself identified as marijuana. (R.p.140, lines 15-17). Lovell similarly opined that in his experience, when someone has digital scales and a quantity of cash, it is indicative of distribution. (R.p.146, lines 17-24).

Furthermore, Kerek Harris testified he sold Crumpton two ounces of marijuana approximately eleven different times. (R.p.132). Harris acknowledged being a drug dealer and claimed to have sold Crumpton marijuana, not industrial hemp. (R.p.131-p.136). The closest Crumpton came to suggesting the substance she possessed was industrial hemp occurred at the very end of her closing argument when trial counsel questioned the accuracy of the State's testing methods. (R.p.200, lines 1-17).

As set forth in its final brief, the State argued the jury was convinced of Crumpton's guilt based on her own defense, her statements to the police during execution of the search warrant, and the testimony of Kerek Harris, not based on the unreliable testing method used by Cowan. The State further argued that any error by the trial judge in allowing Cowan to offer his opinion regarding the substance found in Crumpton's home was entirely harmless. In its published opinion, this Court disagreed. As noted above, however, the State respectfully submits this Court may have misapprehended or overlooked the application of the harmless error rule in Crumpton's case in two critical respects.

First, the Court seems to have misapplied the harmless error standard of review despite correctly citing that standard in its opinion. The State suggests this Court may have erred when it: (1) presumed prejudice from the fact that the trial court heard arguments addressing Cowan's qualification and the matter of reliability in the presence of the jury; and (2) assigned specific prejudicial weight to the trial court's declaration that "hemp is not part of the equation." In regard to presumed prejudice, this Court stated: "we also cannot ignore the effect" that hearing the arguments "may have had on the jury." It noted the arguments should have been made outside the jury's presence before Cowan was qualified as an expert and that the jury should have been removed before the threshold question of reliability was discussed; however, it offered no explanation as to why this necessarily created prejudice, particularly where Cowan himself was forced to admit on cross-examination that his test was so unreliable he could not say whether the substance was actually marijuana as opposed to industrial hemp, which contradicted his testimony on direct that it was marijuana. And this contradictory testimony occurred **after** the jury had already heard about the SLED memo and the unreliability of the testing method that was used by Cowan, and **after** the trial judge explicitly (although erroneously from a Rule 702 standpoint) declined to rule that Cowan's methods were reliable. These circumstances weigh in favor of finding a lack of prejudice.

In regard to the declaration that "[h]emp is not part of the equation" this Court found it "further compounded this prejudice." Yet, the Court again failed to explain how. Taken in further context, the entire comment was:

Well, here's the deal: When I charge the jury as to the law, **the question is going to be marijuana.** Hemp is not part of the equation. Okay? And, the State, **it has to be proven beyond a reasonable doubt that she possessed marijuana with intent to distribute the same.** Okay?

(R.p.163, line 24-p.164, line 5) (emphasis added). Thus, rather than being prejudicial, the comment could easily have been taken as the trial court making sure the jury understood that, to the extent the substance was [or could be] hemp, it should **not** be part of “the equation,” i.e., their determination of guilt or innocence. Indeed, in light of Cowan’s contradictory, unreliable, and therefore non-credible “expert” testimony, the trial court’s comment **undermined** the strength of the State’s case. This should have led to the conclusion that neither Cowan’s testimony itself, nor the jury hearing the arguments addressing Cowan’s qualifications and reliability, could have contributed to the guilty verdict rendered. Thus, without the presumption of prejudice, the trial court’s errors should have been deemed harmless beyond a reasonable doubt.

Second, the Court misleadingly quotes language from two cases for a proposition that does not mesh with a proper harmless error analysis, even though that analysis was applied by the majority opinions in the two cases cited, and by this Court in considering Crumpton’s case or, at the very least, be misleading to the bench and bar. These citations may have contributed to the analytical misapplication of the harmless error rule in Crumpton’s case. Specifically relying on the dissent in *Tapp* and the decision in *Ellis*, this Court seems to imply the admission of improper opinion testimony from an expert or law enforcement officer **always** requires reversal as a matter of law without consideration of the impact such testimony’s admission had in a particular case. Thus, the Court appears to be suggesting the *Ellis* decision established the admission of improper opinion testimony from a law enforcement officer categorically constitutes the rare type of error deemed structural in nature. *See Neder v. United States*, 527 U.S. 1, 8 (1999) (“[W]e have found an error to be structural, and thus subject to automatic reversal, only in a very limited class of cases.” (citations and internal quotations omitted)); *see*

also State v. Rivera, 402 S.C. 225, 246, 741 S.E.2d 694, 705 (2013) (“Most trial errors, even those which violate a defendant’s constitutional rights, are subject to harmless-error analysis.”).

To the contrary, our Supreme Court in *Ellis* did not create any categorical rules of reversal and, instead, only found reversible error occurred in that case after specifically finding *Ellis* was prejudiced under the specific circumstances involved. *See State v. Ellis*, 345 S.C. 175, 178-179, 547 S.E.2d 490, 491-492 (2001) (“We find appellant has established reversible error in the admission of Sergeant Walters’ ‘expert opinion’ reconstructing the position of the victim’s body when he was shot. The effect of this error, compounded by the solicitor’s repeated references to this ‘scientific evidence,’ was to impermissibly undermine appellant’s self-defense claim. This error entitles appellant to a new trial.”). Therefore, the decision in *Ellis* supports—rather than refutes—the need for a case-specific and circumstances-specific analysis of whether prejudice occurred after improper testimony is admitted. Similarly, the majority opinion in *Tapp* conducted a case-specific and circumstance-specific analysis of whether prejudice occurred after improper expert testimony was admitted. *Tapp*, 398 S.C. at 389-91; 728 S.E.2d at 475-76. Thus, this Court properly examined what occurred in Crumpton’s case when evaluating whether reversal was warranted based on the admission of the challenged testimony from Cowan rather than deeming it a structural error. Although the State disagrees with the result of that examination, it was nevertheless conducted by this Court and therefore, at a minimum the references to *Ellis* and the dissent in *Tapp* should be removed.

Furthermore, and as argued above, the State respectfully submits that when the circumstances of Crumpton’s case are properly evaluated, any conceivable error in the admission of the challenged portion of Cowan’s testimony was entirely harmless beyond a reasonable doubt.

Conclusion


For these reasons and the arguments made in its final brief, the State respectfully requests that this Court grant this petition for rehearing, reconsider and rehear this matter, and either issue an order affirming Crumpton's convictions and sentence on grounds that any error was harmless, or alternatively issue a substituted opinion that, while finding the errors were not harmless, removes the references to *Ellis* and the dissent in *Tapp*, as well as any implication that improper opinion testimony from an expert or law enforcement officer always requires reversal as a matter of law.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
August 13, 2024

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-001246

THE STATE,RESPONDENT,

v.

WANDA JANE CRUMPTON,APPELLANT.

PROOF OF SERVICE

I, Susan Spencer, Legal Assistant, hereby certify that I have served the *Petition for Rehearing*, dated August 13, 2024, on Appellant by sending an electronic copy via email to Joanna Katherine Delaney, counsel of record for Appellant, at the address listed for counsel in AIS:

I further certified that all parties required by Rule to be served have been served. This 13th day of August, 2024.



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The South Carolina Court of Appeals

The State, Respondent,

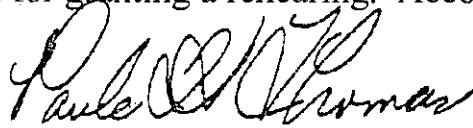
v.

Wanda Jane Crumpton, Appellant.

Appellate Case No. 2019-001246

ORDER

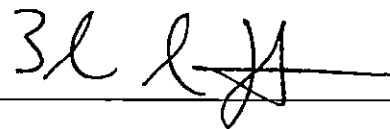
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Joanna Katherine Delany, Esquire
William Walter Wilkins, III, Esquire
John Benjamin Aplin, Esquire
The Honorable Robin B. Stilwell

FILED
Sep 16 2024
