

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY

Clifton Newman, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LEANDRO AGUIRRE,

APPELLANT

APPELLATE CASE NO. 2013-001052

RECORD ON APPEAL

BENJAMIN JOHN TRIPP
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorney for Appellant

Attorneys for Respondent

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	)	COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	—)	2011-GS-32-03799
		2013-GS-32-01171

STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
LEANDRO AGUIRRE	)	
_____ DEFENDANT	—)	

April 22, 2013
Lexington, South Carolina

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JUDGE.

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

MICHAEL D. ROSS, ASSISTANT SOLICITOR
ROBERT E. McNAIR, III, ASSISTANT SOLICITOR
Attorneys for the State

AIMEE J. ZMROCZEK, ESQ.
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

(There were no witnesses produced.)

EXHIBITS

(There were no exhibits marked.)

1 THE COURT: I guess since all the jurors are
2 gone, perhaps we can talk or deal with the issue of this
3 motion for continuance now as opposed to later.

4 Do we need the defendant?

5 MS. ZMROCZEK: He's here. It's just that he
6 consents to us filing that. I can get him if you want to.

7 THE COURT: Yes.

8 (Pause.)

9 THE COURT: All right. Then we'll go on the
10 record regarding this case.

11 Mr. Ross.

12 MR. ROSS: Your Honor, this is Ms. Zmroczek's
13 motion.

14 THE COURT: Okay. And the case is?

15 MR. ROSS: State versus Leandro Aguirre. There
16 are two indictments. The first one is 2011-GS-32-3799,
17 that's for trafficking marijuana. The second indictment
18 is 2013-GS-32-1171, this is for altering, tampering with,
19 or bypassing electric, gas or water meters.

20 THE COURT: All right. Ms. Zmroczek.

21 MS. ZMROCZEK: Thank you, Your Honor.

22 Mr. Aguirre is not fluent in English, but he's
23 okay to go forward with the motion to continue. He wanted
24 me just to state that for the record. I speak Spanish,
25 but I obviously can't translate for him. He's okay with

1 going forward with the motion.

2 THE COURT: All right. Well, what about if the
3 motion is denied and there is a trial, then how are you
4 going to handle that?

5 MS. ZMROCZEK: We have translators lined up.

6 THE COURT: All right.

7 MS. ZMROCZEK: Your Honor, there are two
8 indictments, and the 2013 indictment, which he was just
9 indicted last week or two weeks ago.

10 MR. ROSS: It was the April term, Your Honor.
11 He was served with that indictment, I believe in front of
12 Your Honor, during the last term of court.

13 MS. ZMROCZEK: He was. And my associate
14 accepted on his behalf.

15 THE COURT: Which one was that?

16 MS. ZMROCZEK: Wade Downtin.

17 THE COURT: Which indictment?

18 MS. ZMROCZEK: That would be tampering with
19 electrical equipment.

20 THE COURT: Okay.

21 MS. ZMROCZEK: And, Your Honor, I have been
22 asking specifically for photographs for month and months
23 and months over this case, and on Monday, April 15, I went
24 and we did the evidence review and then I came over and I
25 received at that time, Your Honor, 66 pages of discovery

1 that I hadn't received, 50 -- no, 66 photos, 56 pages of
2 discovery and five audio files. And then on Friday, I
3 received 507 pages of discovery, 69 photos and 14
4 additional audio files.

5 Your Honor, I need time to be able to -- I've
6 gone through them all, but I need to be able to -- they're
7 going to materially affect issues that I plan to raise in
8 this case.

9 THE COURT: All right.

10 MS. ZMROCZEK: And the subpoenas that were
11 served on the MCEC facilities by the State were served on
12 August 12, 2012, August 24, 2012, and August 30, 2012.
13 And it doesn't say when they were returned, but the papers
14 show that they were all printed, the ones that have print
15 stamps from MCEC, it looks like they were printed
16 August 29, 2012, so I'm not sure why I haven't received
17 them prior to Monday.

18 THE COURT: What's MCEC?

19 MS. ZMROCZEK: Mid-Carolina Electrical
20 Corporation. They were the ones who were the complaining
21 witnesses in my case.

22 THE COURT: All right.

23 MS. ZMROCZEK: And for those reasons, Your
24 Honor, we'd ask that those cases be continued. I
25 understand that there's a May 6 term of court. And we're

1 not looking for a long continuance. I think it does not
2 prejudice the defendant in any unduly delay, and it would
3 certainly give me time to adequately prepare with this new
4 information.

5 THE COURT: Mr. Ross.

6 MR. ROSS: Your Honor, first with regard to the
7 pages of discovery that are referenced in the written
8 motion, these are records we subpoenaed from Mid-Carolina
9 Electrical which Ms. Zmroczek previously mentioned. The
10 reason we subpoenaed these records is because Ms. Zmroczek
11 herself indicated to us that she was going to subpoena
12 these records, and we felt like we had enough without
13 subpoenaing the records, but due diligence would require
14 us to investigate what she was going to investigate as
15 well. So we would argue that these are records not within
16 our exclusive care, custody and control anyway.

17 With regard to the photographs, this is -- these
18 are photographs of a drug bust, photographs of a marijuana
19 grow house, the details of which were listed in the
20 written discovery that was provided.

21 Ms. Zmroczek is the second attorney on this
22 case. My notes refer to me giving a physical copy of
23 these photographs to the public defender on a disc format
24 during an appearance. Ms. Zmroczek tells me that didn't
25 transfer over to her, she didn't get a copy of that.

1 There were emails between Ms. Zmroczek and my
2 paralegal, and subsequently four photographs were sent to
3 her. She didn't get the photographs of the grow house.
4 That is a simple oversight, simple confusion that tends to
5 happen given the volume of cases we have.

6 THE COURT: The defendant's charged with growing
7 marijuana?

8 MR. ROSS: Yes, Your Honor.

9 THE COURT: And this is a picture of him?

10 MR. ROSS: These are various pictures taken of
11 his house, of his shed with all the marijuana growing in
12 this shed.

13 THE COURT: Is he in any of the pictures?

14 MR. ROSS: He is in one or two of the pictures,
15 Your Honor.

16 THE COURT: Okay.

17 MR. ROSS: She also made reference to 507 pages
18 of additional discovery. These are also records kept by
19 Mid-Carolina Electrical Corporation. These refer to cases
20 completely separate from Mr. Aguirre's case.

21 To give you a little bit of the factual
22 background of this situation, there are five or six houses
23 which were all busted in early October. After those
24 busts, Mid-Carolina did an audit of their records to look
25 for additional cases where people may have been stealing

1 electric power to supply the power for marijuana grow
2 houses. That's where Mr. Aguirre comes in. His case
3 occurred about a week after those initial busts. So those
4 507 pages are simply their records regarding other houses
5 that are outside the scope of this particular prosecution
6 against Mr. Aguirre. And, again, those were records that
7 we subpoenaed from Mid-Carolina Electric Corporation.

8 THE COURT: And the indictment for stealing
9 services, they are from one location or many locations?

10 MR. ROSS: It's from this one location, [REDACTED]
11 [REDACTED].

12 THE COURT: And what you sent her last week was?

13 MR. ROSS: In regard to [REDACTED].

14 THE COURT: Which is his electric bill or --

15 MR. ROSS: We've got account notes, his
16 application for service.

17 They actually keep records of phone calls the
18 customers make to their customer service center. Those
19 were recorded as well.

20 So those were the digital files Ms. Zmroczek was
21 referring to.

22 THE COURT: All right. Were you through?

23 MR. ROSS: Yes, Your Honor.

24 MS. ZMROCZEK: In response, Your Honor, I was
25 appointed. The Public Defender's Office noticed some

1 similarities amongst some defendants that were arrested
2 three days before my client was and they opted to conflict
3 my client's case out. I served my own Rule 5. Like I
4 said, I never -- I did receive the original 14 pages plus
5 additional five pages, but I never received these
6 photographs, and I do believe they have an impact on the
7 case.

8 THE COURT: All right. Anything else?

9 MR. ROSS: Nothing from the State, sir.

10 THE COURT: Well, we're -- today is Monday, and
11 we have a case that we're about to do. Monday, Tuesday,
12 we wouldn't get to the case before Wednesday, maybe
13 Wednesday afternoon it appears, mid-week, so it seems to
14 me that that would be a sufficient amount of time because
15 if you're dealing with photographs that are of property of
16 the defendant, then this is not surprise information from
17 some third party or place. These are photographs of him
18 or his place, according to the State, that's what he's
19 telling us, so it's kind of hard -- there's only so much
20 digesting or ingesting of this information or surprise you
21 can claim or preparation, I would think, that you'd have
22 to do to deal with it unless you're questioning the
23 authenticity of it, and then that with be some other proof
24 that would need to be presented, showing to the Court as a
25 basis. But you have that and then you have records of

1 their utility service. I certainly understand that you
2 need some time to digest and to try to understand it all,
3 but I think that a continuance until Wednesday is
4 sufficient, should be sufficient.

5 MS. ZMROCZEK: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. ROSS: Thank you, Your Honor.

8 (The proceedings were concluded.)

9 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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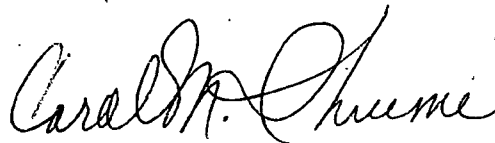
1 CERTIFICATE OF REPORTER

2
3
4 STATE OF SOUTH CAROLINA)5 COUNTY OF LEXINGTON)
6
7

8 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Lexington County, South Carolina, on the 22nd day of
15 April, 2013.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19
20 November 5, 2013

21 
22

23 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

COURT OF GENERAL SESSIONS

2011-GS-32-03799

2013-GS-32-01171

STATE OF SOUTH CAROLINA)

vs.)

LEANDRO AGUIRRE)

DEFENDANT)

TRANSCRIPT OF RECORD

VOLUME 1

April 24, 2013

Lexington, South Carolina

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JUDGE; and a jury.

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

MICHAEL D. ROSS, ASSISTANT SOLICITOR
ROBERT E. McNAIR, III, ASSISTANT SOLICITOR
Attorneys for the State

AIMEE J. ZMROCZEK, ESQ.
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

REPORTER'S NOTE: Answers requiring interpretation are given by Interpreter, Alejandro Garcia, unless indicated.

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1 THE COURT: The State will call your next case.

2 MR. ROSS: Thank you, Your Honor. May it please
3 the Court.

4 The State calls Leandro Aguirre for trial. This
5 is Indictment 2011-GS-32-3799 for trafficking marijuana,
6 and Indictment 2013-GS-32-1171 for bypassing electric
7 lines.

8 I'm handing Your Honor the indictments.

9 THE COURT: Thank you, sir.

10 Ladies and gentlemen, the State has called for
11 trial the State versus Leandro Aguirre. This case comes
12 into court as a result of two indictments returned by the
13 Grand Jury of Lexington County charging the defendant with
14 the offenses of trafficking marijuana between ten and one
15 hundred pounds, and altering, tampering with, or bypassing
16 electric, gas, or water meters. He has pled not guilty to
17 these charges. He is presumed to be not guilty. He
18 cannot be found guilty unless the State presents evidence
19 which convinces a jury of his guilt beyond a reasonable
20 doubt. And that's the purpose of a trial.

21 Mr. Leandro Aguirre, if you will stand and face
22 the jury panel.

23 And, Counsel, if you will introduce yourself as
24 well as the other ladies and gentlemen and others.

25 MS. ZMROCZEK: My name is Aimee Zmroczek, and I

1 have the pleasure to represent Mr. Aguirre. And this is
2 Anna Marin, she is with the Clerk of Court's office, and
3 she is an interpreter.

4 THE COURT: Thank you. You may be seated.

5 The State is represented through the 11th
6 Circuit Solicitor's Office.

7 Mr. Ross, if you would introduce yourself and
8 anyone else you would like to introduce.

9 MR. ROSS: Thank you, Your Honor.

10 My name is Mike Ross. I'm an assistant
11 solicitor in Lexington County. I'm prosecuting this case
12 for the State.

13 To my right is Robby McNair. He is my
14 co-counsel. And all of these individuals over here to my
15 right will be witnesses in this trial.

16 THE COURT: If any member of the jury panel is
17 related by blood or connected by marriage or personal
18 acquaintance with the defendant or the defense attorney or
19 any of the State's attorneys, or if you know them, please
20 stand.

21 Yes, ma'am.

22 THE JUROR: I work in a law firm and currently
23 we have a case with Aimee Zmroczek.

24 THE COURT: The law firm that you work at has a
25 case and she's on the other side of the case?

1 THE JUROR: Right.

2 THE COURT: All right. And your juror number,
3 please?

4 THE JUROR: Forty-two.

5 THE COURT: And would that fact affect your
6 ability to be a fair and impartial juror?

7 THE JUROR: No.

8 THE COURT: All right. Thank you.

9 Would you give me a witness list, Mr. Ross?

10 MR. ROSS: Yes, Your Honor.

11 THE COURT: Ladies and gentlemen, I want to
12 reiterate my admonition to you earlier in the week that as
13 jurors, you are under oath to give complete and truthful
14 responses to all questions that you are asked during this
15 process. And that pertains to if you think that something
16 applies to you, then you are duty bound to respond because
17 the lawyers have a right to select a jury that they
18 believe to be fair and impartial or the most fair and
19 impartial, and they can only do that if they have adequate
20 information.

21 Of course, as it relates to any question, if you
22 do not wish to respond openly for fear of embarrassment,
23 you can make a mental note of that question and you will
24 be given an opportunity to come forward and give those
25 answers here at the bench as we did on Monday.

1 The incidents alleged in this indictment
2 allegedly occurred as relates to the trafficking marijuana
3 charge on or about October 7, 2011, in the
4 Batesburg-Leesville area of Lexington County. The alleged
5 offense involving the meter occurred at [REDACTED].

6 Is that also in Batesburg-Leesville?

7 MR. ROSS: Yes, Your Honor.

8 THE COURT: In Batesburg-Leesville.

9 If any member of the jury panel knows anything
10 about this case or have heard anything about this case,
11 please stand.

12 (No response.)

13 THE COURT: No one is standing.

14 The following people may testify in this case.
15 If you're here, I would like for you to stand so the jury
16 panel can see you.

17 Agent Paige Barnes of the sheriff's department,
18 Deputy D.I. Blackwell from the sheriff's department,
19 Sergeant Kevin Blake, sheriff's department, Deputy Thomas
20 Fine, sheriff's department, Betsy Kosh, K-O-S-H, from
21 Mid-Carolina Electric Cooperative, MCEC, Lieutenant Thomas
22 Hamilton from the sheriff's department, Candy Kyzer from
23 the sheriff's department, Sergeant Barbara McMullen from
24 the sheriff's department, Agent Dennis Tracy of SLED, and
25 Benjamin Wilson of Mid-Carolina Electric Cooperative.

1 Additionally, the following folks may testify.
2 The defendant, Leandro Aguirre, who stood already. He
3 doesn't need to stand now. Mishelin, M-I-S-H-E-L-I-N, is
4 that Mishelin Perez, is back there. Jennifer, how do you
5 pronounce that word?

6 MS. ZMROCZEK: Izquierdo.

7 THE COURT: Izquierdo, Jacqueline Naranjo, Barry
8 Michael Reed, Hal Millard, Lee Ayers from Mid-Carolina,
9 Benjamin Wilson, Thomas Fine -- I think I called him
10 already -- Kevin Blake, Paige Barnes, Thomas Hamilton, and
11 Dennis Tracy.

12 If any member of the jury panel knows any of
13 those folks, or if you're a friend, relative, or associate
14 of any of them, please stand.

15 All right. Yes, sir. Tell me your juror
16 number.

17 THE JUROR: 279, Bryson Tucker.

18 THE COURT: Yes, sir.

19 THE JUROR: I know Mr. Ayers through design
20 services provided for one of the Mid-Carolina buildings.

21 THE COURT: All right. And would that fact
22 affect your ability to be a fair and impartial juror?

23 THE JUROR: No, sir.

24 THE COURT: Thank you, sir.

25 Yes, ma'am.

1 THE JUROR: I'm 186, Leigh Ann McNatt. I am
2 personal friends with Candy Kyzer. Our children go to the
3 same school and play sports together. I've known her for
4 many, many years.

5 THE COURT: And would that fact affect your
6 ability to be fair and impartial should she testify as a
7 witness in this case?

8 THE JUROR: No, sir.

9 THE COURT: Thank you.

10 Yes, sir.

11 THE JUROR: 63, Officer Fine and Hamilton. I
12 know them professionally.

13 THE COURT: You know them professionally, did
14 you say?

15 THE JUROR: Yes.

16 THE COURT: And would that fact affect your
17 ability to be fair and impartial?

18 THE JUROR: No.

19 THE COURT: Thank you.

20 Some additional questions.

21 Naturalization is the process wherein a person
22 who is born from another country acquires citizenship and
23 nationality of another. To become a naturalized citizen,
24 one has to pass the citizenship test and must not have any
25 legal impediments like conviction or court cases arising

1 from committing a crime or a felony.

2 Is there anyone who would consider a naturalized
3 citizen as less than a citizen if they do not speak -- if
4 they did not or do not speak English. If you would
5 consider a naturalized citizen as less than a citizen if
6 they do not or cannot speak English, please stand.

7 (No response.)

8 THE COURT: And no one is standing.

9 If you are fluent in speaking Spanish, please
10 stand. If you are a fluent Spanish-speaking juror, please
11 stand.

12 (No response.)

13 THE COURT: No one is standing.

14 If you believe that the crime rate among
15 Spanish-Cuban population is higher than the rate among
16 other racial groups, please stand.

17 If you believe that the crime rate amongst the
18 Spanish-Cuban population is higher than the rate among
19 other racial groups, please stand if you believe that.

20 (No response.)

21 THE COURT: If you have ever had an unfortunate
22 experience with a person who did not speak English as
23 their first language, please stand.

24 (No response.)

25 THE COURT: No one is standing.

1 Without naming names, have you ever known anyone
2 who has a serious problem with drug use or been treated or
3 received counseling for drug addiction? If so, please
4 stand.

5 All right. Tell us your juror numbers. That
6 will be fine. Juror number?

7 THE JUROR: 181.

8 THE COURT: 181.

9 THE JUROR: 271.

10 THE COURT: 271. You can be seated.

11 THE JUROR: 109.

12 THE COURT: 109.

13 THE JUROR: 88.

14 THE COURT: 88.

15 THE JUROR: 142.

16 THE COURT: 142.

17 THE JUROR: 45.

18 THE COURT: 45.

19 THE JUROR: 75.

20 THE COURT: 75.

21 As a general proposition, do you think that a
22 police officer is more likely -- let me see. Let me read
23 this one first before.

24 If you believe that you are required to give a
25 police officer's testimony more credibility than that of

1 any other witness based on the fact that the witness is a
2 police officer, please stand.

3 If you believe that you're required to give the
4 testimony of a police officer more credibility than that
5 of any other witness merely because the person is a police
6 officer, if so, please stand.

7 (No response.)

8 THE COURT: If you participate in social
9 networking or some form of social media such as Facebook,
10 MySpace, LinkedIn, Flickr, Twitter, or any other network,
11 please stand.

12 If you participate in any social --

13 Well, let's reverse this. You all can be
14 seated. We'll ask it a different way.

15 If you do not participate in social networking
16 in some form of social media, such as Facebook, MySpace,
17 LinkedIn, Flickr, Twitter, or any other network, if you
18 do not participate in any form of social media, please
19 stand.

20 All right. And tell us your juror numbers.

21 THE JUROR: 83.

22 THE COURT: 83.

23 THE JUROR: 71.

24 THE COURT: 71.

25 THE JUROR: 167.

1 THE COURT: 167.
2 THE JUROR: 89.
3 THE COURT: 89.
4 THE JUROR: 251.
5 THE COURT: 251..
6 THE JUROR: 246.
7 THE COURT: 246.
8 THE JUROR: 109.
9 THE COURT: 109.
10 All right. Thank you.
11 If you are a member of Mother's Against Drunk
12 Driving or Students Against Drunk Driving, please stand.
13 (No response.)
14 THE COURT: If you are a member or receive
15 services from Mid-Carolina Electric Co-op, please stand.
16 If you are on Mid-Carolina Electric Co-op.
17 All right. Just tell us your juror numbers.
18 THE JUROR: 116.
19 THE JUROR: 95.
20 THE JUROR: 167.
21 THE JUROR: 109.
22 THE JUROR: 262.
23 THE JUROR: 89.
24 THE JUROR: 186.
25 THE JUROR: 220.

1 THE JUROR: 63.

2 THE COURT: You might note from one of the
3 indictments that Mid-Carolina Electric Co-op is one of the
4 complaining victims. If you believe that the fact that
5 they're the complaining victim, if you believe that that
6 will somehow financially impact you through rendering a
7 verdict in this case, please stand.

8 If you believe that because they are the
9 complaining victim that you will be impacted financially
10 by a jury verdict, please stand.

11 (No response.)

12 THE COURT: No one has stood.

13 In this case, we will have two translators, a
14 Spanish to English and an English to Spanish. And if you
15 believe that you will not be able to focus on the
16 testimony and decide this case based on the law and
17 evidence because of the participation of translators,
18 please stand.

19 (No response.)

20 THE COURT: If at this point in time you've
21 formed an opinion as to the guilt or the innocence of the
22 defendant, please stand.

23 (No response.)

24 THE COURT: If you know of any reason whatsoever
25 why you should not be selected to be a juror or why you

1 cannot be a fair and impartial juror based on anything
2 going on in your life as to why you should not be selected
3 to be a juror in this case, please stand.

4 (No response.)

5 THE COURT: And no one is standing.

6 If you did not respond to any question that you
7 did not wish to respond to openly, that you would like to
8 respond to by coming forward, if so, please stand and come
9 forward at this time.

10 Counsel can come up as well.

11 THE CLERK: Juror Number 155, Your Honor.

12 THE JUROR: My sister is in DSS custody and she
13 has a court date on Tuesday, and I'm off of my job to be
14 at her court date here Tuesday, and my mind's really
15 focused on that.

16 THE COURT: All right. She is Juror Number 25.

17 THE CLERK: She's 155, Your Honor.

18 THE COURT: Number 155. Okay. We'll excuse you
19 and you can go.

20 THE CLERK: Number 35, Your Honor.

21 THE COURT: Yes, sir.

22 THE JUROR: I have a meeting on Friday.

23 THE COURT: You heard all those witnesses I
24 called. We might be here until Sunday.

25 We won't use you this time. Juror Number?

1 THE JUROR: 35.

2 THE COURT: Okay. Thank you.

3 THE CLERK: Number 20, Your Honor.

4 THE JUROR: I'm going on vacation.

5 THE COURT: Very good. What's your Juror

6 Number?

7 THE JUROR: 20.

8 THE COURT: Very good. Thank you, sir.

9 He's excused for cause.

10 THE CLERK: Number 209, Your Honor.

11 THE JUROR: I purchased a home, and it's near
12 the county line.

13 THE COURT: Your citizenship or your residency
14 is in question?

15 THE JUROR: My permanent residence is still
16 up --

17 THE COURT: You haven't moved yet?

18 THE JUROR: I've closed already.

19 THE COURT: All right. You still live here.
20 Thank you.

21 (A discussion was held off the record.)

22 THE COURT: All right. Ladies and gentlemen,
23 the panel is now qualified. If you will give the clerk
24 your attention.

25 THE CLERK: Ladies and gentlemen, it will be the

1 same process that it was Monday. Make sure you bring your
2 purses, books, whatever you have with you, and come and
3 stand where Mr. Dan is at until you're instructed to
4 either have a seat in the jury box or to return to your
5 seat in the audience.

6 Number 83, Daryel Ezell. (White male.)

7 What say you for the State?

8 MR. ROSS: Please present Mr. Ezell.

9 THE CLERK: What say you for the defense?

10 MS. ZMROCZEK: Please seat Mr. Ezell.

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

12 Number 42, Leslie Clamp. (White female.)

13 What say you for the State?

14 MR. ROSS: Please present Ms. Clamp.

15 THE CLERK: What say you for the defense?

16 MS. ZMROCZEK: Please seat Ms. Clamp.

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

18 186, Leigh Ann McNatt. (White female.)

19 What say you for the State?

20 MR. ROSS: Please present Ms. McNatt.

21 THE CLERK: What say you for the defense?

22 MS. ZMROCZEK: Please seat Ms. McNatt.

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

24 99, Beatrice Fulmer. (White female.)

25 What say you for the State?

1 MR. ROSS: Please present Ms. Fulmer.

2 THE CLERK: What say you for the defense?

3 MS. ZMROCZEK: Please seat Ms. Fulmer.

4 THE CLERK: Have a seat in the jury box, ma'am.
5 128, Craig Hess. (White male.)

6 What say you for the State?

7 MR. ROSS: Please present Mr. Hess.

8 THE CLERK: What say you for the defense?

9 MS. ZMROCZEK: Please seat Mr. Hess.

10 THE CLERK: Have a seat in the jury box, sir.
11 267, Amber Sulser. (White female.)

12 What say you for the State?

13 MR. ROSS: Please present Ms. Sulser.

14 THE CLERK: What say you for the defense?

15 MS. ZMROCZEK: Please excuse Ms. Sulser from the
16 trial of this case.

17 THE CLERK: Return to your seat, please, ma'am.
18 75, Jessica Dunning. (White female.)

19 What say you for the State?

20 MR. ROSS: Please present Ms. Dunning.

21 THE CLERK: What say you for the defense?

22 MS. ZMROCZEK: Please seat Ms. Dunning.

23 THE CLERK: Have a seat in the jury box, ma'am.
24 89, Myra Flowers. (White female.)

25 What say you for the State?

1 MR. ROSS: Please present Ms. Flowers.
2 THE CLERK: What say you for the defense?
3 MS. ZMROCZEK: Please seat Ms. Flowers.
4 THE CLERK: Have a seat in the jury box, ma'am.
5 152, Amy Kendrick. (White female.)
6 What say you for the State?
7 MR. ROSS: Please present Ms. Kendrick.
8 THE CLERK: What say you for the defense?
9 MS. ZMROCZEK: Please seat Ms. Kendrick.
10 THE CLERK: Have a seat in the jury box, ma'am.
11 105, Barbara Gortman. (Black female.)
12 What say you for the State?
13 MR. ROSS: Please present Ms. Gortman.
14 THE CLERK: What say you for the defense?
15 MS. ZMROCZEK: Please seat Ms. Gortman.
16 THE CLERK: Have a seat in the jury box, ma'am.
17 292, Leigh Whitticar. (White female.)
18 What say you for the State?
19 MR. ROSS: Please present Ms. Whitticar.
20 THE CLERK: What say you for the defense?
21 MS. ZMROCZEK: Please excuse Ms. Whitticar from
22 the trial of this case.
23 THE CLERK: Return to your seat, please, ma'am.
24 280, Tamara Ulmer. (White female.)
25 What say you for the State?

1 MR. ROSS: Please present Ms. Ulmer.

2 THE CLERK: What say you for the defense?

3 MS. ZMROCZEK: Please seat Ms. Ulmer.

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

5 271, Geraldine Swygert. (White female.) What

6 say you for the State?

7 MR. ROSS: Please present Ms. Swygert.

8 THE CLERK: What say you for the defense?

9 MS. ZMROCZEK: Please seat Ms. Swygert.

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

11 200, Christopher Murdaugh. (White male.)

12 What say you for the State?

13 MR. ROSS: Please present Mr. Murdaugh.

14 THE CLERK: What say you for the defense?

15 MS. ZMROCZEK: Please seat Mr. Murdaugh.

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

17 Alternates, Your Honor?

18 THE COURT: Yes. One alternate.

19 THE CLERK: Yes, sir.

20 Number 45, Traci Collins. (Black female.)

21 What say you for the State?

22 MR. ROSS: Please present Ms. Collins.

23 THE CLERK: What say you for the defense?

24 MS. ZMROCZEK: Please seat Ms. Collins.

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

1 That's the alternate, Your Honor.

2 THE COURT: Are there any matters of law
3 regarding the jury selection?

4 MR. ROSS: Nothing from the State, sir.

5 MS. ZMROCZEK: Nothing from the defense.

6 THE COURT: Ladies and gentlemen, you have been
7 selected to be the jury in the trial of this case.

8 And, ladies and gentlemen, those of you who were
9 not selected, we are through with you all. You all are
10 through with jury duty for this week. Thank you very much
11 for your cooperation.

12 Madam Clerk, would you like to -- you have your
13 very fine clerk in the courtroom this morning, Ms. Beth
14 Carrigg. She always has a nice speech to give to the
15 jurors.

16 THE CLERK: At this time, we want to thank you
17 for your service. If you have any questions or concerns
18 or you need any assistance from my office, please feel
19 free to contact Carol Green downstairs. If you need an
20 excuse for your job or anything of that nature, if you
21 want to know the outcome of this case, please feel free to
22 call Carol Green in my office. Any assistance, let us
23 know.

24 Again, thank you for your service.

25 THE COURT: Thank you all.

1 Are there any matters before the jury's to be
2 sworn and we proceed?

3 MR. ROSS: Your Honor, I believe we have some
4 pretrial motions.

5 MS. ZMROCZEK: Nothing before the jury is sworn.

6 THE COURT: All right. Ladies and gentlemen,
7 we'll have you go to the jury room for a few minutes or a
8 little while while we address any preliminary matters that
9 we need to address. Please do not discuss the case while
10 in the jury room.

11 (The jury left open court at approximately 10:39
12 a.m.)

13 THE COURT: Mr. Ross.

14 MR. ROSS: Your Honor, the State has a Jackson v
15 Denno motion, and Ms. Zmroczek has filed several motions
16 with the Court. We would ask these be addressed prior to
17 the jury being sworn.

18 THE COURT: All right. What are your motions,
19 Ms. Zmroczek?

20 MS. ZMROCZEK: Your Honor, we have a motion to
21 suppress. That's going to be a rather lengthy motion.
22 And Jackson v Denno, and then we just ask that the
23 witnesses be sequestered during the motion hearings, but
24 other than that.

25 MR. ROSS: Judge, I believe she also filed a

1 motion to reveal the identity of the confidential
2 informant. I would ask that the grounds for all these
3 motions be made in accordance with State versus Papp.

4 THE COURT: So you want me to let the jury go
5 until about 11 o'clock, 11:30?

6 MS. ZMROCZEK: Your Honor, I anticipate that the
7 suppression motion is going to take some time. I
8 anticipate calling three witnesses myself, and then I know
9 they probably have some as well. So I just imagine that
10 that's going to take a lengthy amount of time.

11 THE COURT: All right. Let them go until 1
12 o'clock, 2 o'clock, 3 o'clock, tomorrow?

13 MR. ROSS: I think 2 o'clock.

14 THE COURT: 2 o'clock. All right.

15 Let's get the jury to come back.

16 (The jury came into open court at approximately
17 10:42 a.m.)

18 THE COURT: Ladies and gentlemen, we have some
19 matters that I understand will take up all of the morning,
20 so we won't need you all until 2 o'clock. We'll have you
21 all leave and come back at 2 o'clock. So you need to be
22 back in the jury room at 2 o'clock. See you then.

23 Please do not come through the courtroom.
24 Follow the instructions of the bailiff and go directly
25 into the jury room at 2 o'clock.

1 (The jury left open court at approximately 10:44
2 a.m.)

3 THE COURT: Which motion would you like to do
4 first?

5 MS. ZMROCZEK: Your Honor, I have a request that
6 you sent out about receiving a copy of the exhibits. I
7 have several exhibits that if we take a break and I can
8 get them organized. That way it will move much smoother.

9 THE COURT: How much of a break do you need?

10 MS. ZMROCZEK: A very short break, ten minutes.
11 Just to make sure that I have copies for you and your
12 clerk.

13 THE COURT: All right. We'll take a ten-minute
14 break.

15 (A break was taken.)

16 (WHEREUPON, The Court's Exhibits Nos. 1-10 were
17 marked for purposes of the record.)

18 MS. ZMROCZEK: Thank you, Your Honor.

19 The motions that we have, the motion to suppress
20 and the C.I., may involve a little explanation. And I
21 think we can get all the testimony in at once because it's
22 all going to be dependent on the testimony, obviously.

23 But Your Honor, the reason that we're bringing
24 the motion to suppress is because my client was arrested
25 October 7, 2011. And it was a search that occurred at his

1 house, a warrantless search that occurred at his house.
2 And this case relates back to several earlier incidents
3 where several others, they're not co-defendants, but
4 several other defendants were arrested based on similar
5 information and information that was provided as the
6 reason for Mr. Aguirre's arrest. That information was
7 based on an affidavit and search warrant that was issued
8 three days before. But the information provided was the
9 reason that they went to the house.

10 So I'm trying to establish the easiest way to
11 present the evidence of the nature of the first arrest,
12 how it led to -- the first group of arrests, how it led to
13 Mr. Aguirre's arrest and what impact that had on the
14 evidence that was located at his house. And I think
15 that's going to involve probably the testimony of several
16 of the police officers as well as my client.

17 My client and his wife are going to testify as
18 part of the Jackson v Denno hearing.

19 THE COURT: Mr. Ross.

20 MR. ROSS: Your Honor, the search warrants that
21 she's referring to were other houses. This is State
22 versus Leandro Aguirre based on the seizure of marijuana
23 at [REDACTED] and the theft of electric current at
24 [REDACTED].

25 We can proceed however Your Honor wants. I

1 don't think the other cases are relevant and will largely
2 be a waste of time. I would be happy to put up that
3 evidence if Your Honor wants to hear the facts from which
4 Mid-Carolina -- the officers arrived at [REDACTED]
5 on October 7, 2011, and I can also put up the officer that
6 was the lead investigator on the prior cases, the prior
7 houses that were hit a couple of days before. However
8 Your Honor wants to proceed.

9 THE COURT: All right. I have no preference.
10 I'm sitting as the judge. You all are the litigants. The
11 defense has filed a motion, I'm ready to hear the motion.

12 MS. ZMROCZEK: Okay.

13 THE COURT: You've filed several motions, and
14 I've let the jury go until 2. I'm ready to hear the
15 motions, whatever they are.

16 MR. ROSS: I would ask on her motion to
17 suppress, I'd ask for specific grounds so I can call a
18 witness to refute that.

19 THE COURT: All right.

20 MS. ZMROCZEK: Your Honor, the specific grounds
21 for the motion to suppress, again, police arrived at my
22 client's house at [REDACTED] based on information
23 provided to them by Mr. Wilson who works for MCEC. This
24 is the information that I gleaned from the discovery.

25 Mr. Wilson tells the police that he suspects a

1 larceny based on several different facts. Those facts
2 relate back to previous cases. That's why that testimony
3 is important. It references a name of a woman who doesn't
4 live there, but it states that he suspects that there
5 was -- or he noticed a spike or an inconsistency in the
6 power. The power was registered to a name of a witness
7 who didn't live at the house, and that the name of that
8 witness who didn't live at the house was involved in
9 several other arrests. So that is why the information
10 regarding the previous arrests are pertinent here because
11 he is facing his probable cause and good faith to get the
12 police out there based on information from the previous
13 cases. I think we're allowed to inquire as to the basis
14 of that probable cause.

15 THE COURT: All right. Mr. Ross.

16 MR. ROSS: We're ready to call our first
17 witness.

18 THE COURT: All right.

19 MR. ROSS: The State calls Benjamin Wilson to
20 the stand.

21 BENJAMIN WILSON, after being duly sworn,
22 testified as follows:

23 THE CLERK: Once you're seated, please state
24 your full name, spelling your last on the record.

25 THE WITNESS: Benjamin Wilson. W-I-L-S-O-N.

1 IN CAMERA DIRECT EXAMINATION

2 BY MR. ROSS:

3 Q Mr. Wilson, thanks for being here today. Can you
4 tell the judge what you do for a living, please?

5 A I work for Mid-Carolina Electric Cooperative. I'm
6 superintendent of system metering.

7 Q What does that mean?

8 A I take care of anything to deal with the metering at
9 Mid-Carolina Electric, including any power theft, high
10 bills, meter reads, anything to do with a meter.

11 Q Okay. Were you the, for lack of a better term, lead
12 investigator on this case for Mid-Carolina Electric
13 Cooperative?

14 A Yes, I was.

15 Q Did you arrive at [REDACTED] on October 7,
16 2011 to investigate a potential spliced wire?

17 A Yes, I did.

18 Q Can you tell me what led you to [REDACTED]
19 that day, please?

20 A We looked at several accounts where we have had
21 transformers to burn out, what we thought was overload.
22 We looked at these accounts, we looked at the account
23 notes to see if there was any person or persons that were
24 tied to those notes. We looked at the usages at these
25 locations, the meter usages these locations.

1 Q At which locations?

2 A [REDACTED]. We looked at the usage on that
3 meter compared to the size transformer we have there, and
4 the usage would not have damaged that transformer in any
5 way, meter usage.

6 Q Was there a transformer that blew out for [REDACTED]
7 [REDACTED]?

8 A Yes, it did.

9 Q When did that blow out?

10 A On May 29th.

11 Q Of what year?

12 A 2011.

13 Q Okay. And what led you to look for burned out
14 transformers, what prompted that?

15 A We were looking at other situations where we had had
16 burned out transformers, and we decided to pull all of
17 them that we had had for that time period.

18 Q Were those other burned out transformers connected
19 with theft of electric current?

20 A The other one that we found actually led to a finding
21 later on after the 7th.

22 Q Now, were there some other cases of bypassed electric
23 lines connected with marijuana investigations?

24 A Yes, there were.

25 Q When did those investigations occur?

1 A Started October 4th.

2 Q That was before the investigation into [REDACTED]

3 [REDACTED]?

4 A That's correct.

5 Q All right. How did you come to know of that
6 information before the October 4 cases?

7 A October 4th, we received a phone call saying that
8 they needed someone from our company to come out and see
9 if we could find where the electricity was going to this
10 grow house from. They couldn't get it disconnected. So
11 went out to check that.

12 Q Which house was that?

13 A It was [REDACTED].

14 Q All right. Did you check any other houses on October
15 4, 2011?

16 A On the 4th, I don't think we checked any others.

17 Q Did you check any other houses between October 4,
18 2011 and October 7, 2011?

19 A Yes, we did.

20 Q Where were those houses?

21 A We checked one on [REDACTED] Road. Can I look at
22 a note?

23 Q Yes.

24 A Okay. Just to make sure. [REDACTED], [REDACTED]

25 [REDACTED], and [REDACTED].

1 Q And those specific locations, was that information
2 provided to you from law enforcement?

3 A No.

4 Yes. These four, yes.

5 Q Those four that you just mentioned were provided by
6 law enforcement?

7 A Those three, yes.

8 Q We have [REDACTED], [REDACTED], [REDACTED]
9 [REDACTED], and then [REDACTED]?

10 A You're correct, yes. It was all four.

11 Q And the police told you about those?

12 A Yes, they did.

13 Q Did the police provide any information as it regards
14 to [REDACTED]?

15 A They did not.

16 Q How did you come to discover or how did you come to
17 suspect [REDACTED]?

18 A We started looking at damaged transformers, burned
19 out transformers, and looking at those accounts and
20 comparing them to our meter. We get daily usage from our
21 meters, automated coming back to our system, and then we
22 also get hourly usages. But we took the daily usages, and
23 we could not see where the usages at [REDACTED]
24 would have caused any damage to the size transformer we
25 had there.

1 Q And again, you discovered that the transformer blew
2 out there from your own investigation?

3 A Yes, we did.

4 Q No information was provided by the police?

5 A Nobody.

6 Q How often does a transformer blow out?

7 A We have very few transformers go bad. We have about
8 27,000 transformers on our system. I pulled the 2011-2012
9 records, it averaged out to 37 transformers a year for
10 those two years.

11 Q And how many customers do you all service?

12 A We service about 52,000 active accounts.

13 Q So did you decide to go to [REDACTED] on
14 October 7, 2011?

15 A We did.

16 Q Did you go alone?

17 A I took an underground crew and two of my meter techs
18 with us, and we called Lexington County Sheriff's
19 Department and asked that they send an escort to go in
20 before we did to make sure that everything was fine for us
21 to go in.

22 Q Why did you ask for that escort?

23 A We had had some other situations where we had gotten
24 very uncomfortable a few days prior to that. And we felt
25 that it would be best if we'd have an escort there. We do

1 it a lot of times when we know that there may be a
2 situation that we can't handle as utility people.

3 Q So prior to October 7, 2011, had you been on the
4 scene without any law enforcement present investigating
5 theft of electric current at those four houses you
6 mentioned earlier?

7 A Yes, we were.

8 Q How did you feel when you were placed in that
9 position?

10 A A couple of them it was -- got tense.

11 Q Okay.

12 A Felt threatened.

13 Q Now, did any officers arrived to assist you on
14 October 7, 2011?

15 A Yes, they did.

16 Q And are they in the courtroom today?

17 A Yes, they are.

18 Q And what were their names?

19 A Detective Fine and Detective Blake -- or Sergeant
20 Blake, excuse me.

21 Q Now, were these officers involved with the
22 investigation of those four houses on October 4?

23 A Not to my knowledge.

24 Q So what happened next once you called the sheriff's
25 department?

1 A Mr. Fine came in, he talked to us, we told him what
2 we wanted to do. He said he felt that he needed to call
3 his sergeant. He called him, then met -- we met at the
4 truck stop on 178, Hill Top. We told them what we wanted
5 to go in. We wanted to go in, check our underground line
6 from the house back to our transformer to see if there was
7 a tap on that underground line. We asked them if they
8 could go and talk with the customer and make sure that the
9 scene was safe for our guys go in and do it.

10 Q Now, does an employee of Mid-Carolina Electric
11 Corporation, to your knowledge, do they have a legal right
12 to check power lines on private property?

13 A Yes, we do.

14 Q And you have a copy of your bylaws and service
15 regulations?

16 A I do. I have the copy that was in place when that
17 was going on, and I have a copy of our new ones.

18 Q Okay.

19 A I have printed off pages that list the statutes and
20 our bylaws.

21 Q So specifically, you got the 2009 copy?

22 A I do.

23 Q You've got service regulation 100?

24 A I do.

25 Q And you've got service regulation 500?

1 A Yes, I do.

2 MR. ROSS: Your Honor, these are Court's 1
3 through 3, and I'll hand these up to you. Copies have
4 been provided to Ms. Zmroczek.

5 BY MR. ROSS:

6 Q So based on that, you believe you had the legal right
7 to be there without a police escort?

8 A That's correct.

9 Q What happened when you all got to [REDACTED]?

10 A Like I say, two officers went ahead of us. We stayed
11 at the truck stop. They went in. They called the
12 defendant out, and his wife. They called us. Told us to
13 come on in. When we drove in, they were on the porch with
14 both of them.

15 Q Okay. So when they went and knocked on the door at
16 [REDACTED], you weren't present?

17 A We were not present.

18 Q They subsequently called you and said it was okay?

19 A Yes.

20 Q What happened next?

21 A We got to the location. Our underground crew took
22 the locating device, which locates the underground
23 service.

24 Q What is a locating device?

25 A It's a device used to find underground wire that is

1 energized. Basically, they were just locating our line,
2 to find our line from the house to our transformer pole
3 first.

4 Q Okay.

5 A After we located that, we went back and started
6 checking on either side of it to see if there was any
7 other lines around. We actually found -- very close to
8 the home found a line that came out and went underneath
9 the home.

10 Q Were the police helping you look for those lines?

11 A No, they weren't.

12 Q Are they trained to do that?

13 A No, they're not.

14 Q What were the police doing?

15 A They were around the front of the house. We were at
16 the back.

17 Q How long did it take you to find the lines, the
18 spliced lines?

19 A Probably 20 minutes.

20 Q How long?

21 A Twenty.

22 Q And then what happened when you found it?

23 A What we decided then was to go ahead and dig down to
24 see what we were looking at with the locator. The locator
25 doesn't show you the picture. It just shows you where the

1 wire is. We dug down and we found an extra tri-plex wire
2 laid right next to our wire and actually attached to our
3 wire and sealed in some insulation.

4 Q And then what happened?

5 A We went around, we noticed where it was going. It
6 was going underneath the home. We went around, and I
7 addressed the officers and asked them if we could get
8 permission to go under the home to see where the wire was
9 going, to see whether it was inside the house or somewhere
10 else.

11 Q Did you need the key to go underneath the house?

12 A Yes, we did. It was locked.

13 Q Was that key provided to you?

14 A Yes, it was.

15 Q Did you check underneath the house?

16 A We did go under the home, crawled under. We found
17 where the wire came up. We followed it to the opposite
18 front corner of the home, found where it went under the
19 ground. I located, walked around to the home, found the
20 wire, and followed it down towards the shed.

21 Q Okay. What happened when you found it went to the
22 shed?

23 A We came back. We disconnected the service at the
24 transformer. We cut out the splice, cut out the wire
25 going up into the meter base, pulled it out, took it

1 around and showed it to the officers.

2 Q And then what happened?

3 A At that point, officers looked at the defendant. I
4 was standing back off the porch, so I didn't hear the
5 conversation. But the defendant turned --

6 MS. ZMROCZEK: Objection, Your Honor. I think
7 he's going to say what the defendant said, and I object if
8 he does.

9 MR. ROSS: I'm not sure of the nature of that
10 objection.

11 THE COURT: She's objecting on what she thinks
12 the witness is going to say. I guess that's the gist of
13 it.

14 MR. ROSS: Well, we don't know what he's going
15 to say until he says it, Your Honor. The jury is not
16 here. I don't think there is any prejudice in at least
17 offering a proffer at this point.

18 THE COURT: I don't know what he's going to say
19 either. I'm just recalling what her objection is.

20 I overrule the objection.

21 THE WITNESS: The defendant was sitting. When I
22 walked around, he stood up. He took his hand and he
23 pointed down to the shed, and he turned around and put his
24 hands behind his back. I heard nothing he said, but that
25 was the actions he took.

1 BY MR. ROSS:

2 Q Now where -- you visibly saw him do this?

3 A I saw him do this.

4 Q Now, where were you when you saw him do this?

5 A I was standing down in the yard in front of the front
6 porch.

7 THE COURT: Mr. Ross, this is testimony that's
8 the basis for the claims for stealing services. And I
9 guess I need to know how much of this I need to hear in
10 connection with what seems to be at this point a rather
11 unspecific motion to suppress.

12 MR. ROSS: My next step with this witness, Your
13 Honor, is to actually show you what he's talking about. I
14 think a picture is worth a thousand words. I think this
15 would assist the Court.

16 THE COURT: Okay. Go ahead.

17 (WHEREUPON, State's Exhibits Nos. 1-2 were
18 marked for identification only.)

19 BY MR. ROSS:

20 Q Mr. Wilson, I'm showing you State's Number 1. Do you
21 recognize this?

22 A Yes, I do.

23 Q Is that [REDACTED]?

24 A It is [REDACTED].

25 Q Is that how it appeared in October 7, 2011?

1 A It is.

2 THE COURT: How far is that shed back there from
3 the house?

4 THE WITNESS: About 200 yards.

5 THE COURT: Okay.

6 BY MR. ROSS:

7 Q So is this the home right here?

8 A That is the home, yes.

9 Q And this is the shed?

10 A That's the shed.

11 Q Where was the spliced wire?

12 A The spliced wire was on the bottom, a little bit back
13 towards the corner of the house. That's where the meter
14 base is.

15 Q Now, where is the transformer on this property?

16 A You go through those woods, you see that right-of-way
17 cut? That's the transformer.

18 Q Right here?

19 A Yes, it is.

20 Q So the power would come from the transformer to the
21 meter right here?

22 A To the meter, yes.

23 Q And the splice was right near the meter; is that
24 correct?

25 A It was about eight feet from the top of the meter or

1 down.

2 Q Now, if there is a spliced line, was there any line
3 going up into the meter?

4 A Yes, it was.

5 Q And was there a second line going anywhere else?

6 A Well, there was a line coming out of the bottom of
7 the meter going into the home serving power to the house.

8 Q Where was the second line going?

9 A The tap line went underground, went right under the
10 foundation of the home, and went, correct, to the front
11 right corner of the home.

12 Q So it's going underground from this point to this
13 point?

14 A That's correct. No, it was above ground under the
15 house. It went underground right at the foundation and
16 went back out.

17 Q And then it went out to the shed?

18 A It went out to the shed.

19 Q Okay. And was any power going in this -- any
20 electricity going on that tap line?

21 A Yes, sir.

22 Q Was this electricity registering on the meter?

23 A It was not. It was tapped ahead of the meter.

24 Q Okay. What happened after you found the tap and
25 after you saw the defendant put his hands behind his back?

1 What happened next?

2 A Then we went back around, covered up the hole that
3 they had dug. And we were basically through. We were
4 there to find the power theft.

5 They did ask us to go in the shed after they got
6 permission to go in. We went in and identified that the
7 wire was coming up through the floor of the garage up into
8 a breaker box and wired into the breaker box, and it was
9 feeding several ballasts, a heat pump, vent fan, and some
10 oscillating fans.

11 Q What was all that equipment designed to do?

12 A In that particular incident, it was growing marijuana
13 plants.

14 Q Did you see marijuana plants in that shed?

15 A Yes, I did.

16 Q Okay. Did you have any other involvement in this
17 case?

18 A That was it.

19 MR. ROSS: Nothing further from this witness,
20 Judge.

21 THE COURT: Yes, ma'am.

22 MS. ZMROCZEK: Thank you, Your Honor.

23 IN CAMERA CROSS-EXAMINATION

24 BY MS. ZMROCZEK:

25 Q Mr. Wilson, you stated that you alerted the police to

1 meet you at a truck stop because you wanted to go check
2 out [REDACTED]?

3 A I did, yes.

4 Q Have you ever had any problems checking out that
5 property before?

6 A I had never been to that property before.

7 Q Had anyone ever been to that property before?

8 A We went there on May 29th to change out a
9 transformer.

10 Q Five months before?

11 A Yes, five months before. At the customer's request,
12 by the way. She called in an outage.

13 Q Do you have the paperwork from that transformer blow?

14 A I have a service order from it.

15 MS. ZMROCZEK: May I approach, Your Honor?

16 THE COURT: Yes, ma'am.

17 BY MS. ZMROCZEK:

18 Q Do you recognize these documents?

19 A It's an outage history, yes.

20 Q Is that an outage history for [REDACTED]?

21 A Yes, it is, [REDACTED].

22 MS. ZMROCZEK: I would like to mark this as a
23 Court exhibit.

24 (WHEREUPON, The Court's Exhibit No. 11 was
25 marked for purposes of the record.)

1 BY MS. ZMROCZEK:

2 Q Based on Court Exhibit 11, can you tell me what the
3 determinate cause of the transformer blowing on May 29th?

4 A From this, basically it was equipment failure.

5 Q It was equipment failure?

6 A Yes.

7 Q Did that change at any time? Did you go back and
8 change that later on?

9 A No.

10 Q So on May 29th, there was equipment failure and the
11 transformer blew. And then no other problems at [REDACTED]

12 [REDACTED]?

13 A Not during the time frame, no.

14 Q Mr. Wilson, didn't you suspect that they were
15 stealing power? Didn't you tell the cops -- the police
16 that you suspected that they were stealing power because
17 there were abnormal readings on the meter?

18 A I didn't say there were abnormal readings on the
19 meter at all. The readings for the home were absolutely
20 correct, what was metered.

21 Q What was metered was correct?

22 A Yes.

23 Q You did not tell the police that there were abnormal
24 readings?

25 A No, ma'am.

1 Q Did you know who had power at that home?

2 A I knew whose name was on the account.

3 Q Whose name was on the account?

4 A Mishelin Perez.

5 Q Is that what you told the police that morning?

6 A I'm sure it was because that's the name I had on the
7 service order I took out.

8 Q And did you tell the police that the name involved in
9 this account had been connected with -- consistent with
10 power being stolen that coincided with recent narcotics
11 investigations?

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

13 Q You did not tell the police that?

14 A I did not tell the officers there that.

15 Q So you asked the police to go and ask if the power
16 company could look at their power?

17 A Yes, ma'am.

18 Q When you got to the home was -- you said you saw the
19 defendant on the porch?

20 A When I got to the home, they were both on the porch,
21 and the two officers.

22 Q Was the defendant in handcuffs at that time?

23 A No.

24 Q Who else was there when you arrived?

25 A That was it.

1 Q Just the two officers and the defendant?

2 A And the power crew.

3 Q Was the defendant's wife there?

4 A It was a lady and man on the porch.

5 Q There was a lady and a man on the porch?

6 A The defendant and a lady were on the porch with the
7 two officers.

8 Q You didn't need the police to go and look for the
9 power, did you?

10 A Not to look. I did need it for the security.

11 Q And that was based on you feeling uncomfortable at
12 three other locations?

13 A Yes, it was.

14 Q Those three other locations, why were you called
15 there?

16 A To go investigate power theft.

17 Q As a derivative of what?

18 A Of the grow houses being there. They had found those
19 ahead of us.

20 Q So the police called you three days earlier.

21 Actually, you went, I think you said on the 4th, the 5th,
22 and the 6th to three different grow houses based on power
23 theft?

24 A We went on the 4th and the 5th. I don't think we
25 went on the 6th. We went to two or three of them on the

1 5th. We went to one on the 4th.

2 Q Because the police called you there?

3 A Yes.

4 Q And then on the 7th, you called the police?

5 A I did.

6 Q And you never told the police that you suspected that
7 the person had a connection with a grow house?

8 A I called dispatch and told them I wanted to
9 investigate power theft.

10 MS. ZMROCZEK: Okay. I have no further
11 questions.

12 MR. ROSS: I have redirect.

13 THE COURT: Yes, sir.

14 IN CAMERA REDIRECT EXAMINATION

15 BY MR. ROSS:

16 Q Mr. Wilson, you testified that there were no, quote,
17 abnormal readings on that meter; is that correct?

18 A That's correct.

19 Q Is a transformer blowing out abnormal?

20 A It's very rare.

21 Q Okay. Did you bring the account notes from [REDACTED]

22 [REDACTED] with you?

23 A I do have them.

24 Q Did you review those account notes prior to going to
25 the scene on October 7, 2011?

1 A I did.

2 Q And if you were to refer to those account notes,
3 would that help refresh your memory on what led you to
4 that day or what led you to [REDACTED] on that day?

5 A The first note that led me there was the damaged
6 transformer..

7 Q Okay.

8 A There was a previous note before that where the
9 customer, the named customer, Mishelin Perez, had called
10 in inquiring how we would get in to read their meter if
11 they fenced the property.

12 Q When was that inquiry made?

13 A On February 28, 2011.

14 Q Okay.

15 A She also said at the time she called in --

16 MS. ZMROCZEK: Objection, Your Honor.

17 THE COURT: What's the objection?

18 MS. ZMROCZEK: Hearsay.

19 THE COURT: I overrule the objection.

20 THE WITNESS: She said that she had had the
21 underground utilities marked. We never received a request
22 from PUPS.

23 BY MR. ROSS:

24 Q What is PUPS?

25 A PUPS. I guess -- the only thing -- let's see.

1 Q If you can't remember the acronym, if you could just
2 tell me what they do.

3 A What they do is they call all the utilities. You
4 call the number, use to be a 811 number. You call the
5 number and they will send someone out, they send the power
6 company, the telephone company, the cable TV.

7 THE COURT: You call if you're going to do some
8 digging?

9 THE WITNESS: Digging. Any digging. If not, if
10 you damage anything, then you're responsible for it.

11 We never received a request from them to go out
12 and inspect or go out and mark our underground cable.

13 BY MR. ROSS:

14 Q So how was that inquiry by Ms. Perez -- put two and
15 two together on why that was suspicious to you?

16 MS. ZMROCZEK: Objection, Your Honor.

17 THE COURT: Well, the whole nature of this and
18 your cross-examination is why he did or did he have reason
19 to do certain things. It's not -- it's admissible
20 testimony because it explains his concerns, et cetera. So
21 I overrule the objection.

22 THE WITNESS: Those two notes together seemed to
23 tell me -- I saw the blown transformer and the usage on
24 the meter did not show that high of usage, near that high
25 usage. We also have a note on there saying the customer

1 had called to have the underground utilities located, but
2 we had never received a request to locate them.

3 BY MR. ROSS:

4 Q Okay.

5 A So to me, those two notes and then, of course, the
6 third note on here, involved Jennifer Izquierdo's name.

7 Q Who is Jennifer Izquierdo?

8 A Her name showed up on this account, on account notes,
9 not on the account as an owner of an account, but the
10 account notes, in the notes. Her name also showed up as
11 the member receiving power from us on several of the
12 locations where the other grow houses had been found.

13 Q May I see those notes, please?

14 A Yes.

15 MR. ROSS: Your Honor, at this time, I'd like to
16 make a copy and submit this as a Court's exhibit.

17 (WHEREUPON, The Court's Exhibit No. 12 was
18 marked for purposes of the record.)

19 BY MR. ROSS:

20 Q Tell me again how Jennifer Izquierdo was relevant in
21 this case.

22 A Her name was tied to several other accounts where we
23 had found she had gotten the property, stayed there a few
24 months, moved to another property, and it was tied on all
25 of these accounts. All of these accounts ended up being

1 active grow houses.

2 The one on [REDACTED], that account was
3 still in her name at the time that we went to find the
4 tapped underground service.

5 Q Okay. How did you find out that information, that
6 her name was associated with those prior houses? Did you
7 learn it from law enforcement or your own investigation?

8 A We did not. We learned it from our own investigation
9 in our office.

10 Q Did law enforcement ever give you the name Jennifer
11 Izquierdo?

12 A They did not.

13 MR. ROSS: Okay.

14 MS. ZMROCZEK: Your Honor, I have some questions
15 based on new evidence.

16 THE COURT: All right.

17 IN CAMERA RECROSS-EXAMINATION

18 BY MS. ZMROCZEK:

19 Q You suspected there was a grow house at [REDACTED]
20 [REDACTED], correct?

21 A I suspected that there was power theft there.

22 Q Then why -- why are we talking about Jennifer
23 Izquierdo and -- why do you keep mentioning Jennifer
24 Izquierdo and grow houses if you didn't suspect there was
25 a grow house there?

1 A I suspected there was something there. I knew we had
2 power theft there.

3 Q You suspected there was a grow house there?

4 MR. ROSS: Asked and answered.

5 BY MS. ZMROCZEK:

6 Q And you told police that you suspected there was a
7 grow house?

8 A I did not.

9 Q You still have that in front of you?

10 A Which one?

11 Q And that's my copy. But the date that you connected
12 Ms. Izquierdo to this address is what?

13 A October 7th.

14 Q No. Based on the report that you're reading in front
15 of you --

16 A The note is on February 11th -- 8th of February of
17 2011.

18 Q February 8, 2011?

19 A Yes.

20 Q February 2011 and then March of 2011, you're alerted
21 that power may be stolen?

22 A Not March, no, ma'am.

23 Q When were you alerted?

24 A When we looked up the records, October 6, 2011.

25 Q Why did you look up the records October 6, 2011?

1 A Because we looked at our transformers trying to find
2 out which ones we had had burn out in the previous year.

3 MS. ZMROCZEK: I have no further questions.

4 THE COURT: Thank you, sir. You may step down.
5 Next witness.

6 MR. ROSS: The State calls Deputy Thomas Fine to
7 the stand, please.

8 THOMAS FINE, after being duly sworn, testified
9 as follows:

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

12 THE WITNESS: Deputy Thomas Fine, F-I-N-E.

13 IN CAMERA DIRECT EXAMINATION

14 BY MR. ROSS:

15 Q Deputy Fine, you were the initial responding officer
16 in this case; is that correct?

17 A I was.

18 Q Can you tell the judge how you ended up at [REDACTED]

19 [REDACTED] on October 7, 2011?

20 A We were or I was dispatched to a meet-with call, at
21 which time I met with the employees with Mid-Carolina
22 Electric. At that point, they advised me that there was
23 some abnormal electrical activity at the residence and
24 that they needed an escort to the residence.

25 Q And did you provide that escort?

1 A I did.

2 Q What happened next?

3 A I contacted my sergeant, the road sergeant, Sergeant
4 Blake. I advised him of the information that I had
5 received from Mid-Carolina Electric employees and advised
6 him that I would appreciate or would like him to respond
7 to the scene as well.

8 Q Okay. Are you a member of a narcotics investigation
9 team?

10 A No, sir, I'm not.

11 Q Are you a narcotics officer?

12 A I am not.

13 Q Were you involved in any of the cases that Mr. Wilson
14 alluded to during his exam?

15 A No, sir, I was not.

16 Q Did your sergeant arrive on the scene?

17 A He did. He arrived and met with me off scene and
18 then we proceeded together to the scene.

19 Q Okay. What happened when you got there?

20 A When we arrived on the scene, we made a
21 knock-and-announce, just knocked on the door, and just to
22 advise them that Mid-Carolina was wanting to come on to
23 their property and investigate.

24 Q Okay. And when you -- referring to State's Exhibit
25 1, is this the property that you responded to?

1 A Yes, sir, it is.

2 Q When you came down, did you come down this road here?

3 A Yes, sir. That is the driveway, yes, sir.

4 Q And did you walk up to this front door?

5 A Walked up to the front door, yes, sir.

6 Q And did you knock on the door?

7 A Yes, sir, we did.

8 Q Can you tell me about the tone of those knocks? Were
9 they loud knocks, were they soft knocks? What kind of
10 knocks were they?

11 A That is actually a normal knock. (Indicating.) Just
12 a normal knock on the front door.

13 Q And was it you that did that or Sergeant Blake?

14 A I believe it was me that actually knocked on the
15 door.

16 Q Who came to the door?

17 A The female half of the party. I believe it's
18 Mishelin Perez.

19 Q And did you speak with her?

20 A We did speak with Ms. Perez.

21 Q And you advised them of why you were there?

22 A Yes, sir.

23 Q Did she object to the presence of the police on her
24 front door?

25 A No, she did not.

1 Q Did she object to the presence of Mid-Carolina
2 Electric being there?

3 A No, she did not.

4 Q Did she refuse access to any portion of her property?

5 A No, she did not.

6 Q Did she limit where the police could or could not go?

7 A No, sir.

8 Q Did she limit where Mid-Carolina Electric could or
9 could not go?

10 A No, sir.

11 Q What happened after you advised her of the nature of
12 you all being there?

13 A She acknowledged why we were there and acknowledged
14 why Mid-Carolina needed to come there as far as
15 investigating the power at the residence. At that time,
16 we contacted Mid-Carolina and told them that it was secure
17 for them to come onto the property.

18 Q Okay.

19 A And that they were allowed to come onto the property,
20 and then they arrived and began their work.

21 Q Where were you when they arrived?

22 A I was on the front porch.

23 Q Okay. What happened next?

24 A We -- again, we were speaking with Ms. Perez, and
25 Ms. Perez had stated that her husband was asleep at the

1 residence.

2 Q Okay.

3 A And that he'd worked the night before.

4 Q Okay.

5 A And she went and woke up the defendant.

6 The defendant came to the front door and
7 actually came out on the porch. At that point, he wasn't
8 directed to come to the porch. He came out to speak with
9 us, sat down in a chair on the porch. And we, Sergeant
10 Blake and myself, just spoke to them in a casual nature
11 while Mid-Carolina did whatever investigation or whatever
12 work they needed to do.

13 Q What was his physical appearance when he came out?

14 A Sleep -- he looked like he had been asleep, and it
15 looked like he had worked the night before.

16 Q Okay.

17 A I believe he was in some kind of bed clothes, shorts,
18 T shirt.

19 Q Did he speak English with you?

20 A He did. Kind of half English, half Spanish, was kind
21 of splotchy English, but he was able to communicate with
22 me.

23 Q Do you know Spanish?

24 A I do not.

25 Q What did he tell you in English?

1 A We actually talked about where he was working and
2 what he did for a living.

3 Q What did he specifically tell you?

4 A Told me he worked at Wal-Mart, and was a -- he put up
5 items in the shelves.

6 Q All right. And when you were communicating with him,
7 did he appear to understand what you were saying?

8 A He was able to answer my questions, yes, sir.

9 Q Did he ever request a translator?

10 A He did not.

11 Q Did he ever say "no hablo ingles"?

12 A No, sir.

13 Q Did he ever say "no comprende"?

14 A No, sir.

15 Q Did he ever appear confused at what you were talking
16 about?

17 A Not initially. As the time we spent there went on,
18 you could tell he became a little bit more reserved,
19 wasn't answering questions as freely as far as general
20 questions about what he did for a living.

21 Q So he was more reserved?

22 A He became more reserved as we were on scene.

23 Q Did he ever have a look of confusion on his face?

24 A No, not really. Just complacency more or less,
25 complacent look on his face.

1 Q And while he was out there, did you ever limit his
2 freedom of movement in any way?

3 A No, sir, we did not.

4 Q Did you ever detain him while he was initially out
5 there on the porch?

6 A No, sir, we did not.

7 Q Did you ever limit the freedom of the wife, Mishelin
8 Perez?

9 A No, sir, we did not.

10 Q Did you ever detain her?

11 A No, sir, we did not.

12 Q What was she doing while you all were making small
13 talk with the defendant?

14 A I believe they had a child inside the house, and she
15 would go in to check on the child. I feel like she went
16 in to do a couple of -- I think she was doing laundry at
17 the time. Then she would come back out on the porch and
18 speak to us. Her movement was certainly not limited.

19 Q Would you say it's a fair statement to classify the
20 nature of the atmosphere at that point as being relaxed?

21 A It was relaxed, yes, sir.

22 Q Okay. And how long was Mid-Carolina out there
23 checking those lines?

24 A Probably around, I would say around 30 minutes.

25 Q Okay. What happened next? Did they find something?

1 A Yes, sir.

2 While we were on the front porch, Sergeant
3 Blake, myself, the defendant, as well as Ms. Perez, were
4 on the front porch, and one of the Mid-Carolina Electric
5 employees came around the right side of the residence, had
6 in his hand a bundle of wires, obviously more than one
7 wire, and he held up and said, We found what we were
8 looking for.

9 Q Okay. Then what happened?

10 A Well, at that point, we explained to them what
11 Mid-Carolina had found. The defendant then said something
12 to Ms. Perez in Spanish, which excited Ms. Perez very much
13 so. It appeared to anger Ms. Perez. Ms. Perez began
14 raising her voice and screaming at the defendant in
15 Spanish, so much so that Sergeant Blake and myself, we
16 felt concerned for the safety of the parties involved at
17 that point because she was so excited.

18 Q Okay. How long was this conversation between the
19 defendant and the female? How long did that last?

20 A It lasted approximately ten seconds, 10 to 15 seconds
21 at the most.

22 Q Then what happened?

23 A We stepped in, separated them, because like I say, we
24 did get concerned for the safety of the scene.

25 Immediately upon stepping in and separating or

1 asking Ms. Perez to step back, the defendant looked at
2 Ms. Perez and said, I'm sorry, baby, in English. And then
3 turned to me, and if you don't mind, I'll refer to my
4 notes.

5 Q Yes. Go ahead.

6 A He told Ms. Perez, I'm sorry, baby. And then he
7 looked at me and he told me, I know what you're looking
8 for, and it's in the shed.

9 Q All right. That was in English?

10 A It was in English, yes, sir.

11 Q All right. And was that statement in context of
12 everything else that was going on that day?

13 A In context? I'm sorry, sir.

14 Q Was that an out-of-context statement?

15 A Yes. Somewhat out of context, yes, sir.

16 Q When he said, I'm sorry, baby, I know what you're
17 looking for, it's in the shed, did you have any problems
18 understanding what he was saying?

19 A No, sir, I did not.

20 Q Okay. Did he make any physical movements at that
21 time?

22 A He did. He stood up and turned around and put his
23 hands behind his back.

24 Q What did you do at that point?

25 A I put handcuffs on him and detained him.

1 Q Okay. Prior to you putting handcuffs on him, had his
2 freedom of movement been limited in any way?

3 A Not at all, no, sir.

4 Q When you put handcuffs on him, did you place him
5 under arrest?

6 A No, sir. As a matter of fact, I advised he was being
7 detained, and specifically that he was not under arrest at
8 this time.

9 Q Okay. Then what happened?

10 A I sat him down in the chair, and then my focus was on
11 him.

12 Q Okay. What was Sergeant Blake doing at this time?

13 A Sergeant Blake was with me. At that point, Sergeant
14 Blake's focus shifted on, I believe, securing consent to
15 search forms and following up on what may have been in the
16 shed.

17 Q Okay. Were you involved in obtaining those consent
18 to search forms?

19 A No, sir, I was not. Again, my focus was on the
20 defendant.

21 Q Okay. What did you do during that time frame?

22 A I stayed with him, in close proximity with him.
23 Again, securing the safety of the scene.

24 Q Okay. What happened next? Did anybody go in the
25 shed?

1 A Yes, sir. Sergeant Blake, after he completed the
2 consent to search, he did go into the shed, yes, sir.

3 Q Okay. And then what happened?

4 A Well, while we were sitting on the front porch and
5 Sergeant Blake was doing his job in regard to the shed,
6 the defendant made a statement to me. And again, if I
7 could refer to my notes to ensure the accuracy of the
8 statement.

9 Q Sure.

10 A Okay. Again, while Sergeant Blake was at the shed,
11 the defendant said, She doesn't know anything about the
12 marijuana, it's all mine.

13 Q Was that prompted by any interrogation on your part?

14 A Absolutely no questions at all. I had no intentions
15 of questioning him, did not question him at any time.

16 Q Were you having any type of conversation with the
17 defendant at that point?

18 A No, sir, no conversation whatsoever.

19 Q And while Sergeant Blake took care of looking in the
20 shed, you were still on the front porch?

21 A I was, yes, sir.

22 Q Okay. Did narcotics officers arrive at the scene?

23 A Yes, sir, they did.

24 Q How long did it take for them to arrive?

25 A I believe Detective Barnes arrived on the scene

1 within 15 minutes.

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

4 A I did not, no, sir.

5 Q At any time, did you make any promises or threats to
6 the defendant to speak with you?

7 A No.

8 Q Did you coerce him in any way to make any statements?

9 A No, sir, not at all.

10 Q Did he appear to understand what he was saying?

11 A He did appear to understand what he was saying, yes,
12 sir.

13 MR. ROSS: Nothing further, Your Honor.

14 MS. ZMROCZEK: May it please the Court..

15 IN CAMERA CROSS-EXAMINATION

16 BY MS. ZMROCZEK:

17 Q Officer Fine, I believe you kept referring to your
18 notes, and those have been previously marked. Let me make
19 sure that we're looking at the same thing so that I give
20 the Court a copy.

21 Are these the notes that you were referring to
22 for accuracy?

23 A Yes, ma'am, it is.

24 Q You wrote that report soon after this happened?

25 A I did, yes, ma'am.

1 Q I believe that you testified that you wanted to refer
2 to that report to make sure that what you were saying
3 today was accurate?

4 A That is correct.

5 Q Is it important to document your thoughts and notes
6 to preserve them most accurately?

7 A Yes. We try to do that, yes, ma'am.

8 Q Okay. Let's look at that report. Do you have it in
9 front of you?

10 A Yes, ma'am.

11 Q You said you responded to [REDACTED] at about
12 9:30?

13 A Yes, ma'am.

14 Q I believe you testified that you actually met at a
15 truck stop.

16 A I met them at the truck stop. I responded to [REDACTED]
17 around 9:30.

18 Q And that was in reference to a larceny?

19 A Yes. It was in reference to -- initially in
20 reference to secure the scene or secure the scene for the
21 safety of the Mid-Carolina employees.

22 Q Do you mind reading that line out for me, please?

23 A Which line, ma'am?

24 Q The first one.

25 A Okay. On 10/7/2011 at approximately 9:30, I

1 responded to [REDACTED], [REDACTED], South Carolina
2 in reference to a larceny. Yes, ma'am.

3 Q So it was in reference to a larceny?

4 A It was in reference to a larceny. Okay.

5 Q How did you -- you said that they contacted you and
6 you were dispatched?

7 A I was dispatched, yes, ma'am.

8 Q Does dispatch create or generate reports when they
9 send an officer to a location?

10 A Generate reports? No, ma'am. I'm sorry, I don't --
11 I'm sorry, I don't understand the question.

12 Q When dispatch sends you somewhere?

13 A Yes, ma'am.

14 Q Do they generate a report that they sent you there?

15 A They generate what we call a call card.

16 Q A call card?

17 A Yes, ma'am.

18 Q You said that Mr. Wilson -- in your report, you
19 believe that there was a larceny because someone was
20 stealing power. How did he -- how did he relate to you
21 that he said power was being stolen?

22 A There was abnormal activity, abnormal activity on the
23 property in reference to the meter readings, and that they
24 were concerned that power was being stolen.

25 Q Okay. So he told -- so in your report, you put down

1 abnormal readings on the electric meter consistent with
2 illegal activity?

3 A That's what I put down because that was my
4 understanding of what he was trying to explain to me.

5 Q On that day?

6 A Yes, ma'am.

7 Q Who owned the property to your understanding?

8 A I didn't know who owned the property at that point,
9 ma'am.

10 Q Can you read line four of your report?

11 A Yeah. He also stated Jennifer Izquierdo was the name
12 of the person who had requested electrical services to be
13 turned on at the residence.

14 Q And then continue.

15 A He advised that Jennifer had been involved in
16 numerous incidents that are consistent with power being
17 stolen and that each coincide with recent narcotic
18 investigations referencing manufacturing marijuana.

19 Q Okay. So he told you this at the truck stop,
20 correct?

21 A Yes, ma'am. He advised that they were concerned for
22 their safety as far as us being able to secure the scene
23 because of activity that was consistent with what they
24 were seeing or what they experienced previous to this
25 particular day.

1 Q At other grow houses?

2 A I didn't know anything with other grow houses. I
3 knew that there was -- I didn't know about the houses.
4 They had told -- the first time I had heard anything about
5 manufacturing marijuana was at that point.

6 Q At that moment?

7 A Yes.

8 Q And at that moment, you contacted Sergeant Blake and
9 you contacted narcotics?

10 A I didn't contact narcotics. I contacted Sergeant
11 Blake.

12 Q Okay. Does your report reflect that you contacted
13 Sergeant Blake and then contacted narcotics?

14 A It reflects that I contacted Sergeant Blake and
15 advised him of what I was told. Sergeant Blake called
16 narcotics to confirm what we were hearing.

17 Q So at that point, before you go to the house, you're
18 confirming with narcotics -- or when you get to the house,
19 you're confirming with narcotics about a larceny?

20 A No. That one we're confirming with narcotics as to
21 what situation we are going into. And the reason I ask
22 that is, we respond to several incident sites, okay?
23 Whether it be a larceny of a bicycle or whether it be a
24 murder scene. Prior to going on a scene, we want to
25 receive as much information as we possibly can for safety

1 reasons.

2 Q So prior to going on the scene, you were told it was
3 a larceny due to power, correct?

4 A Yes.

5 Q Would you normally contact narcotics if it was a
6 larceny due to power?

7 A No, not larceny due to power. However, what we were
8 informed of at the time that --

9 Q There was a suspected grow house?

10 A No. We were not told that there was a suspected grow
11 house. We were informed that Ms. Izquierdo was associated
12 with -- she was associated with previous activities that
13 were in reference to manufacturing marijuana. We were not
14 told this was a grow house. We were not told that we were
15 going to secure the scene to investigate a grow house.

16 Q You were told that you were -- you were responding to
17 a larceny because of a named -- the power was in the name
18 of someone who had been involved in numerous incidents
19 that were consistent with power being stolen, that each
20 coincide with recent narcotics investigations regarding
21 manufacturing marijuana. Is that what you put in your
22 report?

23 A That's what I put in my report, yes, ma'am.

24 Q So that is why you were responding?

25 A We were responding because of Mid-Carolina's request.

1 That is why we responded.

2 Q Okay.

3 A The other information that was in this report was for
4 our information in regards to what we might be walking
5 into.

6 Q Is the information in your report accurate?

7 A It is accurate, yes, ma'am.

8 Q Okay. When you knocked on the door, you asked for
9 Jennifer Izquierdo, correct?

10 A No, ma'am. I knocked on the door and -- I knocked on
11 the door and was going to speak with whoever may have came
12 to the door. I asked Ms. Perez if she was aware of
13 Ms. Izquierdo.

14 Q Why did you ask Ms. Perez if she was aware of
15 Ms. Izquierdo?

16 A Because, again, we weren't quite sure who we were
17 going to meet there. The name that I had associated, the
18 name that I had in my mind was Ms. Izquierdo. We were
19 trying to make a connection with what we were informed.

20 Q She answered the door. You stated she was
21 cooperative?

22 A Yes, ma'am. She was cooperative.

23 Q And did she tell you at that -- at that point, she
24 said she knew Ms. Izquierdo but she wasn't there?

25 A She advised that Ms. Izquierdo was her sister, but

1 she had not seen her in quite sometime.

2 Q Okay. You then asked for her to get her husband?

3 A We asked if there was anybody else in the residence,
4 and she advised her husband was asleep because he'd worked
5 the night before.

6 Q You told her to wake him up?

7 A I didn't ask her to wake him up. It was -- she said
8 let me get my husband, let me get him up as well.

9 Q And you stated that he spoke English fine?

10 A Yes, ma'am. Well, initially, he spoke choppy English
11 and was able to communicate with me. Later in the --
12 later in the morning, he spoke English fine.

13 Q Okay. Does your report reflect that he didn't speak
14 much English?

15 A My report -- my report reflected that he -- it
16 appeared that he didn't speak much English or English very
17 well initially.

18 Q Why did you secure the residence?

19 A I'm sorry, ma'am?

20 Q It says, Once the residence is secured, it was
21 determined that the main power splice had been spliced and
22 buried underground.

23 So at that point, you have a larceny, correct?

24 A Yes, ma'am, whenever they walked around the corner
25 and showed us the splice.

1 Q And at that point, you're saying his speech changed?

2 A Yes. Yes, ma'am. When they walked around the corner
3 of the residence holding the splice in their hands, within
4 a 15-second period, okay, after we had notified or after
5 Sergeant Blake had actually notified them of what
6 Mid-Carolina had found, within a 15-second time frame, the
7 defendant said something to Ms. Perez in Spanish.

8 Q And you don't know what that was because you don't
9 speak Spanish?

10 A No, ma'am. I didn't know what he had said to her in
11 Spanish. And that's when she became extremely upset.

12 Q Okay. When did Sergeant Blake contact narcotics?

13 A Sergeant Blake contacted narcotics after he
14 identified that there was marijuana in the shed.

15 Q Okay. I'm having a little trouble understanding the
16 discrepancies between your report and what you're saying.

17 A Yes, ma'am.

18 Q Because your report states that he contacted
19 narcotics -- he contacted narcotic investigators and
20 confirmed the report. What report are you talking about?

21 A Sergeant Blake confirmed that the shed contained a
22 large amount of marijuana. At that time, he contacted
23 narcotics.

24 Q Okay. Line seven, can you read that for me, the
25 whole thing?

1 A Yes. I contacted Sergeant Blake who arrived on scene
2 and contacted narcotics investigators and confirmed the
3 report.

4 That was the initial report from Mid-Carolina
5 whenever they advised that Ms. Izquierdo, okay, was
6 involved in marijuana -- manufacturing marijuana. Her
7 name was linked to those cases in some way that I received
8 through Mid-Carolina.

9 Q Officer Fine, how long have you been an officer?

10 A I've been in law enforcement for 15 years.

11 Q The report that you write reflects the accurate
12 events that took place that day?

13 A Yes. To the best of my recognition on the scene,
14 yes, ma'am.

15 Q Officer Fine, when you responded to [REDACTED]
16 [REDACTED], you had suspicion to believe there were drugs or
17 some sort of relationship to drugs on the property which
18 is why you all contacted narcotics. True or false?

19 A We received information from Mid-Carolina. We had no
20 knowledge of anything. We received information from
21 Mid-Carolina that we needed to confirm prior to walking on
22 to a scene that may put myself, Sergeant Blake, and
23 Mid-Carolina employees in danger.

24 Q Because you suspected there was some sort of
25 connection with narcotics?

1 A We did not suspect anything. We wanted to confirm
2 what we were being told.

3 Q So you confirmed that there was a connection with
4 narcotics?

5 A We were confirmed that Ms. Izquierdo had been
6 associated with previous grow houses in the area. Not
7 that -- not that this was a grow house.

8 Q But that it was confirmed that there was suspicious
9 activity that was similar to other locations with grow
10 houses?

11 A Yeah. There was a -- once we confirmed that there
12 was a correlation between those two, okay -- and again, we
13 received this information so that we know what we're going
14 into and that we don't go into somewhere blind, okay? We
15 had a reasonable suspicion that there may be something
16 wrong.

17 Q You had a reasonable suspicion when you went on the
18 property that there was some connection to narcotics.
19 That's what you just said, correct?

20 A Yes, ma'am. That's what I just said.

21 Q Okay. Thank you.

22 Where do you keep your Miranda card?

23 A In my car. It's above the visor in my car.

24 Q And you don't keep it with you? You don't keep it in
25 your shirt pocket?

1 A No, ma'am, I don't have one in my shirt pocket.

2 Q Okay. And at what point did you read Mr. Aguirre his
3 Miranda rights?

4 A I did not read Mr. Aguirre his Miranda rights.

5 Q Did someone read Mr. Aguirre his Miranda rights?

6 A Detective Barnes, I believe, read Miranda rights.

7 MS. ZMROCZEK: I have no further questions.

8 MR. ROSS: I will be brief, sir.

9 IN CAMERA REDIRECT EXAMINATION

10 BY MR. ROSS:

11 Q Why didn't you read Miranda rights? Was he ever in
12 custody?

13 A He was not in custody. He was simply being detained
14 at that time, and I had no intentions of asking any
15 questions.

16 Q Okay. Once you put cuffs on him, did you ask him any
17 questions?

18 A No. Absolutely not.

19 Q And when you put cuffs on him, was he under arrest?

20 A He was not under arrest at that time, no, sir.

21 Q When was he placed under arrest?

22 A He was placed under arrest when Sergeant -- I'm
23 sorry -- Investigator Barnes arrived on scene.

24 MR. ROSS: Thank you, sir.

25 THE COURT: Anything further?

1 MS. ZMROCZEK: Nothing from the defense.

2 THE COURT: Thank you, sir.

3 MR. ROSS: The State calls Sergeant Blake to the
4 stand.

5 KEVIN BLAKE, after being duly sworn, testified
6 as follows:

7 THE CLERK: Once you're seated, please state
8 your full name, spelling your last on the record.

9 THE WITNESS: Sergeant Kevin Blake, B-L-A-K-E.

10 IN CAMERA DIRECT EXAMINATION

11 BY MR. ROSS:

12 Q Sergeant Blake, you're Deputy Fine's supervisor; is
13 that correct?

14 A I was at the time of this incident, yes.

15 Q Okay. And you responded to the scene with him; is
16 that correct?

17 A I did.

18 Q Can you tell me what happened that day?

19 A Well, Deputy Fine initially responded to the call to
20 meet with MCEC representatives, and after he had spoken
21 with them, he called me and I met up with them.

22 Q Okay. And where did you all meet?

23 A At the Hill View truck stop.

24 Q Okay. And what happened when you met them there?

25 A I asked what was going on. They said they were there

1 to check out larceny of power, check the area for possible
2 splices. And they were asking for us to, just like
3 anybody does, when you want to pick up your stuff after a
4 civil dispute with your parents or family, and we get
5 requests to do stand-bys all the time, just to make sure
6 that things don't get crazy. That's basically what they
7 were asking us to do.

8 Q And then what happened?

9 A Based on information about what led them to believe
10 that there may be theft of power at this location and the
11 experiences, uneasy experiences they had had at previous
12 residences, and some of them with a name Izquierdo came
13 up, and it was linked with other addresses with power
14 where they had determined power had been stolen. They
15 gave indications there was possible narcotics activity.

16 Based on my experience, narcotics busts can
17 sometimes equal firearms and everything else under the
18 sun. So I made a phone call to narcotics and said, hey,
19 are you guys familiar with any of this. I said I don't
20 want to go in here and just, you know, get in the
21 crossfire somewhere. I was checking for our safety and
22 MCEC. I like to know as much information when I go in, as
23 far as our safety is concerned. That's all we had at that
24 point.

25 Q Okay. When did you do that? Was that at the truck

1 stop?

2 A That was at the truck stop.

3 Q Okay. And do you recall who you spoke with at that
4 time?

5 A At this point, no, sir. I remember talking to narcs.
6 No, I don't remember who it was.

7 Q Okay. And subsequently you arrived at [REDACTED]
8 [REDACTED]?

9 A We did.

10 Q How long did it take you to get there?

11 A Hill View is just a couple of miles up the road, just
12 a few minutes, if that.

13 Q Okay. And what did you do when you got to [REDACTED]?

14 A I pulled in, noticed a car in front of the house, and
15 walked up to the front porch and knocked on the door.

16 Q How did you knock on the door?

17 A Just like I would one of my neighbors. Not like
18 we're trying to, you know, knock, announce, or serve
19 warrants or anything, just a light knock.

20 Q Did somebody come to the door?

21 A A lady came to the door.

22 Q Who was that lady?

23 A Ms. Perez.

24 Q And what happened at that point?

25 A Explained to her that Mid-Carolina wanted to come out

1 and check out from their utility pole to the meter on the
2 house, power lines, underground wires, things of that
3 nature. And she said that was fine.

4 Q Okay. Did she say she was the homeowner there or the
5 resident there?

6 A I asked her if she lived there, and she did reside
7 there, and that's what she confirmed. I don't believe I
8 ever, you know, established her -- whether or not she was
9 renting or -- as I said, she had reason to be there as
10 property -- I don't know if it was owner, but she was
11 resident.

12 Q And did she object to your presence being there?

13 A She didn't give me any indications to indicate that,
14 no.

15 Q Okay. Did she object to the power company coming on
16 to her property?

17 A No.

18 Q Did she place any limits on where you could go?

19 A No. I mean, she mentioned there was a shed all the
20 way in the back of the property, and she just requested
21 that we respect her religion, and if we didn't need to go
22 into that building, because that's where she practiced her
23 religion.

24 Q Okay. Now, when you say shed, I'm referring to
25 State's Exhibit 1, is that shed pictured in this exhibit?

1 A It was probably just out of sight down by that
2 clearing, a little farther back.

3 Q But the shed wasn't the shed where marijuana was
4 found, was it?

5 A No, sir. It was a small eight by ten, maybe. Very
6 small.

7 Q Was it in front of the house or behind the house?

8 A Behind the house. You couldn't even see it when you
9 pulled up.

10 Q Did you limit her freedom of movement at all?

11 A No, sir. She was vacuuming and doing laundry in the
12 living room.

13 Q Okay. Did the man of the house ever come out?

14 A He did. We asked -- I mean, again, you know, safety
15 factor. We asked is anybody else here, her husband. She
16 indicated he'd worked all night, was sleeping. Never
17 ordered him out of the house or anything. She said, I
18 will go get him. A few minutes later, he came outside and
19 sat down in a chair.

20 Q You never requested him to come out?

21 A No, sir.

22 Q Did you ever limit his freedom of movement at all?

23 A No.

24 Q Did you ever tell him he couldn't go anywhere?

25 A No.

1 Q When did you wave in Mid-Carolina? When were they
2 notified that they could come on the property?

3 A Shortly after we spoke -- I spoke to Ms. Perez and
4 she gave indications to me that it was fine that they come
5 and check on the property, there was no objection. So I
6 told them to come on in, and I think it was three trucks
7 that day pulled down the driveway and off to the side.

8 Q Okay. Did the defendant ever object to your presence
9 being there?

10 A Not that he indicated to us.

11 Q Did he ever object to Mid-Carolina being there?

12 A No. He just kind of sat around.

13 Q What happened after Mid-Carolina came on the
14 property?

15 A A couple of guys went to, I guess, check from the
16 transformer ends, some more started around the house.
17 It's kind of a divide-and-conquer mindset to find the
18 lines underground. And they eventually concentrated their
19 efforts right there near the corner of the house where the
20 meter was. Started digging. Total timing, half hour,
21 maybe a little more. Then this whole time, Ms. Perez is
22 in and out of the house, and we were just around the
23 property. I think I walked around one time, just
24 curiosity. I had never seen a power company dig stuff up
25 before.

1 Q Tell me about the atmosphere of that situation. Was
2 it tense?

3 A No, sir.

4 Q And while Mid-Carolina is checking this wire, did you
5 limit Ms. Perez or Mr. Aguirre's movement in any way?

6 A No, sir.

7 Q Did you demand them to do anything?

8 A No, sir.

9 Q And you said it took them about 30 minutes to find
10 something?

11 A Give or take five minutes but, yeah, thereabouts.

12 Q Okay. What happened then?

13 A Well, I found myself on the front porch with Deputy
14 Fine, and Mr. Aguirre was still sitting in the chair.
15 Ms. Perez had walked out again, and just -- I was
16 basically carrying on small talk with Deputy Fine.

17 Q Okay.

18 A And the Mid-Carolina rep came around the corner
19 holding up a bundled mass of cables and said, fellas, we
20 found what we were looking for. Turned around to kind of
21 see what they were talking about and saw this big mass of
22 wires and a bundle and, like, spray foam insulation or
23 something.

24 Q And that statement from Mid-Carolina was directed to
25 you and Deputy Fine?

1 A Yes, sir.

2 Q Okay. And you were on the front porch with the
3 deputy?

4 A Yes, sir.

5 Q And who else was on that front porch?

6 A At that point, it was all four of us. It was Deputy
7 Fine, myself, Ms. Perez, and Mr. Aguirre.

8 Q Okay. What happened at that point?

9 A Mr. Aguirre was at one extreme end of the porch
10 sitting in a chair, and the door is almost probably
11 centered on the porch. Ms. Perez was in front of the
12 door. We had walked to the other end of the porch just to
13 kind of get a better look at, you know, what MCEC had
14 picked up out of the ground. And Ms. Perez asked, well,
15 what is that. I said, well, it appears to be, I guess,
16 where they found a big power splice, the wires.

17 Q Then what happened?

18 A Mr. Aguirre said something in Spanish. I was at the
19 other end of the porch. Ms. Perez got very vocal, very
20 upset and agitated. They started -- she started walking
21 towards him, he was still seated. Deputy Fine and I,
22 being his supervisor at the time, we responded to numerous
23 domestics and things like that. Our immediate reaction
24 was to get in between the two of them and, you know, just
25 kind of form a block between the two of them.

1 Q Okay. So where was Ms. Perez's agitation directed
2 towards?

3 A Oh, definitely Mr. Aguirre.

4 Q And they were speaking in Spanish?

5 A Yes, sir.

6 Q How long did that conversation last when she began to
7 get agitated and started speaking Spanish to him?

8 A It wasn't very long.

9 Q Okay. You all began to get in between them?

10 A As soon as voices get raised, I mean, it's almost
11 kind of just something that just happens. My nature now,
12 when you hear raised voices and you go to that sound of
13 the disturbance, you just kind of get in the middle of it
14 to try and diffuse it.

15 Q Okay. Then what happened?

16 A Tried calming Ms. Perez down, because at this point,
17 we weren't understanding exactly what was being said. I
18 don't speak Spanish. And trying to, you know, please calm
19 down, you know, what is going on, because at this point, I
20 thought we were dealing with MCEC. I didn't know what all
21 was going on. And that's when -- I was still standing
22 over by the door with her and Deputy Fine was over with
23 Mr. Aguirre, and I didn't hear what was said, but I
24 noticed him stand up, which drew my attention, and he put
25 his hands behind his back.

1 Q And something was said but you couldn't hear it?

2 A Correct.

3 Q It was said towards Deputy Fine, Deputy Fine was with
4 the defendant?

5 A He was just -- kind of just the way we got in between
6 the two of them, that's how it worked out.

7 Q Was Mr. Aguirre placed under arrest at that point?

8 A He was -- not knowing what in the world we were
9 dealing with at that point, we couldn't tell what they
10 were talking about, he was placed in detention because we
11 didn't know what we had. And Deputy Fine relayed to me
12 what he had said about "It's in the shed."

13 Q Okay. What happened next? What happened at that
14 point?

15 A We went to my car, and we had consent to search
16 forms. At this point, the power company, they had
17 finished what they were going to do and wanted to
18 investigate further, not knowing what was in the shed. We
19 didn't know if it was more power, what was going on. And
20 so got the consent to search forms. Ms. Perez signed and
21 gave no indications otherwise there was an issue. She
22 said -- Mr. Aguirre said, I will get the keys. She said
23 no. He went inside.

24 Q Let me stop you right there.

25 You said Mr. Aguirre said what?

1 A He said, I will get the keys.

2 Q Was that in response to any questioning that you had
3 towards Mr. Aguirre?

4 A No. I was speaking to Ms. Perez at the time.

5 Q And was Deputy Fine interrogating or speaking or
6 questioning the defendant at that time?

7 A No. Quite honestly, we were still trying to figure
8 out what is going on.

9 Q So he volunteered that he would get the keys?

10 A Yes, sir.

11 Q What happened next?

12 A Ms. Perez went into the house, came out with a set of
13 keys. He told her that -- and again, this is kind of in
14 broken English at this point, that those were the wrong
15 keys, and that he would go get the right keys. Went
16 inside, and she says no. She went inside, came out, and
17 he confirmed that, yeah, that's the keys.

18 Q When he was speaking this, this was in English?

19 A I was able to understand him.

20 Q Okay. And then what happened?

21 A I took the keys from her and went to the shed and
22 opened up the side door and saw a wall of what I figured
23 was just electric wires and transformers and some stuff I
24 didn't want to touch. And I smelled a strong odor of
25 marijuana.

1 Q Okay. When you went into that shed, did you have
2 permission to go in the shed?

3 A From Ms. Perez.

4 Q Had she signed the written consent form yet?

5 A Yes.

6 (WHEREUPON, The Court's Exhibits Nos. 13-14 were
7 marked for purposes of the record.)

8 BY MR. ROSS:

9 Q Sergeant Blake, I'm showing you Court's Exhibit 13.
10 Do you recognize this document?

11 A I do.

12 Q What is it?

13 A It's a Lexington County Sheriff's Department consent
14 to search form.

15 Q And is that what Ms. Perez signed?

16 A It is.

17 Q That's permission you had to go into the shed?

18 A Yes.

19 Q Did you read that form to her?

20 A I did.

21 Q Did she have any difficulties understanding what you
22 were saying?

23 A She didn't indicate to me that she did, no, sir.

24 Q And this first blank where it says Mishelin Perez,
25 who filled that portion out?

1 A I can't speak for all deputies, but when I do consent
2 to search forms, I leave that line blank because it's for
3 their name, and I don't want to misspell it and I don't
4 want to butcher it. But everything else down just before
5 where they would sign, I take the time to properly fill
6 out where the information should go on the form.

7 Q Okay. So you filled out everything else except for
8 the signature and the witness portion?

9 A Yes, sir.

10 Q Who is the witness there that is on that?

11 A Investigator Barnes.

12 Q Okay. Did Ms. Perez sign -- did you see her sign
13 that where it says "signature" herself?

14 A I did.

15 Q Okay. When she signed this, did she place any limits
16 on where you could go on that property?

17 A Again, the only concern she had was the shed at the
18 very back of the property. She asked if we had to go in
19 there, that we respect her religion. She was -- kind of
20 indicated she was concerned for our safety in that
21 building because of her religion.

22 Q And again, the shed she was referring to was not the
23 shed where the marijuana was found?

24 A No, sir. It was a small, maybe 8 by 8, 8 by 10 white
25 building at the very back of the property.

1 Q Did Mr. Aguirre fill out a written consent to search
2 form?

3 A I had started his consent to search form.

4 Q Uh-huh.

5 A And she returned with the keys and I went and checked
6 the building.

7 Q Okay. Who ultimately obtained written consent from
8 Mr. Aguirre?

9 A Investigator Barnes.

10 Q Okay. And I'm showing you Court's Exhibit Number 14.
11 Is that the consent to search form?

12 A Yes. I filled both of them out at the same time.
13 That's why the dates and times are the same.

14 Q But the actual signature was obtained from whom?

15 A Ms. Perez.

16 I'm sorry. On this form?

17 Q On this form.

18 A Mr. Aguirre.

19 Q Okay. And what law enforcement officer obtained that
20 signature?

21 A Investigator Barnes.

22 Q Okay. At any time did Mr. Aguirre object to you
23 searching that shed?

24 A He never vocalized or said anything directly towards
25 me, no, sir, nothing that I took as an objection.

1 Q Could you have gotten into that shed without a key?

2 A Without a key?

3 Q Yes.

4 A Without causing property damage, no, sir.

5 Q But you received the key, correct?

6 A Yes, sir.

7 Q You went into the shed and came back out. What
8 happened next?

9 A Based on what I saw, smelled, observed in the
10 building, I knew we had something more than patrol
11 division needed to deal with at that point. And
12 obviously, we had more than the MCEC concerns with the
13 power theft that they had already resolved by finding the
14 wires. So I contacted -- I asked dispatch to give me the
15 on-call narcotics agent, and this time it was Investigator
16 Barnes.

17 Q How long did it take for her to get there?

18 A Fifteen minutes, give or take a couple. Wasn't long.

19 Q Was the investigation turned over to her at that
20 point?

21 A Yes, sir.

22 Q What was your involvement once she arrived?

23 A I stood by at that point. Whenever we have a scene
24 where investigations of any type arrive on the scene, be
25 it narcotics, major crimes, crime scene, even though I'm a

1 patrol sergeant at the time, and a road supervisor, I
2 supervise the road, they're in charge of the scene at that
3 point. I was there as a uniformed officer.

4 Q Was Mr. Aguirre ever coerced to give any statements?

5 A No, sir.

6 Q Was he ever -- did you ever make any promises to him
7 to speak to you?

8 A I never directly spoke to him.

9 Q Did he ever ask for an interpreter?

10 A No, sir.

11 Q Did he say, "no hablo ingles"?

12 A Not that I ever heard.

13 MR. ROSS: That's all the questions I have for
14 you. Please answer anything Ms. Zmroczek has.

15 IN CAMERA CROSS-EXAMINATION

16 BY MS. ZMROCZEK:

17 Q Good morning, Sergeant Blake.

18 A Good morning.

19 Q You went there because you suspected there were
20 drugs. That's why you contacted narcotics. True or
21 false?

22 A I contacted narcotics for safety information.

23 Q Because you suspected that there might be drugs on
24 the property or some connection to drugs on the property?

25 A I wouldn't even call it a connection to drugs on the

1 property. I mean, there was a name given to us of
2 Izquierdo on behalf of MCEC. They said they possibly had
3 knowledge of narcotics, so I contacted narcotics to see if
4 that name sounded familiar because -- I do that -- if we
5 have a bad fire, I call fire services to secure the scene.
6 I secure the scene for EMS. I call other people.

7 Q I understand.

8 A So I called narcotics to see if we were dealing
9 with -- that name came across with related to firearms,
10 related to any type of -- I don't like dogs. I wanted to
11 know if they were involved with dog fighting because
12 narcotics involve dogs. So I had other reasons.

13 Q Sergeant Blake, I won't tell your dogs you don't like
14 them.

15 How many -- your response was you called
16 narcotics based on what you were told by MCEC because the
17 name they gave you they understood had a connection with
18 narcotics?

19 A Based on the name, sure.

20 Q That they gave you, you called narcotics. That was
21 the information you got from them?

22 A Because I wanted to know if there was safety issues
23 attached to that name.

24 Q Right. How did -- you said Sergeant Fine described
25 it as a knock-and-announce. You're saying it wasn't a

1 knock-and-announce. Either way, you get to the house, you
2 knock on the door, correct? Was it you or he that knocked
3 on the door?

4 A What are you -- what are you defining as a
5 knock-and-announce? If I knock on a door, obviously,
6 we're there, you can see a marked patrol car, we're
7 wearing a uniform, we've announced our presence just by
8 our sheer presence there. I didn't bang on the door and
9 yell, sheriff's department, come here, or anything like
10 that.

11 Q Of course not. You knocked on the door, and what did
12 you -- you just knocked on the door?

13 A I knocked on the door to see if somebody was going to
14 answer.

15 Q Did you ask for anybody in particular?

16 A I asked for the resident, people that reside there.

17 Q Okay. How was Ms. Perez dressed when she answered
18 the door?

19 A She was wearing -- she wasn't dressed to go to work,
20 not business clothes or anything, but she was wearing
21 house clothes. She was folding laundry. Casual, I guess.

22 Q And you never asked to speak with her husband or see
23 her husband?

24 A Again, going back to the safety issues, we always ask
25 is anybody else here. And she said her husband was

1 asleep, and she said, well, I can go wake him up. I said,
2 well, hold on. Don't worry about it just yet, because at
3 that point we didn't know what we had. I was going to let
4 the man sleep.

5 Q Okay.

6 A But she went and got him anyway. He came out on the
7 front porch.

8 Q All right. He came out on the front porch. And you
9 called MCEC?

10 A Yes. We told them everything was fine, come on in
11 and check the property.

12 Q How did they get under the house?

13 A They asked for -- you know, asked us to inquire about
14 a key because they could see through a crawl space
15 underneath the house to see visible wires that were there
16 that probably shouldn't be there. They were still
17 investigating wires.

18 Q So this is a different key incident than you were
19 referring to with the shed?

20 A Oh, yeah. Completely.

21 Q Okay. Now, you said that they found stolen or -- you
22 know, they found their spliced wires. So at that point,
23 you know that there has been larceny committed, correct?

24 A After they walked around the corner with the bundle
25 of wires.

1 Q Yes.

2 A Yes.

3 Q Okay. But it's your testimony that you didn't put
4 anybody under arrest at that time?

5 A No, because we didn't know -- we knew that they
6 resided there, but we also knew that based on MCEC's
7 records, that, you know, they had the transformer blow
8 from earlier. We had already talked to them about that.
9 I mean, it's kind of -- we were going to have to look into
10 it and see whether or not we would charge the people who
11 were living in the home with the power theft.

12 Q Because the transformer had blown five months
13 earlier, correct?

14 A That was what was indicated. So at that point, I
15 didn't have enough to comfortably stand in front of a
16 judge later on in court and say I know unequivocally these
17 are the two people that, you know, stole power because we
18 were going to further investigate.

19 From that point on, when they came around the
20 corner, no, I didn't put somebody in handcuffs and say
21 you're under arrest, because we needed to delve further
22 into it.

23 Q You said you couldn't stand in front of a judge
24 because all you had was five months earlier, a transformer
25 had blown?

1 A I needed further investigation going back. I needed
2 to confer with MCEC as to what their protocol was because
3 theirs is possibly different from SCE&G. So I have to sit
4 down and speak with people from MCEC, which honestly, on
5 the scene, we didn't have a chance to do which is why
6 nobody was put under arrest.

7 Q But you did before, and that is when they advised you
8 that there was a connection to narcotics. Before you even
9 got to the property, they advised you that there was some
10 connection or a possible connection to narcotics before
11 you ever got to the property which is why you called
12 narcotics?

13 A Because of individual's name sake, but not the
14 property.

15 Q Who eventually handcuffed the defendant?

16 A Handcuffed or placed under arrest?

17 Q Who eventually handcuffed the defendant?

18 A Deputy Fine did when the man stood up and put his
19 hands behind his back.

20 Q Did he ever have any other types of cuffs on?

21 A No.

22 Q He never had the belly cuffs with his hands in front?

23 A That came after Investigator Barnes responded to the
24 scene. I believe Investigator Barnes put the handcuffs in
25 front of Mr. Aguirre.

1 Q So she cuffed him. She changed his handcuffs?

2 A Correct. Because we handcuffed him from behind.

3 Q Do you know if Mr. Aguirre has any medical
4 conditions? Where you advised at that point that he had
5 any medical conditions?

6 A I don't remember.

7 Q You said that you got him to -- you got her to sign a
8 consent form, that Ms. Barnes witnessed her signature?

9 A I didn't witness it. I handed them both to
10 Investigator Barnes when she arrived on the scene.

11 Q That's where I'm confused. Why was Investigator
12 Barnes on the scene? Who called her?

13 A I did.

14 Q Why did you call her?

15 A Because after Ms. Perez had granted consent to check
16 out whatever was in the shed, we checked out what was in
17 the shed, and per what we have, I don't have the equipment
18 to deal with a marijuana grow operation.

19 Q How did Investigator Barnes witness her consent form
20 if she wasn't there? That's my question. That's all I
21 need to know, is how did Barnes witness her give consent
22 when she wasn't there?

23 MR. ROSS: Objection. Calls for speculation.

24 MS. ZMROCZEK: Your Honor, it's a question --
25 they're saying that she gave consent to search, and that's

1 when he found the marijuana and called Barnes, but then
2 he's telling me that Barnes signed it. I don't think it's
3 speculation, it's just a simple question. How did she
4 witness a signature if she wasn't there. I don't think
5 that's a speculative question.

6 MR. ROSS: Agent Barnes can answer that.

7 MS. ZMROCZEK: He's the one who entered the
8 form. It's his form. I don't understand why he can't
9 answer the question.

10 THE COURT: You can answer the question if you
11 can.

12 THE WITNESS: It was an evolving situation. I
13 mean, I had two forms that I signed at the same time. I
14 had got consent, I went and checked it out. And I handed
15 both forms over to Investigator Barnes when she got on the
16 scene.

17 BY MS. ZMROCZEK:

18 Q You get to the shed. You see or you smell a strong
19 odor of marijuana. At that point, do you say, I need to
20 get a warrant?

21 THE COURT: Is that a question or a statement?

22 BY MS. ZMROCZEK:

23 Q Did you -- did you get a warrant once you saw that
24 there was marijuana on the property?

25 A A search warrant? I didn't get any warrants, no.

1 Q Okay. Didn't get any warrants.

2 You contacted Lieutenant Hamilton?

3 A I believe it was Investigator Barnes.

4 Q Investigator Barnes contacted Lieutenant Hamilton?

5 A I believe so.

6 MS. ZMROCZEK: Okay. I have no further
7 questions, Your Honor.

8 THE COURT: Anything further?

9 MR. ROSS: No, Your Honor.

10 THE COURT: You may step down.

11 THE WITNESS: Yes, sir.

12 MR. ROSS: The State would call Detective Barnes
13 to the stand.

14 THE COURT: We're still at the house with the --

15 MR. ROSS: Yes, Your Honor.

16 THE COURT: With the same issue?

17 MR. ROSS: She'll address the consent to search,
18 and she's also going to testify regarding the statements
19 the defendant made to her.

20 THE COURT: Same statement or another statement?

21 MR. ROSS: It's a different statement, same
22 information essentially.

23 PAIGE BARNES, after being duly sworn, testified
24 as follows:

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

1 name, spelling your last.

2 THE WITNESS: Paige Barnes, B-A-R-N-E-S.

3 IN CAMERA DIRECT EXAMINATION

4 BY MR. ROSS:

5 Q Detective Barnes, you were the on-call narcotics
6 agent on October 7, 2011; is that correct?

7 A I responded to [REDACTED].

8 Q Okay. How did you respond there? What brought you
9 to respond to it?

10 A I was contacted by Lieutenant Hamilton to respond to
11 a residence because they were unsure of what they had.

12 Q Okay. Where were you when you received the call?

13 A I can't say for sure exactly where I was. I was
14 about 10, 15 minutes away from the address.

15 Q Okay. And you just got there in 10 or 15 minutes
16 then, right?

17 A Yes, sir.

18 Q What happened when you got there?

19 A When I arrived on scene, it was a very relaxed
20 situation. Deputy Fine was on the porch, people were just
21 kind of walking around. I pulled right up to the door. I
22 met with Sergeant Blake in the yard. He explained to me
23 that Mid-Carolina had been out there in reference to a
24 splice in a wire. He had gotten consent to search the
25 residence from the female half, and he went out to the

1 shed and found the marijuana grow. That's where I became
2 involved in it.

3 Q Okay. And what did you do once you were briefed on
4 the situation?

5 A I went back up to the porch. I introduced myself to
6 Mr. Aguirre, explained to him the situation that we had.
7 I read him -- I uncuffed him from behind, cuffed him in
8 front, advised him of his Miranda rights, and I also read
9 the consent to search which he signed and understood.

10 Q Okay. How did you read him his Miranda rights, in
11 English or Spanish?

12 A English.

13 Q And did you read it from a form or from memory?

14 A From a form.

15 Q What rights did you read?

16 A The consent to search or the Miranda --

17 Q No, Miranda rights.

18 A Oh, I'm sorry.

19 You have the right to remain silent, anything
20 that you say can be used against you in a court of law.
21 You have the right to an attorney. If you cannot afford
22 one, the State will provide you one. Do you understand
23 these rights as I have explained them?

24 Q And did the defendant appear to understand those
25 rights?

1 A He did.

2 Q Did he ask any questions as far as the nature of
3 those rights, what they meant?

4 A No, sir.

5 Q Did he speak in English or in Spanish to you?

6 A He spoke in English the whole time. I had no
7 precursor knowledge that they were even speaking Spanish.

8 Q Did he ever ask for an interpreter?

9 A No, sir.

10 Q Did he ever say "no hablo ingles"?

11 A No, sir.

12 Q Did he ever say "no comprendo"?

13 A No, sir.

14 Q So you read him his rights, you read that consent to
15 search form to him. Did he have any questions about the
16 consent to search form?

17 A No, sir.

18 Q Did he sign it?

19 A Yes, sir.

20 Q And specifically, are we referring to Court's Exhibit
21 Number 14?

22 A Yes, sir.

23 Q You witnessed him sign that document?

24 A Yes, sir.

25 Q Now, there was some confusion on Court's

1 Exhibit Number 13. What is Court's Exhibit Number 13?

2 A That's the consent to search that was signed by
3 Ms. Perez.

4 Q And is this your signature down here at the bottom
5 where it says "witness"?

6 A It is.

7 Q Did you actually see Ms. Perez sign this document?

8 A I did not.

9 Q Then why did you sign your name as a witness if you
10 didn't see it?

11 A Basically, Sergeant Blake handed me both of the
12 consent to search. After I had read it to Mr. Aguirre and
13 explained everything to him, I just signed both forms.

14 Q Did you subsequently speak with Ms. Perez?

15 A I did.

16 Q And what was the substance of your conversation with
17 her?

18 A Did she have a problem with us looking around, she
19 consented to the search as well. She verbally consented.

20 Q Did she give you any indication or place any limits
21 on where you could go?

22 A Absolutely not.

23 Q Did she object to your presence being there?

24 A No. She actually invited me in to talk further.

25 Q Did she object to anybody being there?

1 A No, sir.

2 Q Once you advised the defendant -- moving our focus
3 from Ms. Perez to Mr. Aguirre, once you advised the
4 defendant of his rights and signed that consent to search
5 form, did he give you a statement?

6 A He admitted that all the items in the shed were his.

7 Q And how did he say that?

8 A The marijuana is all mine. The marijuana is all
9 mine.

10 Q Okay. Did he say anything about Ms. Perez?

11 A That she didn't have anything to do with it.

12 Q Did he say this in English or in Spanish?

13 A English.

14 Q Did you have any problem understanding him?

15 A Absolutely not.

16 Q Did he appear to have any problem speaking the
17 English language?

18 A No, he did not.

19 Q So what happened next?

20 A I contacted Lieutenant Hamilton, advised him that we
21 had a large grow house, and I was going to need some
22 assistance from the rest of the narcotics team.

23 Q Did you search the house?

24 A I did.

25 Q What did you find when you searched the house?

1 A If I can refer back.

2 Q Was evidence obtained from the house ultimately?

3 A Yes, sir.

4 Q And was that evidence turned into the evidence room?

5 A Yes, sir.

6 Q Was evidence obtained from the shed?

7 A Yes, sir.

8 Q What evidence was obtained from the shed?

9 A Fifty-four marijuana plants.

10 Q Were those ultimately turned in to the evidence room?

11 A Yes, sir.

12 Q Did you offer any promises to Mr. Aguirre for
13 speaking with you?

14 A No, sir.

15 Q Did you coerce him in any way?

16 A No, sir.

17 Q Threaten him in any way?

18 A No, sir.

19 Q How about Ms. Perez, did you offer her any promises?

20 A No, sir.

21 Q Did you coerce her in any way?

22 A No, sir.

23 Q And would you say it was -- is it a fair statement to
24 say your interaction with them was relaxed?

25 A Very.

1 MR. ROSS: Nothing further. If you would please
2 answer anything Ms. Zmroczek has.

3 IN CAMERA CROSS-EXAMINATION

4 BY MS. ZMROCZEK:

5 Q Ms. Barnes, did you write a report in connection with
6 your visit to this address?

7 A My response to the address, yes.

8 Q Let me show you what's been marked as Court
9 Exhibit 6. Can you identify that?

10 A Yes. That is my report.

11 Q You wrote this report on the day that you were at
12 [REDACTED], correct?

13 A Correct.

14 Q And everything that you put in that report would be
15 accurate as you remember it on that very date, correct?

16 A Correct.

17 Q In the report, it says you were notified by
18 Lieutenant Hamilton that the power company, Midlands
19 Power, was currently out at -- and I assume it's a
20 scribner's error -- at [REDACTED], but we know that it's [REDACTED]
21 [REDACTED] in Batesburg in reference to a possible
22 indoor marijuana grow. That's what you were told?

23 A Yes, ma'am.

24 Q You weren't told that they were out for a possible
25 larceny. You were told that they were out there for a

1 possible indoor marijuana grow, correct?

2 A By my lieutenant, correct.

3 Q Was your lieutenant there?

4 A No. He was contacted by Sergeant Blake.

5 Q So it was Sergeant Blake that contacted Hamilton?

6 A Uh-huh.

7 Q You spoke with Sergeant Blake and he advised you that
8 the consent to search had already been signed, and that
9 after the consent -- after the consent to search was
10 signed and after they found the marijuana, then

11 Mr. Aguirre put his hands up and said, It's mine, and he
12 was handcuffed. That's what your report says, correct?

13 Let me just read it to you. It says, Sergeant
14 Blake advised on the property, contained 54 marijuana
15 plants, a filtration system, electrical box in a side room
16 which appeared to be a nursery. Sergeant Blake advised me
17 the defendant, Leandro Aguirre, admitted all the items
18 were his and immediately turned around and put his hands
19 behind his back. Is that correct? That's what you were
20 told, that after they went to the shed and found this
21 marijuana that he then put his hands behind his back?

22 A No. He put his hands behind his back before they
23 even made it to the shed.

24 Q Okay.

25 A He admitted all the items were his and immediately

1 stood up and turned around and put his hands behind his
2 back. There was no confirmation yet of what was in the
3 shed.

4 Q Did you take pictures that day?

5 A I did.

6 Q How soon after you arrived at the scene did you take
7 pictures?

8 A Well, I read Mr. Aguirre his consent to search which
9 he signed, I spoke with him briefly, I spoke with
10 Ms. Perez briefly. I made contact with my lieutenant and
11 advised him of the situation. Probably 20 minutes.

12 Q And you're saying that Mr. Aguirre signed the consent
13 to search in front of you and he had no problems reading
14 or understanding it?

15 A No.

16 Q At any point did you -- did Mr. Aguirre go into the
17 house with you?

18 A I can't recall.

19 Q I'm going to show you --

20 MS. ZMROCZEK: I'm going to mark this as Court's
21 15.

22 (WHEREUPON, The Court's Exhibit No. 15 was
23 marked for purposes of the record.)

24 BY MS. ZMROCZEK:

25 Q I'm showing you what's been marked as Court's Exhibit

1 15. Do you recognize that?

2 A I'm assuming it's one of the photos I took.

3 Q What does that photo depict?

4 A Mr. Aguirre.

5 Q Inside the house?

6 A Yes, ma'am.

7 Q What would be the reason that you would be inside the
8 house with Mr. Aguirre?

9 A He might have had to use the restroom.

10 Q Okay. I'm going to show you what's been marked as
11 Court Exhibit 10. Do you recognize that photo?

12 A That is a photo I took in front of the house.

13 Q At what point do you recall taking this photo?

14 A That was the first one I took.

15 Q After you had already spoken with Mr. Aguirre and
16 gotten the consent?

17 A Yes.

18 Q And does that photo depict Mr. Aguirre sitting cuffed
19 on the porch?

20 A In the front, correct, where I placed him.

21 Q When you read someone their rights, do you have them
22 initial a form or sign so that you know that they
23 understood?

24 A No.

25 Q Just to be clear, the reason that you went out there

1 to the property at [REDACTED] was in response to
2 information you received that the Midlands Power Company
3 was there in reference to an indoor marijuana grow,
4 correct, as stated in your report?

5 A I was contacted by Lieutenant Hamilton to respond to
6 [REDACTED] in reference to a possible indoor
7 marijuana grow.

8 Q That he was advised -- your report says that the
9 power company is currently out there?

10 A Yes.

11 MS. ZMROCZEK: Nothing further.

12 MR. ROSS: I don't have any further, sir.

13 THE COURT: Thank you. Any further witnesses by
14 the State?

15 MR. ROSS: No, Your Honor.

16 THE COURT: By the defense?

17 MS. ZMROCZEK: Yes, Your Honor. We would like
18 to call Detective Tracy to the stand.

19 DENNIS TRACY, after being duly sworn, testified
20 as follows:

21 THE CLERK: Once you're seated, state your full
22 name, spelling your last on the record, sir.

23 THE WITNESS: Dennis Tracy, T-R-A-C-Y.

24 IN CAMERA DIRECT EXAMINATION

25 BY MS. ZMROCZEK:

1 Q Detective Tracy, could you tell the Judge where
2 you're employed now?

3 A State Law Enforcement Division.

4 Q Where were you employed in 2011?

5 A Lexington County Sheriff's Department.

6 Q In what unit were employed?

7 A Narcotics unit.

8 Q Do you recall doing any investigation regarding
9 marijuana grow houses in the Batesburg-Leesville area
10 around October of 2011?

11 A I do.

12 Q How long was that investigation?

13 A It was multiple months, somewhere between four and
14 six months, if I recall correctly.

15 Q When did you make your first arrest?

16 A Beginning of October.

17 Q Would it be safe to say October 4th?

18 A Yes, ma'am.

19 Q October 4, 2011, you made your first arrest in the
20 marijuana grow house?

21 A Correct.

22 Q When you went to make your first arrest, what
23 information did you base that off of?

24 A We had search warrants based on informant statements.

25 Q I'm going to show you what's marked as Court

1 Exhibit 7. Can you identify that?

2 A I can.

3 Q What is that?

4 A This is a search warrant for the address of [REDACTED]

5 [REDACTED] that we had Judge McMahon sign.

6 Q Or Judge Roth?

7 A No. It's Judge McMahon. Judge McMahon does not
8 accept returns, and he advised us to take the return to
9 Judge Roth.

10 Q Okay. And what else is connected to that?

11 A An affidavit page and an extended affidavit.

12 Q You provided a two-page affidavit in securing those
13 search warrants?

14 A Yes, sir. Yes, ma'am.

15 Q When you suspect that a property has marijuana, is it
16 typical that you secure a search warrant?

17 A There are many ways to work a narcotics
18 investigation. We obtained search warrants in this one
19 due to the reliability factor that we had with our
20 informant and the fact that we knew this was going to be a
21 large scale operation. We had seven targeted locations.
22 We were not going to do seven knock-and-talks, we were
23 going to do -- we wanted to do it as a full operation
24 where we had paper backing our entries.

25 Q When did you notify Mid-Carolina about this narcotics

1 investigation and these narcotics arrests?

2 A If I recall, we notified them the day of the
3 execution while we were on scene at the location.

4 Q So October 4, 2011, you notified them about the grow
5 house?

6 A As far as I recall.

7 Q What information did you provide?

8 A I believe the first thing we notified them was that
9 we had a hazardous situation with the way that the
10 electrical had been spliced, and then they were breaking
11 high -- a higher voltage down using capacitors, which is a
12 dangerous situation. So we needed the power company to
13 come out and secure the scene so we could disassemble
14 everything.

15 Q When did you tell them that Jennifer Izquierdo's name
16 was involved in these grow houses?

17 A I'm not sure I ever disclosed that name to them.

18 Q When did you learn of that name?

19 A I learned the name Jennifer Izquierdo when I was
20 doing background checks on the residences through law
21 enforcement database checks.

22 Q And in your affidavit, did you swear that the
23 informant identified her as being connected to all of
24 these grow houses?

25 A Yes, ma'am.

1 Q In fact, lists her name as being married to one of
2 the operators, correct?

3 A That was the information we obtained.

4 Q Based on that information, you go to, you said, seven
5 locations?

6 A I believe we had seven -- there was seven locations,
7 I believe.

8 Q Mr. Aguirre's name wasn't in any of these?

9 A No, ma'am.

10 Q But on October 4th, MCEC was made aware that grow
11 houses were made -- were existent in connection
12 with Ms. Izquierdo's name?

13 A They were advised that grow houses were located.
14 What research they did on their own I can't testify to.

15 Q All right. Did you ever go to [REDACTED]?

16 A I believe I had a different address on [REDACTED].
17 I didn't even know anything about [REDACTED].

18 Q He wasn't in any of the information provided?

19 A Not that was provided to me.

20 MS. ZMROCZEK: I have no further questions.

21 THE COURT: Anything further?

22 IN CAMERA CROSS-EXAMINATION

23 BY MR. ROSS:

24 Q The search warrants that were executed October 4,
25 2011, you were the lead case agent on that?

1 A Yes, sir.

2 Q Did you find any information from those homes that
3 connected Leandro Aguirre to those homes?

4 A No, sir.

5 Q Was Leandro Aguirre on scene of any of those homes?

6 A No, sir.

7 Q Was there any evidence that he had lived at any of
8 those homes?

9 A Not that we found.

10 Q Was there any evidence that he had ever stayed at any
11 of those homes?

12 A No, sir.

13 Q And the search warrants you obtained on October 4,
14 2011, you obtained them from Judge McMahon; is that
15 correct?

16 A I did.

17 Q Did he place you under oath?

18 A He did.

19 Q In addition to the affidavit that was submitted as a
20 Court's exhibit, did Judge McMahon question you regarding
21 your investigation?

22 A He did.

23 Q And did he ask you about the reliability of your
24 informant?

25 A He also did that.

1 Q And did you explain how that CI was reliable?

2 A We did.

3 Q Okay. And how did you know he was reliable, the CI
4 was reliable?

5 A We established our reliability factor based on, one,
6 checking the information out that he had provided us with
7 names and addresses. We also established his reliability
8 factor using him to conduct a controlled purchase of
9 cocaine from a known target of the Lexington County
10 Sheriff's Department who was a cocaine dealer. The phone
11 numbers he had for the suspect and the buy itself was
12 recorded. Everything went smooth and everything checked
13 out. So he was proven reliable in that he said he could
14 obtain narcotics and was able to obtain narcotics from a
15 known target.

16 Q And this was a controlled purchase?

17 A It was.

18 Q Was he searched before he bought narcotics?

19 A Yes, sir, he was.

20 Q And was he wired before he bought narcotics?

21 A He was.

22 Q And did the contents of what was said over that wire,
23 was that consistent with the narcotics transaction?

24 A It was.

25 Q Did he bring back narcotics to you?

1 A Yes, sir, he did.

2 Q And was he under surveillance during the controlled
3 buy?

4 A He was.

5 MR. ROSS: I have nothing further of this
6 witness.

7 MS. ZMROCZEK: I have a few questions.

8 IN CAMERA REDIRECT EXAMINATION

9 BY MS. ZMROCZEK:

10 Q You said that the CI was reliable regarding the
11 information that you swore to in this two-page affidavit,
12 correct?

13 A Yes, ma'am.

14 Q You said -- so you were able to confirm that
15 according to your CI, that Jacqueline Naranjo and Jennifer
16 Izquierdo on October 3rd, or as close there about, 2011,
17 were living on [REDACTED]?

18 A The information we received from him was
19 approximately -- we had been working this for four months,
20 so this was information that was obtained over the course
21 of that four months. We did learn that they had moved out
22 approximately two weeks prior after this execution of the
23 search warrant.

24 Q So you were relying on information for your affidavit
25 that was in some part at least four months old?

1 A No, ma'am. Most of the information was current. Our
2 informant was not aware that they had moved out of that
3 house.

4 Q Was that the only thing wrong? That was the only
5 thing that you weren't able to verify?

6 A That's the only thing that was brought to my
7 attention. The rest of the information on the search
8 warrants were fairly successful.

9 Q So the information on the search warrant that lists a
10 Joel Okendo as a major supervisory drug dealer are
11 accurate?

12 A From what we ascertained from interviews of suspects,
13 that he was a -- he was a substantial member of this
14 organization.

15 Q You've never arrested him, have you?

16 A No, ma'am.

17 Q So you know that he deals or is a major --

18 THE COURT: Which case are we working on now?

19 MS. ZMROCZEK: Well, he's -- he's relying on
20 information.

21 THE COURT: Which case are we working on now?

22 MS. ZMROCZEK: Which case are we in trial for?
23 It's Mr. Aguirre's case.

24 THE COURT: That you're having this witness
25 testify concerning.

1 MS. ZMROCZEK: Well, I'm having him testify to
2 information that states that -- that deals with
3 Ms. Izquierdo which is the whole reason MCEC stated that
4 they went out to the property in the first place. Well,
5 that and that they had abnormal meter readings, depending
6 on who you listen to.

7 So the information that I'm -- the information
8 that was testified to is that they were told --

9 THE COURT: Okay. Just forget the question.
10 Your response seems to be an argument.

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

13 THE COURT: Anything further?

14 MR. ROSS: No, Your Honor.

15 THE COURT: You may step down.

16 Next witness.

17 MS. ZMROCZEK: Your Honor, I call Mishelin
18 Perez.

19 MISHELIN PEREZ, after being duly sworn,
20 testified as follows:

21 THE CLERK: Once you're seated, state your full
22 name, spelling your last on the record.

23 THE WITNESS: Mishelin Perez, P-E-R-E-Z.

24 IN CAMERA DIRECT EXAMINATION

25 BY MS. ZMROCZEK:

1 Q Ms. Perez, where were you residing on October 7,
2 2011?

3 A [REDACTED], Leesville.

4 Q Do you recall the police coming to your house that
5 day?

6 A Yes.

7 Q Can you explain how that -- can you explain your
8 recollection of that morning?

9 A When they came to the door, I was in my office on the
10 computer and my husband, Leandro, was sleeping, and so was
11 my daughter, Nicole.

12 Q How did they knock on the door?

13 A Pretty strong.

14 Q And you opened the door?

15 A Yes, I did.

16 Q How did you respond to their questions?

17 A Can you rephrase that?

18 Q Did they ask you any questions?

19 A Yes.

20 Q What questions were you asked?

21 A If I was Jennifer Izquierdo.

22 Q What did you tell them?

23 A No.

24 Q Who is Jennifer Izquierdo?

25 A My sister.

1 Q Did she ever live at your property?

2 A Never.

3 Q Did she ever get power in your name at that property
4 or did she ever have any power at that property to your
5 knowledge?

6 A No.

7 Q When did you move into that property?

8 A December 28, 2010.

9 Q And who did you contact to set up power at that
10 point?

11 A Mid-Carolina.

12 Q How many times did you contact Mid-Carolina while you
13 lived at that address?

14 A A couple of times.

15 Q Do you recall contacting them about a blown
16 transformer?

17 A Yes.

18 Q Explain why you called them and what happened.

19 A My husband and I and my daughter were out, and we
20 came home and I saw that there was no fan going on or
21 anything like that. I proceeded to check around the
22 house, and there was nothing wrong. I also checked the
23 fuse box, everything was perfect. So I decided to call
24 Mid-Carolina to see what was going on. That's when they
25 dispatched someone out.

1 Q They did respond?

2 A Yes.

3 Q What was your understanding from their responding to
4 the transformer?

5 A That a squirrel had hit or did something to the
6 transformer. That's why it blew.

7 Q And that was in March. Did you ever have any other
8 transformer problems after that?

9 A Never.

10 Q Any other power problems after that?

11 A No.

12 Q Why did you ask your husband to come out when the
13 police knocked on the door?

14 A Because the officer told me to tell my husband to
15 come outside.

16 Q What happened after he went outside?

17 A He was at the door and Officer Blake pulled him out,
18 handcuffed him behind, and proceeded to speak to him.

19 Q Officer Blake spoke to your husband after he
20 handcuffed him?

21 A Uh-huh, yes.

22 Q Did you ever scream at your husband, yell at him,
23 raise your voice?

24 A You mean in which way?

25 Q They stated that -- did you ever try to attack your

1 husband in front of the police officers?

2 A No.

3 Q Okay. What did the police -- when the police got
4 your consent to search, what were you told when you signed
5 that form?

6 A That I had to sign the form.

7 Q Were you told why you had to sign the form?

8 A Because they needed to have a paper signed, that I
9 had to give them authorization to search the house.

10 Q When did you sign that form?

11 A After the -- Officer Blake had gone all around the
12 house, inside the house, and came back out.

13 Q Had he gone to the shed at that point?

14 A He had gone to the shed, but he could not open it
15 because there was a lock on the door.

16 Q So he had been in your house, he had been at the
17 shed, and then he asked you to sign the consent form?

18 A No. He asked me to sign the form after he went --
19 asked my husband about the key to open the shed. And my
20 husband proceeded to tell him that the key was inside the
21 utility room, which I went with Officer Blake to go look
22 for it. I couldn't see -- I touched or reached. I
23 couldn't touch, I couldn't reach. I couldn't see
24 anything. There's not a light inside the closet where the
25 AC unit is. So Officer Blake said, Let me do it, let me

1 check, search. So he went in and -- with a flash light,
2 started looking and said, oh, clever little sucker, and
3 took the keys and we proceeded to go out and he proceeded
4 to go to the shed.

5 Q Did Officer Blake or Officer Fine ever present
6 themselves as threatening to you?

7 A Yes.

8 Q Describe that.

9 A When I opened the door, Officer Blake had a shotgun
10 in his hand, and he was pointing it like this at the door.
11 He was the one here, Officer Fine was behind, like on the
12 side of him. Especially when my husband came out, he was
13 armed.

14 Q Did he state why he was armed? Do you know why he
15 was armed?

16 A No. There wasn't a reason for me to know.

17 Q Were you ever told you would be arrested?

18 A Yes.

19 Q When?

20 A When Officer Blake asked my husband what was in the
21 shed, that if he didn't tell him that it was his, myself
22 and my daughter would be arrested.

23 Q Was that before or after you signed the form?

24 A Before.

25 MS. ZMROCZEK: I have nothing further.

1 THE COURT: Yes, sir.

2 IN CAMERA CROSS-EXAMINATION

3 BY MR. ROSS:

4 Q Leandro is your husband?

5 A Yes.

6 Q How long have you all been married?

7 A Eighteen years.

8 Q Your last name is Perez, correct?

9 A Correct.

10 Q This last name is Aguirre, correct?

11 A Correct.

12 Q How does that work if you're married to him?

13 A Well, we've been together for 18 years. I would
14 consider that married.

15 Q Okay. You never had a formal marriage ceremony?

16 A No.

17 Q Common law marriage, I guess?

18 A Correct.

19 Q Okay. You all have children in common?

20 A Correct.

21 Q Is it two?

22 A One.

23 Q One child in common. She's in court?

24 A No.

25 Q What's your child's name?

- 1 A Which one?
- 2 Q The one you have in common with Mr. --
- 3 A Nicole.
- 4 Q Do you have any other children?
- 5 A Yes.
- 6 Q Okay. How many other children?
- 7 A Including Nicole would be four.
- 8 Q You have been in the country for how long?
- 9 A I'm born here.
- 10 Q You were born here?
- 11 A Yes.
- 12 Q Okay. Mr. Aguirre was born in Cuba; is that correct?
- 13 A Correct.
- 14 Q And he's been a naturalized citizen since 1990; is
- 15 that correct?
- 16 A Somewhere -- about 23, 24 years now.
- 17 Q So he's lived in America, and he's been a citizen for
- 18 23 years, correct?
- 19 A Or more.
- 20 Q Or more. He's worked as well during those 23 years,
- 21 correct?
- 22 A Yes. And I can only answer from the day he became my
- 23 husband.
- 24 Q But he's always had a job, correct?
- 25 A Correct.

1 Q And the day that the police came, he was working at
2 Wal-Mart, correct?

3 A Correct.

4 Q That's the Wal-Mart in Batesburg-Leesville?

5 A Correct.

6 Q But he doesn't know English, does he?

7 A He speaks enough to be able to somewhat defend
8 himself.

9 Q Okay. So he speaks enough to get along in America
10 just fine?

11 A No.

12 Q He speaks enough to work at Wal-Mart, correct?

13 A Well, he doesn't require speaking at Wal-Mart with
14 his type of job.

15 Q He speaks enough to work any other job he's had,
16 correct?

17 A Any other jobs that he's working while he's been my
18 husband, there hasn't been any need for him to speak
19 English.

20 Q And you said Sergeant Blake put the defendant in
21 handcuffs, correct?

22 A Correct.

23 Q It was unclear when he put him in handcuffs. When
24 did he put him in handcuffs?

25 A As soon as he pulled him from the door out. Put the

1 handcuffs behind him, and proceeded to sit him down on a
2 lounge chair on the porch.

3 Q So as soon as they knocked on the door -- or as soon
4 as Mr. Aguirre walked out, he was placed in cuffs?

5 A Correct.

6 Q There's no doubt in your mind?

7 A None whatsoever.

8 Q You saw this for a fact, right?

9 A I was right there next to them.

10 Q Okay. You also mentioned that Sergeant Blake had a
11 shotgun; is that correct?

12 A Correct.

13 Q And when did the shotgun come into play?

14 A He had it when he came on the porch, when he knocked
15 on the door. He had Officer Fine -- and Officer Fine had
16 his gun on his holster.

17 Q So Officer Fine had a weapon. Was it a handgun?

18 A His -- whatever --

19 Q His service revolver?

20 A Yes. He had the little protective clipper off, and
21 he just had his hand on it, and Officer Blake was the one
22 with the shotgun.

23 Q And no doubt about it?

24 A No doubt whatsoever that that officer there is
25 Officer Blake with the shotgun.

1 Q Okay. And he put a shotgun in your face?

2 A No. He put the shotgun into my husband's face.

3 Q Okay.

4 A And I wouldn't consider it a face, because he's sort
5 of short compared to my husband. It was more down away
6 from the face.

7 Q Okay. So he pointed the shotgun on the porch,
8 correct?

9 A Correct.

10 Q And I'm showing you Court Exhibit Number 10. Is that
11 Sergeant Blake on the porch with your husband?

12 A Yes, it is.

13 Q Where is the shotgun?

14 A That wasn't when he came into the door.

15 Q Oh, okay.

16 A Yeah. The shotgun was put away after he put him in
17 handcuffs, back into -- into his car.

18 Q And you saw Sergeant Blake put his shotgun up, too,
19 right?

20 A Yes. He had a gun already out by the time my husband
21 and me came to the door.

22 Q And you testified that he had put it up by the time
23 this picture was taken?

24 A Yeah. That picture was -- if you notice, I'm not on
25 the porch, Officer Fine is not on that porch.

1 Q Okay.

2 A That was right before he was going to be put into his
3 truck or to his car, Officer Blake's car or something.

4 Q You saw Sergeant Blake put his shotgun up?

5 A He went down with the shotgun off the porch. So I'm
6 assuming -- did he come back with it? That he went and
7 put it in his car.

8 Q All right. Let me show you this picture again. You
9 testified that a shotgun was put in your husband's face,
10 correct?

11 A Uh-huh. Yes.

12 Q You testified that they threatened to put you -- to
13 arrest you, right?

14 A And my daughter.

15 Q They threatened to arrest your daughter, too?

16 A Correct.

17 Q That was a very -- sounds like a very tense
18 situation, correct?

19 A It's not something you expect to hear, but that's the
20 situation that was said to me and presented.

21 Q I'm assuming you would be scared, right?

22 A Yeah. You do get scared if you have any type of cop
23 or anyone with a gun in their hands pointing at you, any
24 part of your body.

25 Q So you were scared, correct?

1 A Yes.

2 Q And you weren't going back and forth into the house
3 doing laundry like the officers testified to earlier?

4 A No.

5 Q And it wasn't relaxed small talk out on the scene
6 with the officers and your husband, correct?

7 A After everything calmed down, everything was smooth.
8 There was no hostility anywhere. Everybody was doing
9 their job.

10 Q But initially, there was hostility because they
11 knocked on the door, dragged him out of bed?

12 A They didn't drag him out of bed. I woke him up at
13 their request.

14 Q Okay. So you woke him up, and he came out and
15 ultimately a shotgun was pointed at him?

16 A Yes.

17 Q Court's Number 13, do you recognize this piece of
18 paper?

19 A Yes, I do.

20 Q That's your signature at the bottom, right?

21 A Correct. And the top also. That's my handwriting.

22 Q Where is says "Mishelin Perez"?

23 A "Mishelin Perez," my handwriting. Signature, my
24 handwriting.

25 Q Okay. So you wrote that part and you signed it?

1 A Correct.

2 THE COURT: Mr. Ross, I think we're going to
3 break now, and come back in about a half hour or so.

4 MR. ROSS: Yes, Your Honor.

5 THE COURT: Ma'am, you're under oath. You're
6 not allowed to discuss your testimony with anyone, the
7 lawyer, your family, your friends, with anyone. If you
8 discuss your testimony with anyone, you would be in
9 contempt of court. Do you understand?

10 THE WITNESS: Okay.

11 THE COURT: We'll break until -- for about a
12 half an hour.

13 MR. ROSS: Your Honor, is this going to be our
14 lunch break?

15 THE COURT: Yes, it's a lunch break. We'll come
16 back at ten after 2.

17 (Lunch break was taken.)

18 THE COURT: Where are our interpreters? Before
19 we go any further, let's swear both of you in.

20 THE CLERK: Please stand and raise your right
21 hand.

22 First off, let me get your names, please, for
23 the record.

24 Your name, please, sir, and spell your last.

25 THE INTERPRETER: Alejandro Garcia, G-A-R-C-I-A.

1 THE INTERPRETER: Anna Marin, M-A-R-I-N.

2 ALEJANDRO GARCIA AND ANNA MARIN, after being
3 duly sworn, interpreted Spanish into English and English
4 into Spanish as follows:

5 THE COURT: You all have been interpreting since
6 the beginning of this case; is that right?

7 THE INTERPRETER: Yes.

8 THE INTERPRETER: Yes.

9 THE COURT: And do you acknowledge that,
10 Counselor?

11 MS. ZMROCZEK: I do, Your Honor. We do not
12 raise any objection.

13 THE COURT: Thank you very much.

14 You may proceed, Mr. Ross.

15 CONTINUED IN CAMERA CROSS-EXAMINATION

16 BY MR. ROSS:

17 Q Ms. Perez, where do you work at?

18 A Housewife.

19 Q You don't work?

20 A No.

21 Q When was the last time you worked?

22 A Just cleaning here and there. It's not -- a job at a
23 place, years.

24 Q Several years since you have had a regular steady
25 job?

1 A Correct.

2 Q Is it safe to say that Mr. Aguirre is the sole source
3 of income for the house?

4 A Yes.

5 Q You don't receive child support from anybody else, do
6 you?

7 A No.

8 MR. ROSS: That's all the questions I have, Your
9 Honor.

10 MS. ZMROCZEK: I have nothing further.

11 THE COURT: You may step down.

12 MS. ZMROCZEK: Your Honor, I just have one more
13 witness. I'm going to put the defendant on the stand, but
14 it's simply going to be at the very limited scope of the
15 statements that he made.

16 LEANDRO AGUIRRE, after being duly sworn,
17 testified as follows:

18 THE CLERK: Upon having a seat, state your full
19 name, spelling your last on the record.

20 THE INTERPRETER: My name is Leandro Pavian
21 Aguirre.

22 Do I have to spell my last name?

23 THE CLERK: Yes.

24 THE INTERPRETER: A-G-U-I-R-R-E.

25 (REPORTER'S NOTE: All answers that require

1 interpretation are given by the Interpreter, Alejandro
2 Garcia, unless otherwise indicated.)

3 IN CAMERA DIRECT EXAMINATION

4 BY MS. ZMROCZEK:

5 Q Mr. Aguirre, do you speak and understand some
6 English?

7 THE DEFENDANT: A little bit.

8 THE INTERPRETER: A little bit.

9 BY MS. ZMROCZEK:

10 Q And for the purposes of having a translator here, go
11 ahead and let him say what I say.

12 A Okay.

13 Q What problems, if any, do you have speaking and
14 understanding the English language?

15 A Two of them.

16 Q Tell us. Tell us what the problems are.

17 A Sometimes I don't understand really well, and I don't
18 know how to speak it really well.

19 Q But you do acknowledge that you can understand and
20 speak some of it?

21 A A little bit.

22 THE COURT: So, si, do you need an interpreter
23 or not?

24 THE WITNESS: Uh-huh.

25 THE COURT: Sir?

1 THE INTERPRETER: Yes.

2 THE COURT: All right.

3 BY MS. ZMROCZEK:

4 Q Do you recall the events of the morning of October 7,
5 2011?

6 A Yes.

7 Q And I'm only asking about a very limited time period.
8 I want for you to tell the Court what you remember about
9 how you were woken up and the events that immediately
10 followed that.

11 Who woke you up that morning?

12 A My wife.

13 Q What did you do after she woke you up?

14 A She told me that the police, they were at the door,
15 and they wanted to see me.

16 Q Did you go to the door?

17 A Yes.

18 Q And what did you see when you got to the door?

19 A One of the police officers, he had the shotgun, the
20 shotgun on his hands.

21 Q Do you see that officer in the courtroom today?

22 A It's the one that is right there.

23 MS. ZMROCZEK: Do you mind standing up?

24 BY MS. ZMROCZEK:

25 Q Sergeant Blake is standing up. Is that the officer?

1 A Uh-huh.

2 Q So you walked out into the living room, and Sergeant
3 Blake is pointing a shotgun at you. Is he in the house or
4 is he outside?

5 A Outside. He asked me to go out.

6 Q He asked you to go out. Was he yelling at you or
7 just speaking?

8 A No, just speaking normally.

9 Q When you went outside, what did you do?

10 A He asked me in English if he could call the company
11 to check on the energy.

12 Q And did you allow him to do that?

13 A I told him yes, and what he did is he start talking
14 over the phone.

15 Q And then what happened?

16 A Then he told me later, do you know why I am here.

17 Q Did you respond?

18 A I said I don't know.

19 Q Did he ask you any more questions?

20 A And then he told me, I am here because I want to know
21 what's going on on that little house, the shed, the big
22 one.

23 Q Did you give him an answer as to what was going on
24 with the shed?

25 A I told him that what he was looking for, it was

1 there.

2 Q What happened next?

3 A Then the company came over, they show up, and they
4 went to the back.

5 THE DEFENDANT: And turn around, and put me in
6 the handcuffs.

7 THE INTERPRETER: And then he told me, he told
8 me turn around, and he put me in the handcuffs.

9 BY MS. ZMROCZEK:

10 Q Are you sure that you didn't put your hands up and
11 say -- what, if anything, did Officer Fine say to you?

12 THE DEFENDANT: No.

13 BY MS. ZMROCZEK:

14 Q What, if anything, did Officer Fine say to you?

15 THE INTERPRETER: Your Honor, I just need to
16 know, if he responds in English, do you want me still to
17 interpret, because it's like before I'm interpreting he's
18 answering, so I don't know what you want me to do.

19 THE COURT: I think we'll note that he's
20 responded in English.

21 THE INTERPRETER: Okay.

22 BY MS. ZMROCZEK:

23 Q So who put you in handcuffs, the same officer with
24 the shotgun, Sergeant Blake?

25 A I don't know what's his name.

1 Q Where was the other officer? Where was the other
2 officer -- I know where he is in the courtroom today. I
3 mean that morning, where was he?

4 A He was just right next to like the lower level of the
5 porch.

6 Q Did he say anything to you?

7 A No. When he saw that the other officer put the
8 handcuffs on, he came running and he asks what's going on.

9 Q After they put you in handcuffs, were you asked any
10 more questions?

11 A He told me that if he were not to say that everything
12 that was there was mine, they were going to arrest my wife
13 and my daughter.

14 Q Did you sign the consent form?

15 A No.

16 Q Did you -- were there any other people that came to
17 the house that afternoon?

18 A Yes. Like a little bit later, there was a young
19 woman who show up. She was really skinny.

20 Q When she showed up, were you in handcuffs or where
21 were you?

22 A Yes.

23 Q Did you speak with this woman?

24 A No. She just go to the house and she walked into the
25 house.

1 Q Is she in the courtroom today?

2 A Yes. I cannot recognize her based on her face.

3 Q You can or cannot?

4 A Yes. Yes.

5 Q Are you indicating Investigator Barnes?

6 A Yes.

7 Q Did you speak with Investigator Barnes at all during
8 that context?

9 A After she came out of the house later, I talked to
10 her, and she asked me who owns the safe box that is there,
11 and I told her that it was mine.

12 Q Did you ever go in the house with Detective Barnes?

13 A No, not really, just to the living room and that was
14 it.

15 Q Did you feel like you could leave your house when the
16 police got there that morning?

17 A No.

18 Q What were your thoughts and feelings from the time
19 that you had contact with the police that morning?

20 A What do you mean, what were my thoughts and feelings?

21 Q Did you think that you had the right to tell them to
22 leave?

23 A Yes.

24 Q Did you ever ask them to leave?

25 A No.

1 Q Did you -- why did you tell them that it was okay for
2 them to -- did you ever tell them that it was okay to
3 search your house?

4 A Because there was no any other way out.

5 MS. ZMROCZEK: No further questions at this
6 time.

7 THE COURT: Mr. Ross.

8 IN CAMERA CROSS-EXAMINATION

9 BY MR. ROSS:

10 Q Mr. Aguirre, you're an American citizen, correct?

11 A Yes.

12 Q You were naturalized as a citizen 20 years ago,
13 correct?

14 A Yes.

15 Q And your naturalization certificate was in your home,
16 correct?

17 A Yes.

18 Q Before you can become a citizen, you got to take a
19 test, right?

20 A Yes.

21 Q And that test covers civics, correct?

22 A Yes.

23 Q So you learned about U.S. Congress, right?

24 A Right.

25 Q The legislative branch, right?

1 A Yes.

2 Q The learned about the president and the executive
3 branch, right?

4 A Yes.

5 Q And you learned about the Supreme Court and the
6 judicial branch, right?

7 A Yes.

8 Q You learned that there are state governments?

9 A Yes.

10 Q And there are federal governments?

11 A Yes.

12 Q There are 50 states, correct?

13 A Yes.

14 Q And there is one federal government, correct?

15 A Yes.

16 Q And all of this is covered on the test, right?

17 A Yes.

18 Q And you learn about American history, right?

19 A No.

20 Q You don't learn basic American history before you can
21 become a citizen?

22 A No, because when you become a citizen of the United
23 States and you haven't studied in this country, they only
24 ask you 20 questions.

25 Q You learned English, right?

1 A No.

2 Q English wasn't a requirement for you to become a
3 citizen?

4 A Yes, but they don't ask you many questions.

5 Q Okay. You have worked in this country since you have
6 been a citizen, right?

7 A Yes.

8 Q And that's well over 20 years, correct?

9 A Yes.

10 Q And you were working down in Batesburg-Leesville when
11 the police came knocking on your door that day, right?

12 A Yes.

13 Q You were working at the Wal-Mart there, correct?

14 A Yes.

15 Q You weren't having any problems doing your job down
16 at the Wal-Mart in Batesburg, were you?

17 A No.

18 Q Most of your co-workers spoke English, didn't they?

19 A Uh-huh.

20 Q And you were able to communicate with them, weren't
21 you?

22 A A lot.

23 MR. ROSS: Nothing further, Your Honor.

24 MS. ZMROCZEK: That's all I have, Your Honor.

25 THE COURT: You may step down, sir.

1 Next witness.

2 MS. ZMROCZEK: Your Honor, the last witness I
3 have is Lee Ayers.

4 LEE AYERS, after being duly sworn, testified as
5 follows:

6 THE CLERK: Please have a seat, sir.

7 Once you're seated, state your full name,
8 spelling your last.

9 THE WITNESS: Lee Ayers, A-Y-E-R-S.

10 IN CAMERA DIRECT EXAMINATION

11 BY MS. ZMROCZEK:

12 Q Mr. Ayers, could you please tell the Court what your
13 position is?

14 A My title at Mid-Carolina Electric is system engineer.

15 Q What are some of the duties that you have as system
16 engineer?

17 A I manage a metering group, our dispatch group and our
18 substation crew.

19 Q Do you do a lot of managing?

20 A Yes, I do.

21 Q When did you or MCEC become aware that there were
22 problems with electricity and grow houses in
23 Batesburg-Leesville?

24 A In general or the specific location?

25 Q No, not the specific location. When and how were you

1 made aware of it?

2 A Our first occasion was on -- when the sheriff's
3 department contacted us on [REDACTED].

4 Q The sheriff's department contacted you what?

5 A On the case at [REDACTED].

6 Q On October 4th, I think we got that straight. And
7 I'm not holding you to that date.

8 A Yes.

9 Q And your company responded in relation to theft in
10 connection with that grow house?

11 A Yes.

12 Q Why is that?

13 A We were requested to.

14 Q What sort of things with regard to the theft of
15 electricity, how is that specific to a grow house or to a
16 narcotics arena? Do people steal electricity all the
17 time?

18 A Electricity is stolen for many different reasons.

19 Q But on October 4th, you were specifically called out
20 because it was stolen for a grow house?

21 A That's what transpired at that location, yes.

22 Q Did that set off an internal investigation to look
23 for other electricity stolen in relation to grow houses in
24 that area?

25 A Not at that time. Not that day.

1 Q Three days or shortly thereafter, or two days, did
2 that then make MCEC investigate to see if there were more
3 grow houses stealing electricity?

4 A Once I believe one of the officers testified to seven
5 or so cases, we did begin looking for other sites of
6 theft.

7 Q In general or because of the narcotics involved?

8 A Our interest was in the theft.

9 Q And the theft of the electricity that was
10 investigated was done so in a manner consistent with the
11 techniques that the grow houses used, correct?

12 A We were looking for theft any way we could find it.

13 MS. ZMROCZEK: Those are all the questions I
14 have.

15 MR. ROSS: Nothing from the State, Your Honor.

16 THE COURT: Thank you, sir.

17 Anything further?

18 MS. ZMROCZEK: No, Your Honor. Just the motion.
19 I would just like to argue the motion to suppress at this
20 time.

21 THE COURT: Okay.

22 MS. ZMROCZEK: Your Honor, the police were
23 present at [REDACTED] because someone suspected a
24 grow house. They want to say today that it was just a
25 suspected theft of electricity, but all the evidence from

1 that day suggests that they know or they suspected that
2 there was some sort of illegal activity. And because they
3 suspected it, they should have gotten a warrant. That's
4 what the Fourth Amendment requires.

5 The MCEC agent stated that he was just
6 investigating a theft of electricity, and that he only
7 called the cops because he didn't feel safe. But the
8 investigator's report reflects that he suspected that this
9 person at this house who is wrongfully identified was
10 involved in narcotics. If he was just investigating the
11 theft of electricity, it's already been established. MCEC
12 has no -- they're allowed to go on somebody's property.
13 They did not need to call the cops, but he involved the
14 police because he suspected that they were operating a
15 grow house. Even Officer Fine said he had a reasonable
16 suspicion, that's why they contacted narcotics.

17 He had been out to four other grow houses three
18 days earlier. That was his probable cause for calling the
19 police and going out there. It wasn't a blown transformer
20 five months earlier. It's because he had been to three
21 other houses that had been stealing property and he was
22 looking more of them. He was acting like an investigator,
23 and there's nothing wrong with that except for if you're
24 going to go on to someone's property and you're going to
25 search and seize their property, you have to have a

1 warrant.

2 They testified that -- all the testimony from
3 the police and from MCEC stated that it was a desire for
4 his safety. He just wanted to be safe. So when the
5 police knock on the door and the defendant and his wife
6 say, sure, go ahead and search, the police then have no
7 reason to stay. At that point, the police should have
8 left or their being there -- at that point, there is no
9 justification for their being there. Because if the
10 justification was, for argument's sake, that he said they
11 were out there just to make sure that he was safe, then
12 they all testified that he was safe. At that point, they
13 should have left.

14 It's then that Sergeant Blake --

15 THE COURT: And if the electrical folks were
16 then ambushed, then what?

17 MS. ZMROCZEK: But there is no probable cause
18 that they would have been.

19 THE COURT: It's their decision whether to stay
20 or go. You said they have no reason to be there. That's
21 for them to decide.

22 MS. ZMROCZEK: Right.

23 THE COURT: What constitutional right does it
24 violate?

25 MS. ZMROCZEK: That doesn't violate anything,

1 but the search, the subsequent search of their house and
2 their property is violated --

3 THE COURT: I just disagree with your gratuitous
4 argument that they had no reason to be there.

5 MS. ZMROCZEK: Well, again, for the sake of
6 argument, if they did have a reason to be there, if they
7 stated that the reason that they were there was simply for
8 their safety. They testified, the police testified that
9 everything was pleasant and safe. So at that point, there
10 is still no probable cause to explain why the shed was
11 searched. They said that they consented to the search,
12 but the consent does not eliminate the need for probable
13 cause. There needed to be a probable cause to search the
14 shed.

15 THE COURT: According to what constitutional
16 authority, that consent does not -- say that one more
17 time.

18 MS. ZMROCZEK: Consent does not eliminate the
19 need for probable cause.

20 THE COURT: According to what constitutional
21 authority?

22 MS. ZMROCZEK: Actually, Your Honor, it is a --
23 I will cite the case for you.

24 THE COURT: I didn't mean to send you searching
25 for anything.

1 MS. ZMROCZEK: No. I know actually have it
2 right here. I did have it right here. That was my
3 problem.

4 Bear with me one second.

5 Your Honor, State v Green, it's 330 SC 551.

6 Your Honor, the problem that I'm arguing that I
7 have with the evidence seized is that they just had no
8 probable cause to search. And regardless of what they
9 want to testify to, their notes reflect very clearly that
10 they all suspected that there was a grow house or some
11 sort of drug activity going on at that property. And that
12 suspicion requires that they get a warrant if they want to
13 search for any items that would produce such evidence.

14 THE COURT: Mr. Ross.

15 MR. ROSS: Thank you, Your Honor.

16 First, I'd like to address Mid-Carolina's right
17 to be there that day. Judge, it starts with SC Code
18 33-49-410. I'm going to hand that up to Your Honor.
19 You've already received a copy of Mid-Carolina's bylaws
20 and rules and regulations. I think those are Court's
21 Exhibits Number 1, 2, and 3. That statute that I've
22 handed up allows a co-op's bylaws to prescribe additional
23 qualifications and limitations with respect to membership.
24 The bylaws of MCEC itself, Article 1, Section 1, right at
25 the beginning, it states, members agree to comply with and

1 to be bound by the service, rules, and regulations adopted
2 by the board.

3 Now, members of a co-op are simply the
4 customers, Your Honor. So when you become a member of
5 this co-op, you are agreeing to abide by those service
6 rules and regulations. Rule 101 echos that, An accepted
7 application by the cooperative and receipt of service by
8 the member, or the customer, constitutes a contract
9 between MCEC and the member obligating that member to
10 respect its service rules.

11 Rule 504, Court's Exhibit Number 3, grants MCEC
12 employees the right of access to the customer's property.

13 So they had a legal right to be there, number
14 one, and it's granted by the code, by the bylaws, and by
15 their service regulations.

16 Number two, their actions that day don't
17 constitute any state action. What they were doing does
18 not bring the Fourth Amendment into play here, and I do
19 have some authority to back that statement up, Your Honor.
20 Primarily, United States versus Cleveland and State versus
21 Leo. I'll give you a copy of these cases, and I'm going
22 to give Ms. Zmroczek a copy. They're not binding on the
23 Court, but they are persuasive, sir.

24 I will take Cleveland first, Your Honor. This
25 was a case out of the Ninth Circuit back in 1995. An

1 electric company in Portland, Oregon, received a tip that
2 a defendant was diverting electricity for a marijuana grow
3 house. That employee contacted the police that he was
4 going to go check the lines. He wanted police presence
5 there just in case the situation became hostile. Very
6 similar to what we have here.

7 The employee checked the line the next day,
8 found evidence consistent with the tip. And while he was
9 doing that, the police were actually parked a block away
10 from the property, used that information for a search
11 warrant. And the court essentially held that the power
12 company's actions that day did not implicate the Fourth
13 Amendment. The analysis was two pronged, whether or not
14 the government knew or acquiesced in the conduct, which in
15 this case was, yes, the government did know of the conduct
16 and acquiesced to it. But more importantly, whether the
17 private party performing the search intended to assist law
18 enforcement efforts or further their own ends.

19 And in that case, just like in this case, the
20 power company has an interest completely separate from law
21 enforcement's interests. I think Mr. Ayers kind of hit
22 the nail on the head, that last witness. He had an
23 interest to ensure that his company wasn't being robbed
24 blind. He had an interest to stop continuing theft and
25 robbing from that company. The police were there to

1 provide backup. They weren't there to investigate
2 anything. They were there similar to being there for a
3 civil dispute.

4 State of Florida versus Delreo, again, that's
5 not binding on the courts, Your Honor. We simply offer
6 that as persuasive evidence. Because this is somewhat of
7 a unique situation, and essentially, the same facts
8 occurred in that case. You had a power company
9 investigating a grow house. And the court in Florida held
10 that that power company's actions did not involve the
11 Fourth Amendment.

12 So we've covered MCEC, Judge.

13 With respect to law enforcement, everything they
14 did that day was lawful as well. A policeman can go and
15 knock on a front door just like any other person.
16 Authority of State versus Wright, Kentucky versus King,
17 and most recently, the U.S. Supreme Court ruled in Florida
18 versus Jardines that police can knock on a front door
19 simply to ask the occupant questions. And when they do
20 that, they're not implicating the Fourth Amendment, they
21 are not searching anything. There is implied consent to
22 walk up to somebody's front door, knock, and ask that
23 homeowner or resident questions.

24 Once they knocked, law enforcement's continued
25 presence was a voluntarily encounter with the police, not

1 a detention. Tons of black letter law on this, Your
2 Honor. Florida versus Bostic, Hiibel versus Sixth
3 Judicial District. Those are both U.S. Supreme Court
4 cases. 501 U.S. 429, 542 U.S. 177. On the State side,
5 there's State versus Blasingame, Your Honor, 545 SE2nd
6 535.

7 Your Honor, all these cases simply state the
8 principle that when the police communicate with a citizen,
9 that communication does not automatically become a seizure
10 or a search. A seizure only arises when there is some
11 type of use of force or show of authority to stop or seize
12 a citizen. And that didn't occur in this case until the
13 defendant got up, made the statement, put his hands behind
14 his back, and then he was placed in cuffs. At that point,
15 when he was placed in cuffs, he was not under arrest. The
16 officer advised him he wasn't under arrest. They knew
17 that there had been spliced line, but the police didn't
18 know whether or not they had enough to arrest somebody.
19 They didn't know whether or not that line was spliced by
20 the homeowners or whether or not it was spliced prior to
21 Ms. Perez or Mr. Aguirre moving in. So they detained him
22 and had a brief Terry detention to investigate, just like
23 what Sergeant Blake testified to. And when you're in a
24 situation of a brief detention -- Your Honor, we may be
25 getting into the statement side of the case, but at that

1 point, a brief detention does not require Miranda to begin
2 with. That's State versus Corley and that line of cases,
3 Your Honor.

4 Once he was briefly detained, he gave consent to
5 search the property. Ms. Perez gave consent, both
6 verbally and written consent. She had actual authority to
7 do so. She was living there. It was her house, she was
8 doing laundry there. She's the account -- the person on
9 the account. Mr. Aguirre gave consent, written and
10 verbal. The authorities we rely on for the validness or
11 the validity of that consent, State versus Laux, 544 SE2nd
12 76. That deals with apparent authority of a girlfriend to
13 give consent to her boyfriend's apartment. I think at a
14 minimum, Ms. Perez had apparent authority to consent to
15 the police officers. I think the defendant himself gave
16 consent as well.

17 And Ms. Zmroczek's statement that you still need
18 probable cause even in a situation of consent, that's the
19 first time, Your Honor, I have heard of that. I'm not
20 completely familiar with the case she cited, but my
21 understanding is you freely give consent, there is no need
22 to establish probable cause.

23 THE COURT: The case she cited, State versus
24 Green, says that if the initial encounter or initial
25 arrest is illegal, an illegal arrest, then any statements

1 taken subsequent to that, if the statements are voluntary,
2 are voluntary statements, they're still subject to being
3 suppressed, if the initial arrest was an unlawful arrest.
4 So it's not on point to this issue. It's sort of a
5 principle taken out of thin air, and it does not apply, in
6 my opinion, to the facts that we're dealing with here.

7 MS. ZMROCZEK: And, Your Honor, we're not
8 arguing that MCEC shouldn't have been on the property.
9 We're not -- we're not protecting that.

10 THE COURT: You're upset that the police went
11 with them because based on their knowledge of these prior
12 thefts, they had no reason to be concerned for their
13 safety and their right to have the police there with them
14 or what?

15 MS. ZMROCZEK: No, Your Honor. What I'm saying
16 is they had a right to have the police, just like you
17 said, in a civil situation, go out and make sure
18 everything was okay.

19 THE COURT: All right.

20 MS. ZMROCZEK: And even Mr. Wilson testified,
21 once they found the wire or the spliced cable, they were
22 done. So they wouldn't have even inevitably gone out to
23 the shed. The testimony that Mr. Aguirre was detained,
24 first, it was for his protection from his wife, then it
25 was so that they could investigate the possible theft, the

1 stories are inconsistent. But it's incredulous, and to
2 believe that he would just stand up and say go search the
3 shed. And even if he did, at that point, they go search
4 the shed. At that point, say, oh, now we have probable
5 cause, let's get a warrant, but they didn't.

6 Your Honor, I'm not saying that they didn't have
7 any reason to be out at the property. They were out at
8 the property, that reason terminated, and they go to
9 search the shed because that's what they were there to do.

10 THE COURT: All right. Well, certainly -- you
11 know, you have -- lawyers sometimes argue the facts as
12 they are and sometimes as they wish they were. In this
13 situation, in this case, I find that the warrant
14 required -- requirement of the Fourth Amendment is not
15 triggered based on this encounter between the electric
16 company and the police officers and the defendant.

17 The defendant, a member of the co-op, gave
18 consent and acknowledged -- signed an acknowledgment
19 regarding his right to access. The company has a right to
20 come on the property to inspect. They, however, are not
21 duty bound to put their lives on the line when they do so.
22 If they have information based on other instances where
23 the theft of services -- theft of service also involve
24 other crimes, that does not trigger the need for the
25 police to get a search warrant to support the electric

1 cooperative in going on the property. Although there may
2 be a dual motive or at least some dual thoughts in their
3 minds that there may be something going on at the
4 property, possibly more than the just theft of service,
5 the initial entry, according to my view of the credible
6 testimony, was for the purpose of investigating the theft
7 of service. It appears that based on the testimony that
8 after the theft of service was discovered, that the
9 defendant then made an acknowledgment, voluntary
10 statements, to the law enforcement.

11 And I find based on preponderance of the
12 evidence that those statements were voluntary, and
13 further, that the parties authorized to give consent, then
14 gave consent to search.

15 It appears from the testimony that the defendant
16 sufficiently understood English. Although he professes a
17 need for an interpreter today, there is no indication
18 based on his testimony that he did not understand the
19 exchange with the law enforcement on that day, that he
20 voluntarily gave statements, that the officers responded
21 as they had a right to do based on the consents given by
22 the parties there, that there was no need for a warrant,
23 and I deny the motion to suppress. I also deny any motion
24 to suppress based on Jackson v Denno.

25 There's a case, State v Charter that speaks

1 about whether or not consent can be given where there is
2 an indication or there is a lack of understanding of the
3 English language. In that case, an expert witness
4 testified that the person did not understand English at
5 all and could not give him consent to search. That does
6 not seem to be applicable here, since there's no testimony
7 that Mr. -- the defendant did not understand the
8 conversation with law enforcement, and that his statements
9 were not voluntarily given. So I deny the defense
10 motions.

11 Ready for the jury?

12 MR. ROSS: State's ready, Your Honor.

13 She also moved about revealing the identity of a
14 confidential informant.

15 MS. ZMROCZEK: Your Honor, we withdraw that
16 motion at this time.

17 We were provided so much -- as I've already
18 stated when I did my motion to you, we were provided so
19 much information in a very short period of time that, at
20 this point, I'm just going to withdraw that motion.

21 THE COURT: All right. Bring the jury in.

22 (The jury came into open court at approximately
23 3:07 p.m.)

24 THE COURT: We need to swear the jury. Stand to
25 be sworn.

1 THE CLERK: Raise your right hand, please.

2 (WHEREUPON, the jury was sworn at 3:07 p.m.)

3 THE COURT: Ladies and gentlemen, we're about to
4 begin the trial. I thank you for your patience and
5 understanding. We had a matter that we needed to address
6 before being able to have you all come in. We haven't had
7 much lunch, in fact. We've been dealing with some issues
8 most of the day.

9 We're now ready to begin the trial of the case
10 of State versus Leandro Aguirre. As I indicated earlier,
11 he's been indicted by the Grand Jury and charged with the
12 offenses of trafficking in marijuana between ten and 100
13 pounds, and altering, tampering, or bypassing an electric,
14 gas, or water meter.

15 He has pled not guilty to these charges. He is
16 presumed to be not guilty. He cannot be found guilty
17 unless the State presents evidence which convinces each of
18 you of his guilt beyond a reasonable doubt. Although you
19 will be here listening to the testimony, at the end of the
20 process, this case will be given to you to decide. And
21 only you can decide whether the defendant is guilty or not
22 guilty of these charges. That is the oath that you have
23 taken, and that is the solemn responsibility that you
24 have. In order to carry out that responsibility, you need
25 to be focused, pay attention so that you will be in a

1 position to deliberate and discuss the testimony.

2 Your primary responsibility in that regard is to
3 determine the credibility of the witnesses and the
4 evidence that is offered. It will be up to you to
5 determine what effect, value, and weight is to be given to
6 the testimony that you hear from this witness stand, as
7 well as to any exhibits that are offered during the course
8 of the trial.

9 Just as only you can determine the facts of this
10 case, as the presiding judge, I'm the sole judge of the
11 law of this case, and you must accept as correct the law
12 as I state it to you at this time, during the trial, and
13 in greater detail at the end of the trial.

14 Now, later in the process, I will appoint one of
15 you to serve as the foreperson of the jury. That person
16 will serve as the spokesperson for the jury and will have
17 the responsibility to preside over the jury deliberations
18 and to complete the verdict form in representing the
19 unanimous verdict of the jury.

20 In just a moment, the Solicitor will make an
21 opening statement in which he will outline the case, his
22 case to you, and explain what he thinks the evidence will
23 show and what your findings should be. After he gets
24 through, then the defense will have the same opportunity.

25 The burden of proof in this case is on the

1 State. The defense has no burden of proof. The State
2 must prove guilt beyond a reasonable doubt, and I will
3 define that to you in greater detail later on.

4 I look forward to working with you on this case.
5 We will try to keep it moving as best as we can, and
6 hopefully, your service will be beneficial to the citizens
7 of this county and state and enlightening to you. You
8 have a big job, that is being a juror, and deciding guilt
9 or innocence of one of your fellow citizens.

10 Opening statements.

11 MR. McNAIR: Thank you, Your Honor.

12 THE COURT: Mr. McNair.

13 MR. McNAIR: May it please the Court.

14 THE COURT: Yes, sir.

15 MR. McNAIR: "I know what you're looking for.
16 It's in the shed." That's what the defendant told law
17 enforcement, and what they found in that shed was a
18 sophisticated grow house, hydroponic lights, a filtration
19 system, a ventilation system, 54 high-grade marijuana
20 plants.

21 Ladies and gentlemen, on October 7, 2011,
22 Mid-Carolina Electric went out to [REDACTED];
23 that's where the defendant resides with his wife, Mishelin
24 Perez. They went out there because a transformer at that
25 location had blown back in May of 2011.

1 Mid-Carolina has several problems with
2 transformers blowing at some of their accounts because
3 people are stealing power. They're splicing the line
4 before it got to the meter, so the meter wasn't
5 registering it, it wasn't picking it up, they weren't
6 getting charged for the electricity they were using. This
7 was causing overages, overloads to the transformers and
8 causing them to explode. So Benjie Wilson, Mid-Carolina
9 Electric, started auditing Mid-Carolina's accounts,
10 looking for locations where transformers had exploded, and
11 then looking at the power usage at that location.

12 Well, the defendant's account popped up, it
13 caught his attention, because that transformer exploded in
14 May of 2011. So they looked at the power usage at that
15 location. Well, the power usage there wasn't enough to
16 cause a transformer to explode. It's a red flag. He
17 became suspicious. He decided he wanted to go out to that
18 location and check the lines.

19 So he calls law enforcement to escort him out
20 there as a safety precaution. Because when you're going
21 to investigate power theft on somebody else's property,
22 you don't just go out there by yourself. So as a safety
23 precaution, he called law enforcement. They escort him
24 out there. They actually go to the property first. They
25 knock on the door, Deputy Blake and Deputy Fine. Mishelin

1 Perez, the defendant's wife comes to the door. Law
2 enforcement tells her why they're there, that the power
3 company is going to check the lines. She doesn't have a
4 problem with it. She goes about doing whatever she was
5 doing before they arrived.

6 The defendant was asleep in the back of the
7 house. He comes out, he sits on the porch with law
8 enforcement. They're just on the porch, kind of hanging
9 out, everything is cordial. It's a relaxed atmosphere.
10 The power company is going about their business, checking
11 the utility lines.

12 The defendant and the officers were there for
13 about 20 or 30 minutes on the porch. Mid-Carolina finds
14 what they're looking for. Right at the meter at the
15 defendant's house, they find where the line had been
16 spliced, there was a huge tangled ball of wire. It had
17 been spliced, it ran under the house and out the other
18 side towards the shed that was in the front of the house.
19 They dig this mess up -- and you'll see pictures of it --
20 dig it up, carry it around to the porch where the
21 defendant, his wife is there at this time, and the two
22 officers. He holds it up and shows them what he found.

23 Defendant says something in Spanish to his wife.
24 They start talking back and forth in Spanish. She gets
25 visibly upset. She starts raising her voice at the

1 defendant. At that point, the defendant stands up, he
2 says, "I know what you're looking for, it's in the shed."
3 He puts his hands behind his back.

4 At that point, law enforcement asks Ms. Perez if
5 they can search the shed. She agrees. She doesn't know
6 where the key is. The defendant says it's in the house
7 where the other keys are. She goes in there, she comes
8 back, has a key, he shook his head, said, no, that's not
9 the right key. Goes back in the house, gets another key,
10 comes out. He acknowledge that's the right one.

11 Sergeant Blake takes that key, goes to the shed,
12 opens it up, sees all those marijuana plants. At that
13 point, he realizes they've got a little more on their
14 hands than he initially anticipated. He calls narcotics.
15 Detective Barnes shows up. She looks in the shed. She
16 shows up to process it, collect evidence, things of that
17 nature. She realizes this is more than she anticipated as
18 well. So she calls other agents to come assist her in
19 collecting these plants and processing the scene.

20 While she's waiting on these other agents to
21 arrive, she meets with the defendant. She reads him his
22 Miranda warnings, you have the right to remain silent, you
23 have the right to an attorney. He waives those. He tells
24 her, "everything in the shed is mine."

25 At some point, he also gives them consent to

1 search his house. They go in the house. They find a
2 naturalization certificate making him a United States
3 citizen. They find a small handgun, an expired passport,
4 and they find some digital scales, which are often times
5 used for weighing drugs prior to sell.

6 The other narcotics agents show up, they process
7 the scene, they collect the plants. The plants are taken
8 to evidence where they are hung to dry before the leaves
9 and the buds are collected off the plants. When they
10 ultimately -- when they dry out, they take the leaves and
11 the buds off, they test it. It tests positive for
12 12 pounds of marijuana. Based on that weight, the
13 defendant is charged with trafficking marijuana.

14 Trafficking, you may be wondering what that is.
15 It's a legal term. What distinguishes the case we have
16 from possessing, distributing, or manufacturing marijuana
17 is the weight. If you possess over ten pounds, it becomes
18 trafficking. If you manufacture over ten pounds, it
19 becomes trafficking. If you aid, assist, or conspire with
20 somebody else to manufacture ten pounds or more of
21 marijuana, it becomes trafficking.

22 The defendant's also charged with bypassing an
23 electrical meter, and that is very simply you can't cut an
24 electrical line to bypass a power meter. So two charges,
25 trafficking marijuana and bypassing a power meter.

1 I'm sure all of you know the burden of proof in
2 a criminal case is beyond a reasonable doubt. That's a
3 burden that we as the State welcome because that's the way
4 it should be. To convict somebody, you ought to prove
5 them guilty beyond a reasonable doubt.

6 A lot of people have misconceptions about what
7 reasonable doubt means, and the Judge will give you a
8 detailed instruction of what that is at the end of this
9 trial. But I just want you to keep in mind that beyond a
10 reasonable doubt does not mean beyond any doubt
11 whatsoever. It means that you are firmly convinced. And
12 at the end of this trial, if you're firmly convinced of
13 this defendant's guilt, then you do not have a reasonable
14 doubt.

15 The great thing about a jury like yourselves is
16 you all bring a ton of life experiences into this process,
17 and that gives you a collective common sense and wisdom to
18 separate fact from fiction and determine the truth.

19 Ladies and gentlemen, I don't know how familiar
20 you are with the court process. I'm sure -- I mean, it
21 seems pretty formal. I'm dressed up, kind of lecturing to
22 you here, it seems kind of rigid. But you don't have to
23 leave your common sense at the door. It absolutely
24 belongs in this courtroom, and you can use it to connect
25 the dots, okay? This isn't some type of lab experiment

1 where we have to prove or disprove every potential
2 variable. You can use your common sense to connect the
3 dots and meet your burden.

4 Now, you may have heard a jury trial referred to
5 as a defendant's day in court. And this is that
6 defendant's day in court. But it is also the day in court
7 for the State of South Carolina and the people of
8 Lexington County.

9 I'm Robby McNair, and this is Mr. Ross, and we
10 represent the State of South Carolina in this case. At
11 the end of this trial, we will come back before you, and
12 we're going to ask you to return a verdict that speaks the
13 truth, and we're going to ask you to find this defendant
14 guilty as charged.

15 THE COURT: Ms. Zmroczek.

16 MS. ZMROCZEK: Your Honor, may it please the
17 Court.

18 THE COURT: Yes.

19 MS. ZMROCZEK: My name is Aimee Zmroczek, and I
20 was appointed to represent Mr. Aguirre.

21 Mr. McNair said something very important. He
22 said that a lot of things very important. But he said the
23 one thing that I found very, very important, and that was
24 don't leave your common sense at the door. You are the
25 people that judge the facts. You get to decide what is

1 true and what isn't. And I can stand up here all day and
2 say the drugs weigh this amount or they don't weigh this
3 amount, but the only people who get to decide how much
4 they weigh are you. You decide it from the testimony, and
5 you get to make that decision. It's all yours. And it's
6 an important decision, because in order to be convicted of
7 certain crimes, you have to meet certain elements. You
8 guys get to decide that.

9 They're going to have to prove to you that
10 Mr. Aguirre concocted this elaborate plan to steal
11 property. They are going to have to show you that he knew
12 about it and that he did it and that it was all his fault.
13 And I'm glad that they have to show you because if the
14 police got to just go around and arrest people because of
15 the color of their skin or they didn't speak English or a
16 lot of other people were doing some stuff and they wanted
17 to catch some more people, it could be a dangerous
18 society. So what you have to do is listen to the facts,
19 listen to all the evidence presented, and the only
20 evidence is coming from that witness stand, and you use
21 your common sense. Does that make sense? At the end of
22 the day, I think that you'll find after listening to all
23 the evidence, things aren't going to add up, and that you
24 will find my client not guilty.

25 THE COURT: First witness.

1 MR. McNAIR: The State calls Betsy Kosh.

2 BETSY KOSH, after being duly sworn, testified as
3 follows:

4 THE CLERK: Once you're seated, speak up loud
5 and clear. State your full name, spelling your last on
6 the record, please.

7 THE WITNESS: I'm Betsy Kosh. My last name is
8 K-O-S-H.

9 DIRECT EXAMINATION

10 BY MR. McNAIR:

11 Q Ms. Kosh, you're the member services supervisor for
12 Mid-Carolina Electric, correct?

13 A That's right.

14 Q And that is an electric cooperative?

15 A Yes, sir.

16 Q And the jury may know, but I don't. What is
17 different from a cooperative from a normal power company?

18 A A cooperative is formed by members, and that is the
19 people that have service with us actually own the electric
20 cooperative that provides their service.

21 Q Like shares?

22 A They share in the expense of the operation of that
23 co-op.

24 Q And as a member services supervisor, what are your
25 duties?

1 A I'm responsible for all the customer service
2 functions from billing to the account setup and payments
3 and anything having to do with face-to-face contact with
4 customers or over the phone to set up accounts.

5 Q What do customer service representatives do?

6 A Yes, sir.

7 Q What do they do?

8 A They are on the phone or in person, people come in
9 and set up their accounts, they talk to them about payment
10 arrangements, they discuss service needs or problems
11 they're having with their electric.

12 Q So they're people who have face-to-face contact with
13 customers, and you are above them as their supervisor?

14 A That's right.

15 Q And in your position, do you have access to
16 Mid-Carolina records?

17 A I do, to the account records and the billing records.

18 (WHEREUPON, State's Exhibit No. 3 was marked for
19 identification only.)

20 BY MR. McNAIR:

21 Q I'm going to show you what's been marked as State's
22 Exhibit 3. Tell me if you can identify this.

23 A This is a copy of the account notes for the electric
24 account at -- it doesn't say on here, but it's [REDACTED]

25 [REDACTED].

1 Q Okay. And who inputs the information contained on
2 that document?

3 A Customer service reps put in most of it. Some of it
4 is automated entry of certain information. But most of it
5 is just notes that customer service reps enter.

6 Q Are those notes recorded at the time that the
7 information is input?

8 A Yes. They're date and time stamped, and they have
9 the initials of the person that entered it into the --

10 Q Is that stored and maintained on your system?

11 A It is.

12 Q As part of the ordinary course of business?

13 A Yes.

14 MR. McNAIR: We'd offer State's 3 into evidence.

15 THE COURT: Any objection?

16 MS. ZMROCZEK: No objection.

17 THE COURT: It's admitted without objection.

18 (WHEREUPON, State's Exhibit No. 3 was admitted
19 into evidence.)

20 BY MR. McNAIR:

21 Q So if someone calls Mid-Carolina Electric to apply
22 for service or with a billing question, or a power outage,
23 would that be recorded in those account notes?

24 A Most of the time.

25 Q Okay. Tell me this: Who applied for service at [REDACTED]

1 [REDACTED]?

2 A Mishelin M. Perez.

3 Q When did she apply for service?

4 A She called in on December 29th of 2010.

5 Q Is that when service was activated?

6 A No. Actually, it was turned on the next day, the
7 30th.

8 Q December 30th?

9 A Uh-huh.

10 Q When was that service terminated?

11 A October 7th of 2011.

12 Q Do those notes reflect why it was terminated?

13 A Well, these notes don't actually say it. It just
14 says cut at the pole, remove meter.

15 Q Do you know why it was terminated on October 7, 2011?

16 A Yes. There was suspicion of power theft at that
17 location. And we -- actually, a co-worker went out with a
18 crew and they disconnected the power based on what they
19 found when they went out there.

20 Q What are the different ways that somebody can pay a
21 bill at Mid-Carolina?

22 A They can come into the office and make a payment,
23 they can mail us a payment, they can pay it over the
24 phone, or they can sign up and enroll online and pay over
25 the Internet.

1 Q So you have an online bill payment system?

2 A We do.

3 Q And do you maintain those records?

4 A Those are maintained through a third party vendor.

5 Q Do you have records of online payments in your
6 system?

7 A Yes, we do.

8 (WHEREUPON, State's Exhibit No. 4 was marked for
9 identification only.)

10 BY MR. McNAIR:

11 Q I'm going to show you what's been marked as State's
12 Exhibit 4, and tell me if you can identify this.

13 A Okay. This is the -- actually, when someone goes on
14 and enrolls online to pay their bill electronically, this
15 first page is the main screen where their account number
16 and their e-mail address and that sort of information is
17 displayed.

18 Q Before we get into what it is, is that the online
19 bill pay record?

20 A Yes.

21 Q Okay. And that's maintained in your system?

22 A Right.

23 Q As part of the ordinary course of business?

24 A Uh-huh.

25 MR. McNAIR: Your Honor, we move to admit

1 State's 4.

2 MS. ZMROCZEK: No objection.

3 THE COURT: It's admitted without objection.

4 (WHEREUPON, State's Exhibit No. 4 was admitted
5 into evidence.)

6 BY MR. McNAIR:

7 Q Who inputs the information contained in that record?

8 A I would say the member. I can't be certain the
9 member does it. Whoever they give access to it.

10 Q And whose name is the account in?

11 A The name on the account is Mishelin M. Perez.

12 Q Does she have it set up so she could access that
13 online bill pay?

14 A Right.

15 Q Does she have an e-mail address on there as well?

16 A She does. It's Mishelin Lee at [REDACTED].

17 Q Now, based on that record, can you tell how many
18 times a credit card ending in 4323 paid on this account?

19 A There were five payments made with a credit card
20 ending in 4323.

21 Q And whose name was inputted as being the card holder?

22 A The card associated with that is Leandro Aguirre.

23 Q Okay. So between the times of December 2010 and
24 October 2011, that card paid five times?

25 A That's correct.

1 MR. MCNAIR: I don't have any further questions.
2 Answer any questions Ms. Zmroczek has.

3 THE COURT: Ms. Zmroczek.

4 MS. ZMROCZEK: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. ZMROCZEK:

7 Q I just have a few questions for you.

8 You stated that service was requested to be
9 turned on or activated on the 29th or 30th?

10 A They came in -- they called our office or came in, I
11 can't determine for sure which, on the 29th. The account
12 was -- the service was applied for on the 28th and --
13 excuse me. Let me be sure of that date. It was the 29th.
14 Yeah, 29th of December. And the arrangement was to --
15 they had to pay a certain amount before the service could
16 be connected in their name. And so that was done, I
17 believe by telephone, by an Easy Pay payment. So the
18 service was activated in their name the following day.

19 Q Did MCEC -- do your records or notes indicate if MCEC
20 needed to go and put in any wires or put up a transformer
21 or install a meter or was it already existing?

22 A It was an existing service is my understanding.

23 Q So someone or something had service at that location
24 prior to it being put in Mishelin's name, correct?

25 A As far as I know, yes.

1 MS. ZMROCZEK: Nothing further.

2 THE COURT: Anything further?

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

4 THE COURT: Thank you, ma'am. You may be
5 excused.

6 Next witness.

7 MR. McNAIR: The State calls Benjamin Wilson.

8 BENJAMIN WILSON, after being duly sworn,
9 testified as follows:

10 THE CLERK: Sir, once you're seated, speak up
11 loud and clear, spelling your last name on the record,
12 please.

13 THE WITNESS: My name is Benjamin Wilson,
14 W-I-L-S-O-N.

15 DIRECT EXAMINATION

16 BY MR. McNAIR:

17 Q Mr. Wilson, you investigated a case for Mid-Carolina
18 Electric, did you not?

19 A I did.

20 Q Before we get into that, would you tell us a little
21 bit about your background at Mid-Carolina?

22 A At Mid-Carolina, I'm the supervisor of system
23 metering. It entails everything from dealing with meters,
24 anything to do with the meters, cut-offs, cut-ons,
25 cut-offs for non-pays. Investigating any power theft that

1 we find or see on our system or any that we believe is on
2 our system. Dealing with high bill complaints, a sundry
3 of other things. Anything dealing with the metering line
4 itself.

5 Q Okay. How long have you worked there?

6 A I've been there almost 14 years.

7 Q Have you been in the same position the whole time?

8 A Yes.

9 Q What areas does Mid-Carolina service?

10 A We service five counties, a little bit of Aiken,
11 Lexington, Richland, Newberry.

12 Q How many customers do you have?

13 A 52,000 active accounts.

14 Q Now, were you in your current position back on
15 October of 2011?

16 A I was.

17 Q Back during that time, did Mid-Carolina service an
18 account at [REDACTED]?

19 A We did.

20 Q Is that in Lexington County?

21 A It is.

22 Q Whose name was on that account?

23 A Mishelin Perez.

24 Q Back in October of 2011, did that location or that
25 account kind of get your attention?

1 A Repeat it one time.

2 Q Bad question.

3 Back in October of 2011, did anything about that
4 account catch your attention?

5 A Yes, it did.

6 Q What was that?

7 A We looked -- pulled the records on all of our
8 accounts to look at transformers that we had lost, burned
9 up or been destroyed, and this one flagged as failing in
10 May of 2011. And we pulled the subsequent records on this
11 transformer and looked at the usages at this location, and
12 we realized that the usages going through our meter were
13 not nearly enough to have damaged that transformer.

14 Q Okay. How many transformers do you have?

15 A We have right at 27,000.

16 Q 27,000. How many transformers blow in a given year?

17 A Averaged over 2011 and 2012, we had 35 a year.

18 Q So that is a pretty low --

19 A Excuse me, 37.

20 Q Average of 37 out of 27,000?

21 A Out of 27,000.

22 Q That's .00 something percent?

23 A Yes.

24 Q Can you determine what exactly caused a transformer
25 to blow?

1 A There are several things that can cause it. You can
2 have lightning, overload, that is the two major reasons
3 for it, either a lightning strike or overload, and there
4 was no thunder storm that day.

5 Q Did you investigate cases of other transformers
6 exploding other than [REDACTED]?

7 A Yes, we did.

8 Q Did you determine what the cause of those
9 transformers exploding was?

10 A We had another one that was -- we had three
11 transformers at one location that were overloaded all
12 three times.

13 Q Did you discover power theft at those locations?

14 A We did.

15 Q So essentially, it's just an overage that causes the
16 transformer to explode rather than lightning?

17 A Yes.

18 Q Now, at some point, did you actually go on to the
19 property?

20 A At [REDACTED]?

21 Q Yes.

22 A Yes, we did, October 7th.

23 Q October 7, 2011?

24 A That's correct.

25 Q Okay. Did you go by yourself?

1 A No, I didn't. I took two of my meter techs and an
2 underground crew with me because it was an underground
3 service.

4 Q Did you call anybody else to assist you with going on
5 the property?

6 A We called Lexington County Sheriff's Department.

7 We had been on several locations the previous
8 couple three days, and we'd gotten in some situations that
9 we were not comfortable. We're not law enforcement, we're
10 electrical folks, and we can deal with the electrical
11 side, but law enforcement, we felt that we needed some law
12 enforcement there to deal with the customers while we were
13 at the location.

14 Q So you called them as a safety precaution?

15 A Safety, yes.

16 Q Tell us how things transpired that day.

17 A We called Lexington County Sheriff's Department. We
18 were en route to Highway 178 at the truck stop at 178 and
19 I-20. We talked to them, we explained and expressed what
20 we were wanting to do. They went in, they said you all
21 wait here, we'll go in and talk to the customer and find
22 out what's going on and get them, find out when it will be
23 safe for you all to come in. They called us on the cell
24 phone probably five to ten minutes after they left the
25 truck stop.

1 Q Let's stop right there. When you say "you all," what
2 officers did you meet with at the truck stop?

3 A Officer Fine first and he called the sergeant, and
4 they both met us at the truck stop and then they proceeded
5 to the home.

6 Q That's Officer Fine and Sergeant Blake sitting right
7 here?

8 A Yes.

9 Q So you met them at the truck stop. Then they go to
10 the property?

11 A That's correct.

12 Q And you wait behind?

13 A That's right.

14 Q At some point, they call you?

15 A They called us and said it was clear for us to come
16 on in, and we drove down, it was probably two miles to the
17 house.

18 Q So a short distance?

19 A Very short.

20 Q What's the first thing you do when you get there?

21 A We got to the property. I spoke to the officers,
22 asked them if it was all right to proceed, they said yes.

23 Q Where were the officers when you spoke to them?

24 A They were on the front porch with the defendant and
25 Ms. Perez.

1 Q Okay. So they're all on the front porch?

2 A Right.

3 Q They're just sitting there?

4 A They were sitting there.

5 Q So you touch base with them, and then you start doing
6 your thing?

7 A We did. We went around to the meter base which was
8 on the back corner of the home. We took our locator,
9 electrical locator we use to locate underground lines.

10 Q Is that similar to a metal detector?

11 A It's not really a metal detector. It detects
12 electricity which you can follow in the wire. We followed
13 it from the meter base, back to our transformer, which was
14 an overhead transformer. When we came back, we started
15 searching on both sides of that line looking for a splice
16 that would be coming off or tapped to our line before it
17 got to the meter. We got almost back to the meter base
18 about two feet, two and a half feet from the house, from
19 the foundation, we found another line that was not ours.
20 We saw it with the metal detector, and proceeded to dig
21 down to that line, and we found the splice where it was
22 spliced ahead of the meter, running power, and it looked
23 to us it was going under the foundation of the home up
24 into the crawl space.

25 Q Okay. Could you see the under the foundation?

1 A Yes, we could. The vent was open. We looked under
2 the crawl space and we could see a wire, the same wire,
3 4-aught wire, laying across underneath the home going
4 towards the front corner of the home, but we couldn't see
5 the entire distance of it at that point.

6 Q So on the outside of the house, it was underground?

7 A Yes.

8 Q On top of the ground under the house?

9 A On top of the ground under the house, yes.

10 Q Where was that line going to?

11 A It was going to the front corner of the home and went
12 back underground. The front corner of the home, we took
13 our locator around, started checking there, found the line
14 running from the home to the shed out in front of the
15 house.

16 Q Were you able to get under the house?

17 A Yes, we were. We went around, we asked for
18 permission to go under the home. The customer gave the
19 key to the officer.

20 Q So it was locked?

21 A It was locked, it had a lock on it. We asked for
22 permission.

23 Q The defendant gave you the key?

24 A The defendant gave it to Sergeant Blake, he gave it
25 to me, we went back around and went under the home.

1 Q Okay.

2 A Followed the line to the other side of the house.

3 Q I'm going to show you what has been marked as State's
4 Exhibit Number 1. Do you recognize this?

5 A That is the location, [REDACTED].

6 Q Okay. Is that a fair and accurate depiction of that
7 area as it was on October 7, 2011?

8 A It is.

9 MR. McNAIR: Your Honor, at this time, we'd
10 offer State's 1 into evidence.

11 MS. ZMROCZEK: No objection.

12 THE COURT: It's admitted.

13 (WHEREUPON, State's Exhibit No. 1 was admitted
14 into evidence.)

15 BY MR. McNAIR:

16 Q Will you step down for a second?

17 A Sure.

18 Q Using this map, where is the transformer that
19 services this location?

20 A Our power line comes in here. This is our
21 transformer.

22 Q Okay. So there's the power pole and that's the
23 transformer?

24 A That's correct.

25 Q Does that transformer serve any other property other

1 than [REDACTED]?

2 A No other property off of that transformer. That's
3 one meter.

4 Q Okay. So show us what you did when you first got to
5 this property and started checking for your lines.

6 A We pulled in and we pulled around to the right end of
7 the home.

8 Q And where is the front porch?

9 A The front porch is over here.

10 Q This is where the defendant and the officers and his
11 wife were?

12 A That's correct. Came around, started searching here.
13 We found our cable and followed it back to the transformer
14 just to make sure that we knew the path of it. They
15 buried it kind of in the line of sight looking at them,
16 but you really need to know if it's here or over there.
17 And we followed it back, and then we started working back
18 looking on either side of it to see if we found the wire.
19 When we got right to this corner, we found the wire. It
20 was not a main wire but a wire leading off of it.

21 Q Okay. Show us where the actual meter base is on
22 there.

23 A This is the meter base right here.

24 Q Okay. So it's right on the corner of his house?

25 A Right on the corner of the home.

1 Q And right there is when you found a wire coming off
2 of your wire?

3 A Coming off of our wire, came under the foundation
4 right here, ran the length of the house, came out under
5 the foundation on the front corner.

6 Q Okay. And then ran towards -- this is the shed
7 you're referring to?

8 A And headed down to the shed on this side.

9 Q Okay. And the splice was right at the bottom, is
10 that where you dug up?

11 A Right at the bottom, conduit coming out of the meter
12 base. There's a piece of pipe running from the meter base
13 underground about three feet. That is where the wire was
14 coming down, it was spliced coming out of that conduit.

15 Q If you'll remain standing for one second.

16 Let me show you what's been marked as State's 2.
17 Can you identify this?

18 A Yes, I can.

19 Q Did you prepare this?

20 A Yes, I did.

21 Q Does this accurately depict the difference in normal
22 meter service versus non-meter service, where somebody
23 spliced the line?

24 A It does.

25 MR. McNAIR: Your Honor, we move State's 2 into

1 evidence.

2 MS. ZMROCZEK: Without objection.

3 THE COURT: It's admitted.

4 (WHEREUPON, State's Exhibit No. 2 was admitted
5 into evidence.)

6 BY MR. McNAIR:

7 Q All right. Explain to the jury what this depicts.

8 A This is our pole that was out in the right-of-way
9 about a hundred or so feet away from the home.

10 Q That's where the transformer --

11 A The transformer's up on top of this pole. This is
12 the secondary wire coming down through the conduit, runs
13 through the ground, comes back up in the conduit, goes
14 around to the top of the meter.

15 Q What is the layman's word for conduit?

16 A Pipe. PVC pipe. It's usually a gray pipe.

17 Q Okay.

18 A It runs to the top of the meter because all the power
19 going to that home should flow through that meter, and
20 then out of the bottom, and into the breaker box in the
21 home. That is a normal hook up.

22 Q So all this service is being monitored by this meter
23 registering on that box?

24 A Everything that comes from here, from the bottom of
25 the meter, is monitored.

1 Q What about non-metered service?

2 A Okay. This would be the transformer. Service starts
3 through the conduit, towards the home, up into the meter,
4 power would still be going to the meter, power passing
5 through the meter and going into the house itself. So
6 this was not Mid-Carolina's wire. This wire was tapped on
7 to our neutral and two hot wires and run, and this was the
8 one that ran out and ran under the foundation of the home
9 and up around under the home and came back out the other
10 side and back under the ground to the shed.

11 Q So all the service going to the house is still
12 registering on this meter?

13 A Yes, it is.

14 Q But anything going from this splice is not?

15 A No. It's lost right here.

16 Q Okay. That would not be your service line?

17 A No.

18 Q And is there any limit on what you can pull off on
19 the splice?

20 A Until it burns up or melts the wire over the capacity
21 of the transformer.

22 Q And that's a lot of power, correct?

23 A Yes.

24 MR. McNAIR: Thank you. You can have a seat.

25 Beg the Court's indulgence, Your Honor. This is

1 15 pictures.

2 THE COURT: Ladies and gentlemen, we're going to
3 have you go to the jury room for a few minutes. Please go
4 to the jury room. Please do not discuss the case.

5 (The jury left open court at approximately
6 3:55 p.m.)

7 THE COURT: We'll take about five minutes.
8 You can step down, sir.

9 (WHEREUPON, State's Exhibits Nos. 5-19 were
10 marked for identification only.)

11 THE COURT: What's the story with the defendant
12 and his bond? What's the story there?

13 MR. ROSS: He's out on bond, Judge. I believe
14 it's 75,000, something in that ballpark, sir. But he has
15 appeared for every court appearance to date.

16 THE COURT: All right. No objection by the
17 State to him remaining on bond?

18 MR. ROSS: Whatever Your Honor thinks is best.
19 Like I said, he's been here.

20 THE COURT: Not remaining on bond, but remaining
21 out, because bond is up once the case is called.

22 MR. ROSS: No objection from the State, Your
23 Honor.

24 MS. ZMROCZEK: Your Honor, we request that he
25 remain on bond. We haven't had trouble. He's always

1 appeared, and I have no doubt that he will continue to
2 appear.

3 THE COURT: Mr. Perez, you understand that if
4 you should fail to appear, number one, you would be in
5 contempt of court. Number two, the trial will proceed in
6 your absence. Number three, you can incur additional
7 charges for failure to appear.

8 Do you understand that, sir? I can't hear you.

9 THE INTERPRETER: Yes.

10 THE COURT: Okay. All right. He's out on bond.
11 Okay. Let's bring the jury in.

12 (The jury came into open court at approximately
13 4:03 p.m.)

14 THE COURT: All right. Mr. McNair, you may
15 continue.

16 MR. McNAIR: Thank you, Your Honor.

17 BY MR. McNAIR:

18 Q Mr. Wilson, is there any way that you can determine
19 when a line was spliced?

20 A Not really, no.

21 Q In this case, can you determine when it was spliced?

22 A I cannot.

23 Q Was it before the transformer blew, can you say that?

24 A I would say yes.

25 Q So prior to May of 2011 is most likely when it was

1 spliced?

2 A That's correct.

3 Q In order to splice a line, does the power company
4 have to turn the power off?

5 A No, they don't.

6 Q Is it a safe thing to attempt to do?

7 A No, it's not.

8 Q Do you have to kind of know what you're doing to do
9 it?

10 A Yes.

11 Q So it doesn't matter if you turn the power off at the
12 house, you would have to turn it off at the transformer?

13 A The transformer would have had to have been cut off.

14 Q But you can do that without turning the power off?

15 A That's correct.

16 Q After you discovered the splice and followed the line
17 to the shed, did you go in the shed?

18 A I went in the shed later, yes, to identify the
19 service coming in and to identify some of the equipment on
20 the front wall.

21 Q Describe for us what you saw in the shed.

22 A When I went in the shed, on the far back hallway,
23 there was a breaker box. The wire coming from the home,
24 the same wire was coming into the bottom of that breaker
25 box. Served out of that breaker box was several rows of

1 pigtail outlets, relays. Plugged into those were drop
2 cords running to ballasts and a capacitor bank that were
3 then plugged in to run lights, thousand watt high pressure
4 sodium light bulbs on the ceiling of the building. There
5 was also the air-conditioning heating unit hooked up on
6 the inside and a ventilation fan and some circulating
7 fans.

8 Q Let me show you what's been marked as State's Exhibit
9 5 through 19. Take a minute and look through those. Tell
10 me if you can identify those.

11 A One at a time?

12 Q Just go through them all.

13 A Okay. Number 5, that's a picture of the splice after
14 we dug it out of the ground and cut it off.

15 Q How about look at all of them and tell me if those
16 accurately reflect what you saw October 7th.

17 A Yes, they do.

18 Q Okay. Those pictures accurately reflect what you saw
19 October 7th, 2011?

20 A That's correct.

21 MR. McNAIR: Your Honor, we move State's 5
22 through 19 into evidence.

23 MS. ZMROCZEK: Without objection.

24 THE COURT: They're admitted.

25

1 (WHEREUPON, State's Exhibits Nos. 5-19 were
2 admitted into evidence.)

3 BY MR. McNAIR:

4 Q Mr. Wilson, if you'll step down again. These are
5 small pictures. We'll start with State's 12.

6 What is this a picture of?

7 A This is a picture of the splice still down in the
8 ground. This is our lead going into the bottom of the
9 conduit. Their lead splice coming off. And that's just a
10 ground wire that happened to be run down into the ground
11 next to it.

12 Q So this would be your wire?

13 A Yes, sir.

14 Q And this is not your wire?

15 A This one is not our wire.

16 Q Okay. What this? Is this in a bag of some sort?

17 A It's in a -- actually it was in a Lowe's bag, and it
18 was insulated with some spray foam-type material to keep
19 the water and moisture from the connection inside.

20 Q Okay.

21 A This one is a picture --

22 Q Let's kind of get in the middle so hopefully
23 everybody can see.

24 A This is another picture of the splice after we cut it
25 loose from the top of the meter base, cut it loose from

1 where it was going under the foundation of the home, cut
2 it loose back here is where it was coming from the
3 transformer itself.

4 Q So this goes up to the meter base --

5 A That goes to the meter base.

6 Q -- on the house?

7 A On the house. This is going underneath the
8 foundation of the home up under the crawl space.

9 Q Okay.

10 A This is another shot of the angle of it. This is the
11 part going up into the meter base. This is not our wire.
12 This is coming out -- going under the house.

13 Q More of the same?

14 A More of the same.

15 Q Number 8.

16 A Another shot of the same thing showing clearly, more
17 clearly, this is our line coming in, our line going up the
18 conduit and this is the splice coming off the back side of
19 it.

20 Q So this is under the ground outside the house?

21 A Yes.

22 This is a picture of the meter base where it was
23 located on the corner of the home. This is our conduit
24 coming up into the meter base, and right in here is where
25 the splice was placed.

1 Q Under the house?

2 A Going under the corner right here.

3 This is another outside shot.

4 Q How much did that thing weigh?

5 A Not much.

6 Q And that's the spray foam?

7 A The spray foam insulation.

8 Q And what is this?

9 A This is a picture inside the shed, back corner. The
10 breaker box right here comes out and serves these outlets
11 with the drop cords plugged in and running the ballasts
12 and capacitors for the high pressure sodium lights are
13 inside the building.

14 Q Is this safe?

15 A No, it's not safe.

16 Q Does that look like the work of a skilled
17 electrician?

18 A It's nowhere close to code or a skilled electrician.

19 This is just another shot of the ballasts and
20 capacitors and all the wire as they put it together.
21 That's a capacitor, that's a ballast. That's a unit that
22 runs the bulb for the high pressure sodium light.

23 Q Do those lights pull a lot of power?

24 A They pull -- each one pulls one kilowatt per hour.

25 That's a picture of the four-source heat pump on

1 the back side of the grow room.

2 Q Do you know what the purpose of that heat pump would
3 be?

4 A That's to heat -- to cool the room somewhat because
5 of all the heat coming off of those lights. There's 18 of
6 them in that ceiling. That puts off an extreme amount of
7 heat.

8 That's the filtration system.

9 Q For water?

10 A No, for the air. It actually pulls air through a
11 filter here and blows it to the outside and to vent out
12 some of the odors.

13 Q Does that suck hot air out more than it pulls air in?

14 A Yes, it pulls out the air.

15 That's a picture of some of the fertilizer that
16 they were using.

17 Q That was in the shed?

18 A That was in the shed.

19 This is another shot of some of them.

20 Q Are these the lights you were referring to?

21 A These are the 1000-watt bulbs in these fixtures
22 inside.

23 And that's just another shot with a couple of
24 lights and the air-conditioning duct work and the fan to
25 kind of stir the air up.

1 Q Okay. How long were you on site that day do you
2 think, approximately?

3 A Probably hour and a half, hour 45.

4 Q Did you see the person that the police arrested that
5 day?

6 A I did.

7 Q Is that the same person who pointed towards the shed?

8 A That is.

9 Q Do you see him in the courtroom today?

10 A Yes, the defendant.

11 Q Sitting by Ms. Zmroczek?

12 A No. Yes, beside Ms. Zmroczek. I'm sorry.

13 MR. McNAIR: Thank you.

14 THE COURT: Ms. Zmroczek.

15 MS. ZMROCZEK: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. ZMROCZEK:

18 Q Mr. Wilson, you testified that you went out there
19 because of a blown transformer?

20 A That was our initial signal, yes.

21 Q That was your initial signal that a transformer blew
22 in March and so then in October you went to go check it
23 out?

24 A The transformer blew in May.

25 Q In May. And then in October you went to check it

1 out?

2 A Yes, we did.

3 Q And can you tell me who -- did someone live at the
4 property prior to my client?

5 A Yes, I'm sure they did, yes.

6 Q When you arrived on scene and said we would like to
7 check the property, were you told no?

8 A No, we were not.

9 Q In fact, my client gave you the key and said go right
10 ahead?

11 A That's correct.

12 Q And you said that this, all these wires and splicers
13 were down underground under the house?

14 A The splices were outside the home under the ground.

15 Q Under the ground?

16 A Yes.

17 Q Outside the house?

18 A Yes.

19 Q If I were just walking on the property or if I had
20 just moved into the property or living in the property and
21 I didn't put it there, would I know it was there?

22 A No, you wouldn't.

23 Q And although this appears dangerous, this picture
24 that you were saying, this is a grand scale of if I were
25 to take like a power strip and plug it into another power

1 strip and another power strip?

2 A The wiring in the breaker box was nowhere close to
3 code. The wire into the receptacles was nowhere close to
4 code. And the wiring and the way they were installed was
5 nowhere close to code.

6 Q Certainly wasn't code. But if there were wires in
7 there, there's no telling who put the wires in there,
8 correct?

9 A I have no knowledge of who put them in there, no.

10 Q You don't know that Mr. Aguirre spliced this at all?

11 A I do not.

12 Q In fact, you don't have any proof that he knew or
13 that he -- he knew that the wire was spliced or that it
14 was done illegally, correct?

15 A I had no proof of that, no.

16 Q You stated that you were in fear. Tell me about --
17 tell the jury what kind of fear that you had going out
18 there that day?

19 A We had been dealing with other situations, grow
20 houses in the area for three days. We had run into
21 situations we did not have law enforcement with us and we
22 felt very challenged by the people that were at the
23 locations when we went to inspect to find out where the
24 taps were, how they'd hooked them up, and to follow
25 through on cleaning that work and getting that out and

1 getting our evidence on the power thefts. It's one of
2 those situations where we're not law enforcement. We
3 don't pretend to be. We were there to find out where the
4 power was being stolen from and how much power was being
5 stolen.

6 Q But you didn't have any of those experiences when you
7 went to Mr. Aguirre's property, did you? You didn't have
8 any experiences where you were yelled at or threatened by
9 Mr. Aguirre or anyone?

10 A No, we did not.

11 Q Did you provide the police with information that
12 morning when you called and requested that they come out
13 there with you?

14 A I provided them information why we were going, yes.

15 Q What was the nature of that information?

16 A I gave them the information that we were going to
17 look for power theft, that we -- that the transformer --
18 the notes on the account about the underground services
19 had been located and the customer requesting how we --
20 wanted to know how we would get in to read the meter
21 monthly, and the name associated on the account we had
22 found associated on several other accounts that were tied
23 to some grow house locations.

24 Q How many times did Mr. Aguirre and Ms. Perez call
25 MCEC?

1 A I would have to look back on the notes. I think they
2 called when they initially applied for service. The only
3 outage they called us on was the outage on May 29th.

4 Q And, in fact, when they called, you were referring to
5 they were asking how you would check power, it's because
6 they wanted to put a fence up for their little dogs,
7 right?

8 A That's what they told us.

9 Q And, in fact, you reported that call, correct? Or
10 not you, but MCEC reported that call?

11 A Notes were put on the account, yes.

12 Q And it was also reported, correct?

13 A I don't know knowledge of that.

14 Q What -- the underground service, explain the
15 significance of that it was underground service. How is
16 that significant or different or why would that draw
17 attention to you?

18 A Underground services are easier unfortunately to tap
19 than an overhead service because it is hidden. Overhead
20 service is overhead. You can't -- it's very hard to hide
21 a tap on an overhead service. Underground service, it's
22 very easy to hide that tap because dirt is put back on top
23 of it, grass grows over it.

24 Q And when you went to the house and you had to dig up
25 through the ground, it was well covered, well preserved

1 when you got there on October 7th, 2011, correct?

2 A Yes, it was covered with dead grass in October.

3 Q You had to use a shovel to get down in there?

4 A Yes, we did.

5 MS. ZMROCZEK: I have nothing further.

6 REDIRECT EXAMINATION

7 BY MR. McNAIR:

8 Q Mr. Wilson, whose name was on the account at [REDACTED]

9 [REDACTED]?

10 A Mishelin M. Perez.

11 Q Perez? That's the defendant's wife?

12 A That's right.

13 Q And when did their service begin?

14 A It began December 29th.

15 Q Of what year?

16 A 2010.

17 Q 2010. And when did that transformer blow?

18 A May 29th, 2011.

19 Q And that spliced line was running to the shed?

20 A Yes, it was.

21 Q Was those marijuana plants in there, did they appear
22 dead to you?

23 A They were green as they could be.

24 Q Did they appear alive?

25 A They were very alive.

1 Q One other thing. You mentioned the notes and
2 somebody called about marking lines?

3 A Yes.

4 Q Who called?

5 A Ms. Perez called in, asked about putting a fence up.

6 MS. ZMROCZEK: Objection, hearsay.

7 MR. McNAIR: It's in the notes that are in
8 evidence, Your Honor.

9 THE COURT: Yes, ma'am.

10 MS. ZMROCZEK: Your Honor, if he wants to read
11 exactly what the note says, that's fine, but for him to
12 expound on what she was thinking or was asking --

13 THE COURT: Are the notes in evidence?

14 MR. McNAIR: They are, Your Honor.

15 MS. ZMROCZEK: I mean, I have no problem with
16 him reading that.

17 THE COURT: The objection is overruled. You may
18 proceed.

19 BY MR. McNAIR:

20 Q I'll show you State's Exhibit 3.

21 A Okay.

22 Q Did Ms. Perez call in about marking lines?

23 A She called in -- she called in on February 28th and
24 she called about how we would get in to get our monthly
25 meter reading -- I can read it to you. She called about

1 getting in to read the meter monthly, and if they
2 installed a fence, she had had the underground utilities
3 marked.

4 Q Did that -- is that unusual for you?

5 A It's seemed unusual because we had not gotten a call
6 from Palmetto Utility Protections.

7 Q Do most customers call you to inform you they've
8 already had the lines marked?

9 A No, they don't.

10 Q How does that typically work?

11 A They do not. They call Palmetto Protection --
12 Utility Protections, they give the location and Utility
13 Protections, they send out to the power company, phone
14 company, cable TV, water, whoever is serving in that area
15 a notice to go out and locate their utilities. And we did
16 not get a request for that.

17 Q So usually you all go out to locate your lines?

18 A We locate the electric.

19 Q Most customers don't do it themselves?

20 A No.

21 Q What type of service did the defendant and his wife
22 have, overground or underground service?

23 A Underground service.

24 Q And that's something they could choose?

25 A It was there when they moved in.

1 Q Okay. It was there when they moved in?

2 A Yes.

3 Q You said that makes it easier to splice a line when
4 it's underground rather than overground where everybody
5 can see it?

6 A Not easier to splice, easier to hide.

7 MR. MCNAIR: Good point. That's what I meant.
8 Thank you.

9 THE COURT: Anything further?

10 You may step down, sir.

11 Next witness.

12 MR. ROSS: The State calls Deputy Thomas Fine to
13 the stand.

14 THOMAS FINE, after being duly sworn, testified
15 as follows:

16 THE CLERK: Have a seat, please, sir. Once
17 you're seated, state your full name, spelling your last.

18 THE WITNESS: Thomas Fine, F-I-N-E.

19 DIRECT EXAMINATION

20 BY MR. ROSS:

21 Q Deputy Fine, how are you doing this afternoon?

22 A Good, sir.

23 Q You were the initial responding officer; is that
24 correct?

25 A I was, yes, sir.

1 Q Before you tell us what you did on October 7th, 2011,
2 can you tell the jury about your background in law
3 enforcement?

4 A I am in my 15th year of law enforcement. I spent 12
5 years with the Department of -- South Carolina Department
6 of Probation, Pardon and Parole Services. I've been with
7 the sheriff's department about two and a half years now.

8 Q So what do you do with the sheriff's department?

9 A My current assignment is with the traffic division.

10 Q What does that involve?

11 A It's primarily traffic enforcement. My primary
12 position is DUI enforcement.

13 Q Okay. Were you working this job on October 7, 2011?

14 A October 7th, 2011, I was a road patrol deputy in the
15 South region.

16 Q And what does that mean?

17 A We answer different calls that come in to our
18 dispatch or our 911 operators. We're dispatched to
19 anything from a larceny of a bicycle to a murder,
20 depending on what the nature of the call is.

21 Q Okay. And what county is [REDACTED] in?

22 A It's in Lexington County.

23 Q South Carolina?

24 A Yes, Lexington County, South Carolina, yes, sir.

25 Q And you responded there on October 7th, 2011?

1 A I did, yes, sir.

2 Q And tell me how you responded there and why you
3 responded there.

4 A Well, we received a dispatch call -- or I received a
5 dispatch call for a meet-with at a -- at the Hill View
6 truck stop in that area of the county.

7 Q What does that mean, meet-with?

8 A Meet-with is you're going to meet up with either a
9 complainant or a victim, some party that wants to provide
10 you information about something they may be concerned
11 about.

12 Q And who did you meet with?

13 A I met with several employees of Mid-Carolina Electric
14 Co-op.

15 Q And when you met with them, what was the problem?

16 A They had advised that they were concerned about one
17 particular address which was the [REDACTED] address
18 and the possibility that someone may be stealing power at
19 that residence.

20 Q Okay. What time did you meet with them?

21 A I met with them probably around 9:15, went to the
22 residence around 9:30.

23 Q And how long did you meet with them?

24 A It was just a brief -- it was a brief time that I met
25 with them at the Hill View truck stop, just to gather the

1 information that I needed prior to going on scene. I
2 was -- I met with them there long enough to be able to
3 contact my sergeant and advise him of what it is that I
4 had learned from Mid-Carolina Electric.

5 Q And what happened next?

6 A I contacted Sergeant Blake and advised him that based
7 on what Mid-Carolina had told me in regards to abnormal
8 meter readings is what I had thought at the time based on
9 my limited knowledge of electricity -- I'm police, not an
10 electrician -- I was under the impression that there was a
11 deviation in the power through the meter that was coming
12 into the house.

13 I also advised him that there was a concern from
14 a safety standpoint that someone relating or someone
15 associated with that power contract, I guess you would
16 say, had been involved in several high-stress, high-tense
17 situations earlier in the day involving Mid-Carolina and
18 marijuana grow houses. That's what they advised me.

19 Q Okay. And did Sergeant Blake arrive on the scene?

20 A He did.

21 Q And how long did it take for him to get there?

22 A Just a few minutes. I wouldn't say more than five or
23 ten minutes.

24 Q Okay. And what did you do when Sergeant Blake
25 arrived?

1 A I met up with Sergeant Blake, again briefed him on
2 all the information that I received on scene, and at that
3 time Sergeant Blake had wanted to confirm the reports that
4 we're receiving. The reason we do that is so that we're
5 aware of what we're walking into, what we're going into.
6 We wanted to be able to identify whether or not the
7 reports from Mid-Carolina Electric were correct in regards
8 to the marijuana grow houses that had happened a couple
9 days previous.

10 Q Okay. Did you all go to [REDACTED] [REDACTED]?

11 A We did.

12 Q And did you ride with Sergeant Blake over there?

13 A Yes, sir.

14 Q And what happened when you got there?

15 A Whenever we got there, we walked up on the front
16 force and knocked on the door and waited for somebody to
17 answer the door.

18 Q How did you knock on the door?

19 A I can demonstrate how I knocked on the door.

20 It was a casual knock, very casual encounter.

21 We didn't know what we had. We had some
22 suspicions, but we certainly didn't feel that it was
23 necessary that we approach it tactically. We went up and
24 knocked on the door and actually had the resident come to
25 the door.

1 Q And what -- you said approach it tactically. What
2 are you referring to there?

3 A In some instances, approaching tactically based on
4 the intel that we receive prior to going to a residence,
5 you may want to take more than two deputies. You may want
6 to set a perimeter on the house. You may want to set
7 somebody in that woods that watched the house based on the
8 nature of the call and what you might be going to.

9 In this particular instance, Sergeant Blake and
10 myself felt reasonably safe in approaching the front door
11 and trying to secure the scene for the safety of the
12 Mid-Carolina guys that were coming in.

13 Q Did somebody come to the door when you knocked?

14 A Yes, sir.

15 Q Who was that?

16 A That was Ms. Perez.

17 Q And how did she appear when she opened the door?

18 A Very casual. It appeared that she might have been
19 doing some housecleaning. Very calm in nature.

20 Q Did you advise Ms. Perez why you all were there?

21 A We did.

22 Q What did you tell her?

23 A We advised her that Mid-Carolina Electric
24 Co-operative has a need to come on their property and
25 would like to search the electric line on their property.

1 Q Did she object to your presence being there?

2 A No, sir, she didn't.

3 Q Did she ever shut the door on you?

4 A No, sir, she didn't.

5 Q Did she ever say, No, I don't want the power company
6 here?

7 A No, sir, she did not.

8 Q Did she limit your freedom of movement in any way?

9 A She did not limit my freedom of movement at all.

10 Q Okay. Now let me ask you this. Did you limit her
11 freedom of movement in anyway?

12 A No, sir, we did not.

13 Q Did you tell her that she could only stay in one
14 particular place?

15 A No, sir, we did not.

16 Q What was she doing while Mid-Carolina was out
17 checking the power lines?

18 A There were several times -- she spent some time out
19 on the porch with us talking casual. She returned into
20 the residence. I believe she was doing a load of
21 clothing. She also had a child in the house that she went
22 in to check on occasionally.

23 Q Okay. Did the defendant come out?

24 A He did eventually come out, yes, sir.

25 Q And who got him to come out?

1 A Ms. Perez, whenever we made contact at the door,
2 she -- we asked if there was anybody else in the
3 residence. She said, My husband's asleep, he had to work
4 last night. She said, I'll go get him. And that's how
5 Mr. Perez came out to meet us.

6 Q And did he meet with you or Sergeant Blake?

7 A Both. We were both on the porch.

8 Q Okay. And how did he appear when he came out?

9 A Sleepy, tired. I think he had just -- he had been
10 asleep. Through our course of conversation while we
11 standing on the porch I learned that he worked at Wal-Mart
12 and he was a nighttime stalker -- not stalker, stocker --
13 nighttime stocker, and so he was very calm, very kind of
14 melancholy and appeared to be sleepy.

15 Q You said you learned he was a stocker at Wal-Mart?

16 A Yes.

17 Q Did you learn that from speaking with him directly?

18 A Yes.

19 Q And was he speaking English to you?

20 A He was.

21 Q How was his command of the English language?

22 A It was spotty, kind of limited to yes or no answers
23 and small sentences. I think he -- I knew that he had to
24 wake up to come to the door and so I started a
25 conversation with him regarding, I see you're sleeping,

1 your wife said you work nights, what do you do? And he
2 said he puts things up on shelves at Wal-Mart.

3 Q Okay. And did he have any problem explaining that to
4 you?

5 A No.

6 Q Did you have any problem understanding him?

7 A I did not have any problem understanding him.

8 Q Did you limit his freed of movement?

9 A I did not, no, sir.

10 Q Did you tell him he couldn't go back inside?

11 A No, sir.

12 Q What was -- would you say it's a fair assessment to
13 describe the situation at that point as being very
14 relaxed?

15 A It was relaxed.

16 Q Okay. So what happened next? He comes out,
17 Mid-Carolina's checking their lines. What happens next?

18 A He has a seat in a chair on the front porch.

19 Q Okay. And what did you all do while Mid-Carolina was
20 checking the lines?

21 A Small talk, just again, I was asking about his job
22 and what he did for a living. Other than that, it was
23 relatively quiet.

24 Q And where was Sergeant Blake while this was going on?

25 A Sergeant Blake was on the front porch about me,

1 oftentimes engaged with Mr. Perez and, again, just
2 conversation.

3 Q Okay. Did Mid-Carolina ever find anything?

4 A Yes, sir, they did.

5 Q And tell me how that came about.

6 A While we were standing on the front porch, one of the
7 workers from Mid-Carolina had come from the right side of
8 the residence, came past the front corner of the house and
9 they were holding a bundle of wires, and they called up to
10 the porch and I looked over at them and they said, We
11 found what we were looking for.

12 Q Okay. And who was that employee telling that
13 information to?

14 A They were telling Sergeant Blake and I.

15 Q Okay. And then what happened after they said that to
16 you and Sergeant Blake?

17 A It kind of got a little -- a little carried away.
18 Ms. Perez wanted to know what it was. So while Sergeant
19 Blake was in the process of explaining to her that it was
20 a spliced line, the defendant said something to Ms. Perez
21 in Spanish. At that second when he said something to her
22 in Spanish she became extremely irate, started yelling in
23 Spanish back at him, started crying hysterically.

24 Q So she's yelling to who?

25 A She's yelling at the defendant.

1 Q Okay.

2 A Obviously, Sergeant Blake and myself, we're
3 concerned. Our alert level went up considerably within
4 minutes -- with a time of seconds. She was extremely
5 upset, actually took a step in his direction, at which
6 time we stepped in to ensure that there was no domestic
7 situation about to happen.

8 Q How long were they going back and forth?

9 A It was not more than 15 seconds, 10 to 15 seconds.

10 Q Okay. And what happened then?

11 A When we finally got her to calm down within that 15
12 seconds, he looks over at her and he -- it's okay to refer
13 to my notes at this point?

14 Q Please.

15 A He said, I'm sorry, baby. He looked at me and he
16 told me, I know what you're looking for and it's in the
17 shed.

18 Q So he said, I'm sorry, baby. He wasn't saying, I'm
19 sorry, baby, to Deputy Fine, was he?

20 A He was not.

21 Q You're not his baby, are you?

22 A I was not his baby, no, sir.

23 Q Who was he saying it to?

24 A He was saying that to Ms. Perez, his wife.

25 Q Now, the second part of that statement, I know what

1 you're looking for, it's in the shed, who was he saying
2 that to?

3 A That was directed to me.

4 Q All right. And when he said, I know what you're
5 looking for, it's in the shed, did make any physical
6 movements at that point?

7 A He was rising to his feet from his chair.

8 Q Okay. And what did he do then?

9 A He turned around and his put hands behind his back.

10 Q If you could, please step down and demonstrate
11 exactly what he did to the jury.

12 A He was sitting in a lawn chair on the front porch.
13 He was -- as they were -- as he had said something to his
14 wife in Spanish and she came back to him in a very
15 aggressive manner speaking in Spanish, he said, I'm sorry,
16 baby, and about that time he stands up, he looks at me,
17 and I'm standing about here, she's over there, and he
18 says, I know what you're looking for and it's in the shed,
19 and about that time he turns around and puts his hands
20 behind his back like this.

21 Q Were you aware prior to that moment of anything being
22 in the shed?

23 A No, I was not aware of anything being in the shed.

24 Q Okay. If you would, please have a seat.

25 A Yes, sir.

1 Q What did you do after he placed his hands behind his
2 back like that?

3 A I put handcuffs on him at that point.

4 Q And did you tell him he was under arrest?

5 A No, sir, I told him he was being detained and
6 specifically that he was not under arrest at this time.

7 Q Now, you're going to have to explain to me what the
8 difference is between being detained and being under
9 arrest.

10 A Yes, sir. Being in detention means that there's a
11 reasonable suspicion to believe that there may be some
12 kind of illegal activity going on. If you put somebody
13 -- you place somebody in -- you detain somebody for three
14 reasons: To prevent escape, to prevent the destruction of
15 evidence and to ensure the safety on all parties on scene.
16 At that time it included myself, Sergeant Blake, and Ms.
17 Perez, his wife, as well as the Mid-Carolina employees
18 that were still on the scene.

19 Q Okay. Did you put cuffs on him?

20 A Yes, sir.

21 Q And what did you do after you put him in cuffs?

22 A I asked him to have a seat back in the chair.

23 Q And did he sit down?

24 A He did.

25 Q What happened next?

1 A At that point my focus was on him and his security
2 and everybody else's safety. Sergeant Blake then started
3 working on the consent to search and he took over that
4 part, so my focus at that point was on Mr. Aguirre.

5 Q Okay. And did he say anything while he was sitting
6 down there?

7 A He did. After Sergeant Blake received his consent to
8 search, Sergeant Blake actually left the porch to go see
9 what was in the shed.

10 While he was in the shed -- and again, I'll
11 refer to my notes if I may -- the defendant turned and
12 looked at me and said, She doesn't know anything about the
13 marijuana, it's all mine.

14 Q She doesn't know anything about the marijuana, it's
15 all mine?

16 A Yes.

17 Q Did Sergeant Blake obtain permission to search the
18 shed?

19 A He did.

20 Q Were you involved in that?

21 A I was not involved in the actual consent forms,
22 filling out the consent forms. I wasn't -- again, my
23 focus was on the defendant.

24 Q Okay. What did you do after he said that statement?

25 A I didn't do anything to be honest with you.

1 Q Okay.

2 A I continued to watch him and secure him in that
3 particular instant.

4 Q When he said, She doesn't know anything about it, the
5 marijuana's all mine, did he appear to understand English
6 at that point?

7 A He spoke it very well at that point, yes, sir.

8 Q Did you have any problem understanding what he was
9 saying?

10 A No, not at all.

11 Q Was there anything lost in translation when he
12 claimed that marijuana?

13 A Nothing lost in translation.

14 Q Did he ever request an interpreter?

15 A He did not.

16 Q Did he ever request a Spanish speaking officer to
17 come to the scene?

18 A He did not.

19 Q Did he ever say "no hablo ingles"?

20 A No, he did not.

21 Q Did he ever say "no comprende"?

22 A He did not.

23 Q Did you all get the narcotics officers involved in
24 the case at that point?

25 A Yes. When Sergeant Blake entered the shed,

1 identified what was in the shed, came back, he immediately
2 called narcotics.

3 Q And who arrived from narcotics?

4 A Detective Paige Barnes.

5 Q And how long did it take for her to get there?

6 A I'd say no more than 10 or 15 minutes.

7 Q Okay. Did you all turn the scene over to her at that
8 point?

9 A We did. At that point we did.

10 Q And is that part of you all's department policy?

11 A It is policy and procedure, whether it be major
12 crimes or narcotics investigators, anytime an investigator
13 comes out, we will turn that scene over to that
14 investigator.

15 Q Okay. The individual who said, She didn't know
16 anything about it, the marijuana's all mine, is he
17 standing in court today?

18 A He is.

19 Q Can you point him out for me, please?

20 A (Witness complying.)

21 Q Are you pointing towards Mr. Aguirre?

22 A I am, yes, sir.

23 Q The gentleman with the headset on?

24 A Yes, sir.

25 Q Sitting by Ms. Zmroczek?

1 A Yes.

2 MR. ROSS: Nothing further from this witness.

3 If you'll answer anything Ms. Zmroczek has.

4 THE WITNESS: Yes, sir, I will.

5 CROSS-EXAMINATION

6 BY MS. ZMROCZEK:

7 Q And I know that you -- it's Mr. Aguirre. I know you
8 called him Mr. Perez a few times.

9 A I'm sorry. My reference --

10 Q I assumed you were talking about Mr. Aguirre.

11 A Perez would be for Mrs. Perez, I'm sorry.

12 Q You said you were a road deputy for a long time?

13 A I was a road deputy for approximately 18 months, 19
14 months, and then transferred to traffic division, yes,
15 ma'am.

16 Q You've pulled people over before, right?

17 A Yes, ma'am.

18 Q You pull people over that either have been drinking
19 or smoking dope or doing something they weren't supposed
20 to, right?

21 A Yes, ma'am.

22 Q When you pulled them over, when you made first
23 contact with them, were they casual, did they say, sure,
24 come on, let's sit on the porch and chat, or were they
25 nervous, trying to get away, squirrely, how would you

1 describe somebody who is guilty of something?

2 A Well, it's hard to say. I mean, I guess it could go
3 either way. It would depend on the actual offense and the
4 situation, yes, ma'am.

5 Q In your experience --

6 A Yes, ma'am.

7 Q -- when you -- you're a road deputy -- pull somebody
8 over?

9 A Yes, ma'am.

10 Q Even if it's just for speeding, they know they're
11 speeding, are they nervous?

12 A They're less nervous if they are aware of what they
13 were being pulled over for.

14 Q Okay. You stated that you were contacted by MCEC for
15 what you say were abnormal meter readings, but kind of
16 left some other stuff out, too. What else were you told
17 that morning?

18 A Whenever I met with them, I was told they were
19 concerned about the possibility of power being stolen at
20 the residence. And I asked them if they could elaborate
21 on, you know, what exactly they had in regards to that,
22 and they advised that -- it was my understanding at the
23 time that they advised that there was an unusual or
24 abnormal reading on the meters. I have extremely limited
25 electricity knowledge, and that was my understanding at

1 the time.

2 Q What else did they tell you besides just unusual
3 activity on the meter?

4 A One of the things that -- the reason they called us
5 was because of their concern for their safety like they
6 mentioned. One of the reasons for that is the connection
7 between the power issue as well as it correlating with the
8 marijuana grow houses that they had been involved with a
9 few days earlier.

10 Q Because you were told that the power was in the name
11 of Jennifer Izquierdo, right?

12 A That was my understanding at the time. The name
13 Jennifer Izquierdo came up as someone who was associated
14 with the previous marijuana grow houses.

15 Q And with the address that they were going to?

16 A Yes, it had some tie to that particular address. I
17 was under the impression at that time on the scene that
18 she was the one that requested that the power be turned
19 on. I later found that I was mistaken in that. But I was
20 advised that Ms. Izquierdo had been associated with the
21 previous marijuana grow houses.

22 Q I'm not trying to trip you up. I mean, what you were
23 told that day or what your understanding was because of
24 what you were told that day is what you put on your
25 papers, your report?

1 A Yes, ma'am.

2 Q You didn't make that up?

3 A No, ma'am.

4 Q You put down what you were told, correct?

5 A Yes, ma'am. I put down what my understanding to the
6 best of my knowledge was, yes, ma'am.

7 Q All right. You said that later on in the day you all
8 had contact with narcotics, but that actually wasn't the
9 first time you all had contacted narcotics?

10 A No, ma'am, it was not. Once we received the
11 information that there may be something else at this
12 residence because of the name associated with it and the
13 previous grow houses, we -- Sergeant Blake and myself
14 actually took the added step to investigate further to
15 determine whether or not that was an accurate report that
16 we were receiving. At that point Sergeant Blake did
17 contact the narcotics department and narcotics officers
18 just to confirm what we were being told.

19 Q And when you go to the house and Mr. Aguirre and Ms.
20 Perez were accommodating; is that correct?

21 A Yes.

22 Q And they never said don't dig here, don't --

23 A No, ma'am, they did not.

24 Q And MCEC, I believe he testified, had to dig under
25 the house; is that correct?

1 A I believe that the digging was done beside the house
2 and observed under the house, the wire laying on the -- I
3 certainly do not want to misspeak in regards to the
4 testimony.

5 Q I'm not trying to trip you up, I promise.

6 A No, I understand. I understand.

7 Q When you drove up, did you notice -- could you tell
8 that there were illegal power lines?

9 A No, ma'am, I saw no illegal power lines.

10 Q You stated that Mr. Aguirre told you he worked at
11 Wal-Mart as a stocker?

12 A Yes, ma'am.

13 Q He's not an electrician?

14 A No, ma'am, not to my knowledge.

15 Q The job that he described to you was, I think you
16 said, putting things on shelves; is that right?

17 A That's correct, yes, ma'am. That was his description
18 or the description of what he did, yes, ma'am.

19 Q He put things on shelves, that was his job?

20 A Yes, ma'am.

21 Q Had he done that for a long time?

22 A I don't believe that our conversation got that in
23 depth in regards to how long he might be doing it.

24 Q Okay. So MCEC comes -- one of the workers comes out
25 and pulls up the power line and he just stands up and

1 says, It's in the shed, and puts his hands behind his
2 back?

3 A He said something to his wife in Spanish first before
4 doing that.

5 Q And then -- oh, and then that ten to fifteen seconds
6 she started screaming hysterically --

7 A As soon as -- I'm sorry.

8 Q -- and you all jumped in -- I'm just trying to get it
9 straight.

10 A Yes, ma'am.

11 As soon as he said something to her in Spanish,
12 and it was relatively a calm statement to her in Spanish,
13 she then directed -- she was angry, she was upset, she was
14 crying and screaming at him in Spanish.

15 Q And he said, What you're looking for is in the shed?

16 A Yes, after -- after he says to her, I'm sorry, baby,
17 then he turned and said that to me.

18 Q And he didn't ever say, I'm stealing power, or I did
19 this, or this is me? He never admitted any of that to
20 you, did he?

21 A No, ma'am. After that initial statement that I'm
22 sorry, baby, I know what you're looking for, it's in the
23 shed, he didn't say a whole lot after that.

24 Q Then you stayed with him for the remainder of the
25 time?

1 A Yes, ma'am, that was my duty at that point was to
2 secure him.

3 MS. ZMROCZEK: That's all I have.

4 THE COURT: Redirect.

5 MR. ROSS: No, Your Honor.

6 THE COURT: Thank you, sir. You may step down.
7 Next witness.

8 MR. ROSS: The State calls Sergeant Kevin Blake
9 to the stand.

10 KEVIN BLAKE, after being duly sworn, testified
11 as follows:

12 THE CLERK: Have a seat, please, sir. Once
13 you're seated, state your full name, spelling your last.

14 THE WITNESS: Sergeant Kevin Blake, B-L-A-K-E.

15 DIRECT EXAMINATION

16 BY MR. ROSS:

17 Q Sergeant Blake, how are you doing this afternoon,
18 sir?

19 A Doing well.

20 Q You were one of the responding officers in this case;
21 is that correct?

22 A I was.

23 Q Before you tell the jury what you did that day, can
24 you tell them a little bit about your background in law
25 enforcement?

1 A I started out in late 2002, Charleston City Police.
2 Moved up here in 2006 and sign on, was hired on by
3 Lexington County. I've been through road patrols, master
4 deputy in our northern region, and currently was this day
5 in question patrol sergeant in the South region.

6 Q What does a patrol sergeant do?

7 A Just about everything these days. Respond to calls
8 for service just as if I was just a road deputy, in
9 addition to monitoring -- right now I have five other
10 deputies assigned to me currently on the shift, answer
11 their questions, respond to their scenes. If outside
12 resources are needed, it's my responsibility to assess
13 what's going on and call those resources in.

14 Q So you're those five deputies, you're their
15 supervisor?

16 A I am. I make number six on the shift.

17 Q Okay. What type of cases do you all respond to?

18 A Everything from somebody waking up and their
19 mailbox's been a victim of mailbox baseball to homicide.

20 Q Tell me what happened on October 7th, 2011.

21 A I received a call from Deputy Fine to meet with him
22 at the Hill View truck stop in reference to him being
23 there with MCEC. I got there and he related to me that
24 they had some concerns about wanting us to do a stand-by
25 with them. We do them for people wanting to pick up dogs

1 and domestic disputes and you name it, people from the
2 county request us to stand by.

3 After speaking to the workers on scene, they
4 indicated to us that they had some issues with wanting to
5 go investigate theft of power. They also provided a name
6 associated which led them to wanting to investigate [REDACTED]
7 [REDACTED] for theft of power, with Izquierdo being
8 related to the previous day's event with some marijuana
9 grow houses.

10 Q Okay. What happened next?

11 A We had -- I had no knowledge of [REDACTED]
12 until that day, being requested to go out there, so I just
13 asked for whoever was on narcotics, and right now I
14 couldn't remember who it was that day, but on the phone
15 just as a matter of we're walking in here, does this name,
16 which is Izquierdo, ring a bell, you know, what are we
17 walking into, and they said, you know, to treat it just
18 like we would any stand-by for something. They didn't
19 give me any indications for heavy fire power, dogs,
20 because our narcotics agents also deal with dog fighting
21 at that time, so I didn't know if we were going to be
22 rolling into a yard that had pit bulls chained up
23 everywhere.

24 Q Okay.

25 A So I was just looking for any information I could

1 get.

2 Q For safety purposes?

3 A Yes, sir.

4 Q What time did you meet with the Mid-Carolina folks?

5 A Actual meet with them?

6 Q What time in the morning are we talking about?

7 A 9:30, quarter to 10, somewhere around there, probably
8 9:30.

9 Q After you made the phone call to narcotics, what
10 happened then?

11 A Myself and Deputy Fine went over to the house and we
12 went down the driveway there on [REDACTED] and saw one
13 car in the parking lot, and no dogs, and we just went up
14 to the front porch and knocked.

15 Q All right. And what was the tone of the knock?

16 A You know, we had no reason to go in there hot and
17 heavy. We just knocked on the door like I would, you
18 know, anybody else, just trying to see who was home.

19 Q Did somebody answer the door?

20 A A woman did.

21 Q And who was that woman?

22 A Ms. Perez.

23 Q And is she in court today?

24 A The front row, flowered, I guess, blue-green shirt.

25 Q What happened when you met with her?

1 A Explained to her that MCEC, the power company, wanted
2 to come out and investigate their lines from the
3 transformer to the pole to the house and they needed to
4 move around the property. There was no objections. She
5 was fine with it.

6 Q Did she place any limits on where you all could go?

7 A No, sir.

8 Q Did she place any limits on where the power company
9 could go?

10 A Her only request was that, you know, if we had to go
11 into the back building, there's a small eight by eight,
12 eight by ten shed at the far rear of the property. She
13 said that that was for her religion and asked us to be
14 respectful if we needed to go there.

15 Q Okay. Now, I'm going to show you State's Number 1
16 and I'm going to hold it up to where the jury can see it.
17 The building that she was referring to, was that the
18 building where marijuana was found?

19 A No, sir. It's probably just out of view on the
20 bottom portion of the photograph.

21 Q So it's down in this area?

22 A Yes, sir.

23 Q That's the only limit she placed?

24 A She didn't tell us we couldn't go in there. She just
25 asked that if we did go in there, that we, you know,

1 respect it.

2 Q Okay. Did she place any limits on this building
3 here?

4 A No, sir, there were no limitations put on to where
5 the power company or anybody could go.

6 Q All right. After you met with her, what you do then?

7 A We called Mid-Carolina Electric and they were just up
8 the road so in a very short matter of time they were at
9 the house. We pulled in and told them it was fine and the
10 crews kind of went two ways, some were at the meter by the
11 house and some guys went into the woods where the
12 transformer and pole were, and they started looking.

13 Q What was Ms. Perez doing at this time?

14 A Housework, laundry. She'd go into the house and come
15 out of the house.

16 Q Did Mr. Aguirre come out?

17 A Yes. He came out. She woke him up. He was -- she
18 said he had been sleeping. He came outside and sat in the
19 chair.

20 Q Okay. Where were you all when he came out and sat in
21 the chair?

22 A I -- probably on the porch. We were probably on the
23 porch. Deputy Fine stayed up there most of the time. I
24 out of curiosity wanted to know what electric wires and
25 everything else looked like, so I'd come down and go back

1 around the side of the house and watch them dig and
2 meandered around between the front porch and the back
3 corner by the meter box.

4 Q Okay. Did Mid-Carolina ever find anything?

5 A They did.

6 Q How long did it take them to find that?

7 A The total time from getting on the property until
8 them advising us they had the bundled cables, maybe 30
9 minutes, a little more.

10 Q Okay. Now you said they advised you that they had
11 the bundled cables. Where were you when you learned of
12 that?

13 A Myself and Deputy Fine were on the front porch, and
14 at that point, Mr. Aguirre was still seated in the chair.

15 Q Okay.

16 A Ms. Perez had come outside and Mid-Carolina had said,
17 hey, and we turned around and by that point we had moved
18 just kind of to the other end of the porch and he said, We
19 found what we're looking for, and he held up a bundle of
20 wires and plastic and insulation, I guess.

21 Q What happened next?

22 A I heard Mr. Aguirre say something in Spanish and then
23 Ms. Perez became agitated, started getting very vocal.
24 She was like upset. And Deputy Fine, at that time I was
25 his supervisor, and we'd been to many domestic calls by

1 ourselves or together, and we immediately put ourselves
2 between the two of them.

3 Q So she was directing her agitation towards him?

4 A Yes, sir, it wasn't at us.

5 Q Okay. Then what happened?

6 A He -- Mr. Aguirre still remained seated. And just by
7 way of the way we approached the two of them, Deputy Fine
8 was closer to Mr. Aguirre and I turned my attention to Ms.
9 Perez and was trying to get her to calm down. It was all
10 over in a matter of seconds.

11 Q So when you got in the middle between them, you were
12 focusing on Ms. Perez and you had your back turned towards
13 Mr. Aguirre?

14 A Yes.

15 Q And Deputy Fine on the other hand was facing him?

16 A Yes.

17 Q Okay. So what happened at that point when you got in
18 between them?

19 A My attention was focused on Ms. Perez, again, trying
20 to calm her down and trying to figure out what in the
21 world sparked all of it. And I observed Mr. Aguirre
22 standing up. I couldn't hear what was being said, but I
23 observed him standing up and turn around and put his hands
24 behind his back --

25 Q Okay.

1 A -- and Deputy Fine put handcuffs on him.

2 Q Then what happened?

3 A I walked over to him, What's going on? And that's
4 when he indicated to me about what Mr. Aguirre had
5 vocalized to him.

6 Q Okay. Did you look in the shed at that point?

7 A Not immediately, no, not knowing what was there
8 because whatever was said in Spanish we didn't understand,
9 so again "it's in the shed" for us was unknown at that
10 point.

11 I asked Ms. Perez, I said, you know, do you,
12 mind if we look in the shed? Mr. Aguirre offered to --
13 told her, you know, the keys are here in the house. She
14 went inside, got a set of keys, came outside. He
15 indicated to her that those were the wrong set of keys.
16 She went back inside, got a second set of keys, and he
17 said -- he confirmed that those were the right keys, and
18 that's when I went out to the shed and opened the door.

19 Q How did he confirm that those were the right keys?

20 A He told her. It was in English, I could understand.
21 He said, yeah, those are it.

22 Q Now, when he said, you've got the wrong keys, was he
23 talking in English or Spanish?

24 A No, I understood him, and I don't speak much Spanish.

25 Q You didn't have any problem understanding what he was

1 saying?

2 A No.

3 Q When he said, those are the right keys, did you have
4 any problem understanding what he was saying?

5 A No, sir.

6 Q Anything lost in translation?

7 A No.

8 Q Did you take possession of that key at that point?

9 A I did.

10 Q And did that key open a door to the shed?

11 A Yes, the larger shed building close up between the
12 house and the road, yes, sir. Not the one at the back of
13 the property, but the larger shed up front.

14 Q It opened the shed with the marijuana in it?

15 A Yes, sir.

16 Q All right. And did you open that shed?

17 A I did.

18 Q Did you go in?

19 A Far enough into there -- when you walk into the shed
20 there was almost a quarter that had been constructed,
21 wooden pieces on the floor. I saw a wall to the rear,
22 that little hallway that was full of wires and electric
23 cables, and I'm not an electrician and I wasn't about to
24 get close to it. And roughly in the center of the wall on
25 the interior there was a door that was kind of made out of

1 insulating reflective material that was partially askew
2 and you could smell the marijuana without having to go
3 into that room, and at quick glance, you could see plant
4 material growing, and that's when I got out of the
5 building.

6 Q Now, let me ask you this. You can smell marijuana,
7 and this may be a stupid questions, but what did it smell
8 like?

9 A Skunk. It's just -- growing marijuana smells bad.
10 You can't mistake it.

11 Q You can't mistake that for anything?

12 A At least I can't.

13 Q Okay. You came back out. What did you do then?

14 A Oh, I knew that it was more than just a little dime
15 bag in somebody's pocket that patrol deals with, so I
16 called -- I had dispatch radio -- one of my jobs as a
17 supervisor, even if I hadn't been on the scene, I would
18 have been the only one to be able to request narcotics or
19 any other assistance by policy, so I just requested for
20 dispatch to have the next available narcotics agent to
21 respond.

22 Q And did an agent respond?

23 A Investigator Barnes did.

24 Q How long did it take her to get there?

25 A Maybe 15 minutes, give or take.

1 Q All right. And while you're waiting on her, did you
2 interact with the defendant or his wife at any point?

3 A The defendant, no.

4 Q How about his wife?

5 A Very little, I mean, if anything. At that point we
6 were in a waiting game. I mean, previously stated, the
7 only person's movements at that point who were kind of
8 constrained were Mr. Aguirre. Ms. Perez was free to move
9 about.

10 Q Okay. Did you ever obtain written permission to
11 search the premises?

12 A Yes.

13 Q And from whom did you obtain that from?

14 A Ms. Perez.

15 MR. ROSS: All right. Beg the Court's
16 indulgence one second.

17 (Pause.)

18 MR. ROSS: Your Honor, may I approach?

19 THE COURT: Yes.

20 (A bench conference was held with the judge and
21 attorneys in the presence of the jury but out of the
22 hearing of the jury.)

23 (WHEREUPON, State's Exhibits Nos. 20-21 were
24 marked for identification only.)

25 BY MR. ROSS:

1 Q Sergeant Blake, I'm showing you what's been marked as
2 State's Number 20 and 21. Do you recognize these
3 documents?

4 A I do.

5 Q And what is State's Number 20?

6 A It's a Lexington County Sheriff's Department Consent
7 to Search form.

8 Q And is that what you presented Ms. Perez?

9 A Yes.

10 Q And what portion of this form did you fill out?

11 A When I -- any time I do a consent to search form,
12 just so there's no confusion about addresses and dates and
13 times and where that information belongs, I will fill out
14 everything except for their printed name at top and
15 obviously their signature at the bottom, but my name,
16 location, dates and times are all in my handwriting.

17 Q Okay. And did Ms. Perez sign that?

18 A She did.

19 Q And did you read the consent to search form to her
20 before she signed it?

21 A I did.

22 Q Did she have any problems understanding it?

23 A Not that she expressed to me.

24 Q Okay. Did somebody witness this? Whose signature is
25 that at the bottom where it says "witness"?

1 A Investigator Barnes.

2 Q Okay. Let me see the second form, State's Number 21.

3 Do you recognize that?

4 A I do.

5 Q And what is it?

6 A It's a Lexington County Sheriff's Department Consent
7 to Search.

8 Q And who signed that one?

9 A Mr. Aguirre.

10 Q Okay. Who handled presenting this to Mr. Aguirre?

11 A I filled out my name, you know, location, dates,
12 times, I filled both of them out at the same time. At the
13 time this one was signed and presented to Mr. Aguirre,
14 that was done on behalf of Investigator Barnes.

15 Q So she'd already arrived by the time you got to the
16 second one?

17 A Yes, sir.

18 Q Okay. When she arrived at the scene did you give
19 these to her?

20 A Maybe not within minutes of her arriving, but within
21 a very short period of time, yes, sir. I didn't throw
22 them at her as she got out the car.

23 MR. ROSS: Okay. Your Honor, at this point we'd
24 move 20 and 21 into evidence.

25 MS. ZMROCZEK: Without objection.

1 THE COURT: They're admitted without objection.

2 (WHEREUPON, State's Exhibits Nos. 20-21 were
3 admitted into evidence.)

4 BY MR. ROSS:

5 Q Now once written consent is obtained -- well, let me
6 ask you this. Did you ever attempt to obtain a search
7 warrant?

8 A No, sir.

9 Q And why is that?

10 A We had the consent of the residents who were
11 responsible for the property on scene.

12 Q Okay. And what happened when the narcotics agent
13 arrived, Detective Barnes?

14 A As our policy, even though I'm the patrol supervisor,
15 I have my crew, my guys that I'm responsible for their
16 activities, but any time specialized divisions come in, be
17 it narcotics, major crimes, crime scene, we turn the scene
18 over to them. It's theirs, and we're there as an
19 assisting role at that point.

20 Q Did you remove anything from the shed?

21 A Did I remove anything from the shed?

22 Q Yes.

23 A No, sir.

24 Q Did you remove anything from the house?

25 A No, sir.

1 Q Is the individual who was at [REDACTED], the
2 gentleman of the house, is he in court today?

3 A He is.

4 Q Could you point him out for me, please?

5 A He's seated beside his attorney, Ms. Zmroczek, with
6 the gray-striped shirt, goatee.

7 Q And are you pointing at the defendant?

8 A I am.

9 MR. ROSS: Your Honor, nothing further for this
10 witness. Please answer anything Ms. Zmroczek has.

11 THE COURT: Ms. Zmroczek.

12 CROSS-EXAMINATION

13 BY MS. ZMROCZEK:

14 Q I wanted to ask you about the consent form that you
15 identified. Why do you have these forms? Why do you have
16 these forms? Why do you have somebody sign this form and
17 you make sure that you read it to them?

18 A Because it reflects their consent for us to search
19 property.

20 Q And it's important enough to have a witness watch you
21 do that to make sure that they -- you know, I guess
22 they're signing it saying that we saw you do this, we're
23 witnessing it, that's why you have the line there, right?
24 Otherwise, why bother? Is it important to have a witness
25 to the consent form?

1 A Yes, sure.

2 Q It is?

3 A Yeah, I'd agree with you.

4 Q Okay. And Detective Barnes signed these?

5 A Uh-huh.

6 Q Did she witness these being signed?

7 A I handed her the one that I had pre-filled out for
8 Mr. Aguirre and at the same time I just handed her both of
9 them and said I have a consent to search from Ms. Perez.
10 Everything was still going on when narcotics arrived as
11 far as paperwork and things like that. She signed both of
12 them.

13 Q She signed them, but she did not witness Ms. Perez
14 signing it?

15 A No.

16 Q Because she wasn't there?

17 A When Ms. Perez signed it? No.

18 Q You said that Officer Fine called you and you all met
19 at the truck stop and then you were concerned enough and
20 clearly Mr. Wilson was concerned enough for his safety
21 that you all called narcotics before you went out to the
22 property, correct?

23 A Concerned? All right. Concerned for safety from
24 their standpoint or from our standpoint? Which one are
25 you asking?

1 Q I have it written down, concerned for safety, so --

2 A Okay. MCEC, they were a business, private individual,
3 they had the same rights that everybody does in the county
4 to call us to stand by. Based on information they
5 provided with the name of Izquierdo, from their dealings
6 indicated possible narcotics involvement. So I'm not
7 going to walk into something I have no knowledge of, so
8 the people that deal with narcotics, I called them.

9 Q And you said narcotics said go ahead. But didn't
10 narcotics say, yes, the name Izquierdo is associated with
11 several grow houses?

12 A They told us they were involved with narcotics and
13 possible activity at houses, yes.

14 Q When you approach houses that are involved in
15 possible activity in narcotics and you're an officer
16 approaching a house that you know or have been told has
17 these kind of things going on, what kind of safety
18 protection do you make for yourself or the other people
19 around you?

20 A I've gone to man-with-a-gun calls held up on the
21 front porch by myself, so it's just -- the environment
22 dictates what I do. At this point Tom Fine was with me
23 and we pulled up to the house and just decided to go up to
24 the front door and knock.

25 Q And Ms. Perez opened the door and you said that she

1 was accommodating?

2 A Yes.

3 Q Pleasant, in fact?

4 A I don't know what her normal daily demeanor is, but,
5 I mean, she wasn't hostile or agitated or anything. She
6 was just matter of fact. She was at the house.

7 Q And you said she was doing laundry and housecleaning.
8 Could you see all that from standing outside?

9 A Some of that, and what she told us. At one point she
10 told -- she said, I was folding laundry -- at one point
11 she was folding laundry there inside and said, you know,
12 do want to step in for a minute? So I stood right there
13 at the screened-in porch, at the storm door of the house.

14 Q She invited you in?

15 A To the house?

16 Q Is that when she said step in for a minute?

17 A Yeah, to the storm door.

18 Q Okay.

19 A We didn't go walking through the house, but that's
20 where she said she was folding clothes.

21 Q You said you didn't have many interactions with Mr.
22 Aguirre?

23 A No. He came outside and looked like a man that was
24 just waking up. He came outside in a T-shirt and short, I
25 think, and sat in the chair.

1 Q He wasn't nervous or combative? He wasn't yelling at
2 you, he wasn't mean to you, he didn't threaten anybody?

3 A No. He's just sitting there.

4 Q And after they walked around and they said, We found
5 what we're looking for, you said that he said something to
6 his wife in Spanish, and you didn't know what it was but
7 she got really upset, and then turn around and you saw him
8 put his hands behind his back?

9 A Yes.

10 Q Okay. When you were walking -- while they were
11 digging up the property and you were walking around, were
12 you able to see kind of what MCEC workers were doing?

13 A Yeah, I was watching them dig in the ground.

14 Q When you drove up to the property, you didn't notice
15 any wires or anything that would indicate to you that
16 there was spliced stolen property?

17 A I can barely hook up a ceiling fan. I couldn't tell
18 you what it looks like.

19 Q When did you ask them to sign that? Was it after he
20 said, It's mine -- after he put his hands behind his back
21 or after he had gone to the shed?

22 A Sign the consent to search forms?

23 Q Yes.

24 A After he stood up and put his hands behind his back
25 and we -- at that point now it's something that's ongoing

1 from the point of MCEC stating that they found their wires
2 and Deputy Fine related, I know what you're looking for,
3 it's in the shed, we asked if it was all right if we
4 checked the shed and Ms. Perez consented.

5 MS. ZMROCZEK: Beg the Court's indulgence.

6 (Pause.)

7 MS. ZMROCZEK: That's all I have.

8 THE COURT: Yes, sir.

9 MR. ROSS: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. ROSS:

12 Q State's Number 20, did you see Ms. Perez sign this
13 document?

14 A I did.

15 Q You witness that with your own eyes?

16 A I did.

17 Q State's Number 21, you filled out this document,
18 didn't you?

19 A I did.

20 Q And you gave it to Agent Barnes?

21 A I did.

22 Q And when you gave these two documents to her, did you
23 turn the scene over to her at that time?

24 A I did.

25 Q And once a scene is turned over to a narcotics

1 officer, they take charge of the investigation at that
2 point?

3 A Yes, sir.

4 Q And they're involved with completing these consent to
5 search forms?

6 A That could be part of completing the process, yes,
7 sir.

8 Q That's part of the investigation, right?

9 A Yes.

10 Q And they're charged with completing the
11 investigation, right?

12 A From that point on, yes, sir.

13 Q Who gave you the key to act on this permission, who
14 gave you the key to search that shed?

15 A Ms. Perez.

16 Q Where did she get the key from?

17 A Inside their residence.

18 Q Did she know where the key was initially?

19 A She was directed by her husband.

20 Q And is her husband Mr. Aguirre over here?

21 A Yes.

22 Q Did he point out where the key was?

23 A Yes.

24 MR. ROSS: Nothing further, Your Honor.

25 THE COURT: Anything further?

1 Thank you, sir.

2 Ladies and gentlemen, I think that will do it
3 for this day.

4 I'm going to appoint Juror Number 42 to serve as
5 the foreperson of the jury. If you will serve as the jury
6 foreperson and take the first seat here when you return.

7 As foreperson you'll be the spokesperson for the
8 jury, will preside over jury deliberations and complete
9 the verdict form representing the unanimous verdict of the
10 jury.

11 We'll start back tomorrow morning at 9:30. At
12 9:30 a.m. we'll need you back.

13 Have a good evening. Please do not discuss the
14 case with anyone. You must decide the case by discussing
15 it only with your fellow jurors after listening to the
16 entire case and my telling you that it's time to discuss
17 the case. So you cannot discuss it with anyone away from
18 the courthouse.

19 We'll see you tomorrow morning.

20 (The jury left open court at approximately 5:20
21 p.m.)

22 THE COURT: All right. Anything further on this
23 matter before we leave?

24 MR. ROSS: No, Your Honor.

25 MS. ZMROCZEK: No, Your Honor.

1 THE COURT: Do you all have any preliminary
2 charges that you want to submit for us to be working on
3 and considering?

4 MR. ROSS: I do, sir.

5 THE COURT: All right.

6 MR. ROSS: I've got a hard copy here. Would you
7 like me to e-mail that to you, Your Honor?

8 THE COURT: That will be fine.

9 MS. ZMROCZEK: And I have an e-mail copy.

10 THE COURT: If you'll e-mail it, that will be
11 best.

12 See you all at 9:30 tomorrow morning.

13 MR. ROSS: Thank you, Your Honor.

14 (The proceedings were concluded for the day and
15 reconvened on April 25, 2013.)

16 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

17 VOLUME 1 OF 2

18

19

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25

1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5)
6 COUNTY OF LEXINGTON)
78 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Lexington County, South Carolina, on the 24th day of
15 April, 2013.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
1819 November 1, 2013
2021 
2223 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	—)	2011-GS-32-03799
		2013-GS-32-01171

STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	VOLUME 2
LEANDRO AGUIRRE	)	
_____ DEFENDANT	—)	

April 25, 2013
Lexington, South Carolina

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JUDGE; and a jury.

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

MICHAEL D. ROSS, ASSISTANT SOLICITOR
ROBERT E. McNAIR, III, ASSISTANT SOLICITOR
Attorneys for the State

AIMEE J. ZMROCZEK, ESQ.
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

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1 (WHEREUPON, State's Exhibits Nos. 22-76 were
2 marked for identification only.)

3 THE COURT: Good morning. Anything before the
4 jury comes in?

5 MR. ROSS: Yes, Your Honor, briefly.

6 I just want to put on the record that
7 Ms. Zmroczek subpoenaed personnel records for Lieutenant
8 Hamilton, who is a witness in our case. John Tate, the
9 general counsel for the sheriff's department, is here.
10 And I believe they have resolved any issue for personnel
11 records, and that is no longer an issue for Ms. Zmroczek.

12 MS. ZMROCZEK: Your Honor, that's absolutely
13 correct. Mr. Hamilton was listed as a witness, and I had
14 no incident report or anything from him, and so I went
15 ahead and subpoenaed the record, and Mr. Tate confirmed
16 that there is nothing applicable. So I agree with him, so
17 I'm releasing him.

18 THE COURT: Thank you.

19 MR. TATE: Thank you, Your Honor.

20 THE COURT: Yes, sir. Thank you.

21 All right. You can bring in the jury.

22 (The jury came into open court at approximately
23 9:41 a.m.)

24 THE COURT: Good morning. Madame Forelady,
25 how's the jury doing?

1 THE FOREPERSON: Good.

2 THE COURT: Very good. You may proceed.

3 MR. ROSS: Thank you, Your Honor. May it please
4 the Court.

5 The State would call Detective Paige Barnes to
6 the stand.

7 PAIGE BARNES, after being duly sworn, testified
8 as follows:

9 THE CLERK: Once you're seated, state your full
10 name on the record, spelling your last, please.

11 THE WITNESS: Paige Barnes, B-A-R-N-E-S.

12 DIRECT EXAMINATION

13 BY MR. ROSS:

14 Q Detective Barnes, how are you doing this morning?

15 A I'm good.

16 MS. ZMROCZEK: Your Honor, I'm sorry to
17 interrupt, but I think we're having equipment -- I just
18 want to make sure that -- thank you.

19 BY MR. ROSS:

20 Q Detective, you were the initial responding narcotics
21 officer in this case; is that correct?

22 A That's correct.

23 Q Before you tell me what you did in this case, can you
24 tell the jury a little bit about your background in law
25 enforcement, please?

1 A I began law enforcement in 2000. I worked for the
2 South Carolina Department of Probation, Parole and Pardon
3 Services. I moved over to the Lexington County Sheriff's
4 Department in 2004. I worked on the road for
5 approximately a year and a half. I was promoted to a
6 fugitive investigator. I did that for approximately four
7 years, and then I was promoted to a narcotics investigator
8 in 2008.

9 Q So you've been doing narcotics for, I guess, about
10 four and a half, five years now?

11 A Yes, sir.

12 Q Tell me about your specific training as it relates to
13 narcotics.

14 A I have been to various schools pertaining to
15 clandestine labs, marijuana grows, undercover, basic
16 narcotics.

17 Q Who teaches at these schools, who runs these classes?

18 A Retired federal agents.

19 Q What organizations sponsor these schools?

20 A The federal government.

21 Q Okay. Tell me, what are your job duties as a
22 narcotics officer?

23 A I have various job duties. I do undercover buys,
24 controlled buys of illegal narcotics, drug trafficking,
25 prostitution, dog fighting, methamphetamine labs. You

1 name it, I do it.

2 Q And you've been doing this since 2008?

3 A Yes, sir, 2008.

4 Q Tell me, how did you get to [REDACTED] on
5 October 7, 2011? How did that come about?

6 A I was contacted by my lieutenant, Lieutenant
7 Hamilton. He advised me to respond out to [REDACTED]
8 [REDACTED] in reference to a possible marijuana grow.

9 Q Did you know what you were walking into?

10 A I had no idea.

11 Q How long did it take you to get there?

12 A About ten to 15 minutes.

13 Q So you got there. What did you find?

14 A When I got there, I pulled up to the front porch. I
15 noticed that the scene appeared to be very relaxed.
16 Nobody was on high guard, so to speak. I observed Kevin
17 Blake coming from the shed. He met me halfway in the
18 driveway and explained to me that they had an indoor
19 marijuana grow, and a consent to search had been signed.
20 I walked on to the porch and spoke with Mr. Aguirre.

21 Q Okay. How did Mr. Aguirre appear when you met with
22 him?

23 A Very calm.

24 Q Was he in handcuffs?

25 A Yes.

1 Q Where were his cuffs?

2 A Behind his back.

3 Q What did you do when you got there to him?

4 A I removed the handcuffs from behind his back to go
5 over a few things with him. I read him his Miranda
6 rights.

7 Q What are his Miranda rights? What are you talking
8 about there?

9 A I advised him that he had the right to remain silent,
10 anything that he said could be used against him in a court
11 of law. He had a right to an attorney. If the State
12 cannot -- if he could not afford an attorney, the State
13 would provide him one. And I asked him if he understood.

14 Q Did he appear to understand those rights?

15 A Very much so.

16 Q Did he have any questions about those rights?

17 A No, sir.

18 Q Did he appear to understand the English language?

19 A He did.

20 Q Did he have any looks of confusion on his face?

21 A He did not.

22 Q After you advised him of his rights, what did you do
23 next?

24 A I introduced myself, and told him who I was and my
25 purpose for being there. And due to the fact that they

1 had two different last names, I wanted to make sure that
2 he signed the consent to search before the process
3 proceeded. I did not know their marital status, and so I
4 just made sure that he understood the consent to search.
5 I read it to him, he signed it and agreed to it.

6 Q Did he have any questions about that consent to
7 search?

8 A No, sir.

9 Q Did he ask for a translator at all?

10 A No, sir.

11 Q Did he ever tell you "no hablo ingles"?

12 A No, sir.

13 Q Did he ever say "no comprendo"?

14 A No, sir.

15 Q You said he signed a consent form. I'm handing you
16 State's No. 21 that's been admitted into evidence. Do you
17 recognize that document?

18 A I do.

19 Q Is that the consent to search form he signed?

20 A It's a copy.

21 Q Okay. Did you witness him sign it where it says
22 signed?

23 A I did.

24 Q And did you put your name down as a witness?

25 A I did.

1 Q That is your signature where it says "witness"?

2 A Yes, sir.

3 Q I'm going to show you State's 20. Do you recognize
4 this document?

5 A I do.

6 Q Can you tell me what that is?

7 A A consent to search.

8 Q And who signed that consent to search?

9 A Ms. Perez.

10 Q And did you actually see her write her name where it
11 says "signed"?

12 A No.

13 Q Did you indicate at the bottom that you were a
14 witness, though?

15 A Yes, sir.

16 Q Can you explain to the jury how that came about?

17 A Basically, what -- how I got up on the porch, when I
18 was up on the porch, and after I spoke to Mr. Aguirre, I
19 also spoke with Ms. Perez, and she verbally consented to
20 me a search, agreed to a search. The papers were
21 handed -- I just signed both of them at the same time.

22 Q Okay. So when you spoke with her, did she give you
23 any indication that she was not consenting to the search?

24 A Absolutely not.

25 Q All right. So after you Mirandized him, you

1 introduced yourself, you went over the consent to search
2 form with Mr. Aguirre, did you ask him about the case?

3 A No, sir.

4 Q Did he give any statement?

5 A He told me that the marijuana was all his.

6 Q Okay. How did he say that? What were his specific
7 words?

8 A "What is in the shed is all mine."

9 Q Did he indicate whether or not Ms. Perez knew
10 anything about it?

11 A No.

12 Q Okay. How long did you sit there and speak with him?

13 A Three to four minutes.

14 Q After you spoke with him, what next did you do with
15 the case?

16 A I contacted my lieutenant, which is Lieutenant
17 Hamilton, and advised him of the situation. I walked out
18 to the shed, saw what I had, knew I couldn't handle it as
19 one person, and requested the assistance of the rest of my
20 team.

21 Q How long did it take for the team to get there?

22 A Twenty minutes.

23 Q What were you doing during those 20 minutes?

24 A I was taking photographs of the outside. I was
25 taking an inventory of the inside of the shed. Taking

1 pictures inside the house.

2 Q Okay. What was inside the shed?

3 A Fifty-four marijuana plants.

4 Q How did you come to that number?

5 A I counted them.

6 Q And how developed were those marijuana plants? Were
7 they seedlings, were they full grown, what?

8 A The full grown marijuana plants were six to seven
9 feet in height. There was a nursery, which they were
10 cloning from one plant and making a nursery. So there
11 were marijuana plants from this big all the way up to as
12 tall as Mr. Aguirre.

13 Q You said "cloning." Can you explain to me how that
14 works?

15 A Basically what they do is they snip a piece of a
16 marijuana plant off, snip a stem, and put it in water
17 where it starts rooting. And then after it starts
18 rooting, they put it in soil and let it grow. Most women
19 have cloned a plant.

20 Q You say most women?

21 A I'm not trying to -- women who have flowers will
22 typically clone like a daisy or some kind of -- wisteria,
23 a plant that they want grown in their yard somewhere else.

24 Q Did you search the house?

25 A I did.

1 Q What did you find in the house?

2 A If I can refer to my notes to make sure I'm accurate,
3 a Taurus .25 caliber handgun, seven 9-millimeter bullets,
4 three 25 auto bullets, one box of Winchester 9-millimeter
5 bullets.

6 Q Let me interrupt you there. What was the serial
7 number on that handgun?

8 A DRJ23769.

9 Q Okay. Go ahead.

10 A A box of Remington 25 auto bullets containing 50
11 rounds, a set of digital scales, one passport belonging to
12 the defendant, and a Boost Mobile cell phone, and one
13 Certificate of Naturalization.

14 Q What did you do with all those pieces of evidence
15 that you received at the time?

16 A They were bagged and tagged, as we put it, and placed
17 into evidence.

18 Q Who bagged and tagged them?

19 A I did.

20 Q You bagged and tagged all those items?

21 A Yes, sir.

22 Q From the point that you seized those items from the
23 home to the point that you bagged them and tagged them,
24 were they within your care and custody and control?

25 A Yes, sir.

1 Q Did you alter any of those items in any way?

2 A No, sir.

3 Q And what did you do with them after you bagged them
4 and tagged them?

5 A I gave them to the custodian. Placed them into
6 evidence at the sheriff's department.

7 Q Okay. And when you placed them into evidence at the
8 sheriff's department, had they been in your care, custody,
9 and control from the point that you seized them to the
10 point you put them into evidence?

11 A Yes, sir.

12 Q Did you alter any of those items in any way?

13 A No, sir.

14 Q Did anyone else come into possession of those items?

15 A No, sir.

16 Q Were they in the same condition when you turned them
17 in as when you seized them?

18 A Yes, sir.

19 Q You mentioned a set of digital scales.

20 A Yes, sir.

21 Q How was that relevant to a drug case?

22 A Usually digital scales are very important when it
23 comes to trafficking illegal drugs because you want to
24 weigh the amount of drugs to make sure that you're
25 distributing them in the correct way.

1 Q Okay.

2 A And these are exceptionally large digital scales.

3 It's not usually what we see with cocaine dealers or crack
4 dealers.

5 Q Explain that a little bit.

6 A The scales were larger. They were probably about
7 that large. I'm sorry. They were about that large.
8 Usually when you're dealing in cocaine and crack or
9 heroin, they're about that big. The reason for it is
10 they're selling in greater quality -- quantity.

11 Q Is marijuana sold in larger weight amounts than other
12 drugs?

13 A Yes.

14 Q When you arrived on the scene, did you see any dogs
15 at that time?

16 A No.

17 Q Any dogs out in the yard?

18 A No, sir.

19 Q Any indication that dogs had been there?

20 A No, sir.

21 Q Any bowls or dog food?

22 A No, sir.

23 Q So tell me about the shed. What did you all do with
24 the marijuana out in the shed?

25 A I did not process the scene out in the shed.

1 Lieutenant Hamilton and Sergeant Moore and Agent Slice did
2 that. But I took photos of everything prior to them
3 coming into the shed.

4 Q Okay. When you say "process the scene," what are you
5 referring to?

6 A With a marijuana grow, it's a very manual labor
7 activity to actually take down all of these marijuana
8 plants. They have the lights, the light bulbs, the
9 reflective paneling.

10 We have to typically remove every plant from its
11 pot with the root balls attached to them, take them to a
12 different location. And we can't stay in the room for
13 very long because the CO2 level is very high. We take
14 them outside.

15 We have to cut down all the lights, the
16 ventilation system, the filtration system. And due to the
17 fact that he had some very unique illegal transformers and
18 wiring out there, we had to wait until they cut the power
19 off there, too, as well.

20 Q Okay. Who turned all that marijuana into evidence?

21 A I did.

22 Q Okay. Tell me how you went about doing that.

23 A After it was all removed from the shed, a count was
24 done, and then the root balls were cut off, and a
25 different count was done. We placed them into an enclosed

1 trailer. Lieutenant Hamilton placed them in an enclosed
2 trailer, drove them up to the sheriff's department where I
3 followed behind him. We pull up into -- they have a
4 garage door at the sheriff's department for the evidence
5 room. We met with Sergeant McMullen, and we have to
6 basically take out each plant one at a time, put a rope
7 around them and hang them from the rafter so they can dry.

8 Q Why you need to dry the plants?

9 A So you can get an accurate weight on them. Good
10 marijuana like what he had was very sappy, it's very
11 green, and it tends to hold more weight when it has the
12 sap inside of them.

13 Q So you were actively involved with putting those
14 plants on the hanger at the evidence room?

15 A Lieutenant Hamilton was using a ladder, so I would
16 tie them up, kind of like an upside down bouquet of
17 flowers.

18 Q How many would you tie up at a time?

19 A About three to four.

20 Q So you'd tie them up and then give them to Lieutenant
21 Hamilton?

22 A And he would actually hang them from the rafter, yes.

23 Q And how many marijuana plants did you all hang on the
24 rafter?

25 A Fifty-four.

1 Q Now, how do you -- the marijuana seized in this case,
2 how you keep it isolated from marijuana seized on other
3 cases so you know that what you seized on October 7, 2011,
4 is actually what you tested?

5 A They're separated. The evidence storage building,
6 the outside storage building, it's a large building. And
7 we have marijuana hanging on the back side, on the front
8 of it, and then along the other side. So -- and it was
9 also the bar code and case number was placed on these
10 marijuana plants.

11 Q You say bar code and case number. Could you expand
12 on that a little bit, please?

13 A The bar code comes from the evidence room. We do not
14 have access to obtaining the bar code. I provide the
15 evidence custodian with a case number. She prints out a
16 bar code and attaches it to the plant.

17 Q Was there an evidence custodian with you all when you
18 put these in evidence?

19 A Candy Kyzer and Sergeant McMullen.

20 Q Sergeant McMullen you said?

21 A Uh-huh.

22 Q Do you have access to that evidence room without the
23 presence of an evidence custodian being there?

24 A Absolutely not.

25 Q Okay. How far apart was this group of 54 plants from

1 plants hanging from other cases?

2 A Probably from that rafter to that rafter.

3 Q So is there any way to confuse plants seized from
4 [REDACTED] to plants seized from any other place?

5 A No, sir.

6 Q Now, once they're hung on the rafter, what is the
7 next step in actually testing those marijuana plants?

8 A We have to wait until they completely dry, like I
9 said, to get an accurate weight on them. Once they're
10 dried, then the marijuana leaves and the buds are all
11 pulled from the original stalk and turned over to our
12 marijuana analysis. They were bagged and turned over to
13 our marijuana analysis.

14 Q So who actually pulls those buds and leaves off the
15 plants?

16 A Anybody can do it that's on the narcotics team, but
17 on this particular day, Lieutenant Hamilton and Dennis
18 Tracy.

19 Q Okay. Were you there when they did that?

20 A I was not.

21 Q Okay. From the point those 54 marijuana plants were
22 taken from the shed to the point they were hung in the
23 rafter, were they under the care, custody, and control of
24 the narcotics team the whole time?

25 A Yes.

1 Q Did anyone else come into possession of those plants?

2 A No, sir.

3 Q Were they in the same condition from the point that
4 you seized them from the shed and cut the root to the
5 point you all hung them up in the warehouse, the evidence
6 room?

7 A Yes.

8 Q You said you took photographs on the scene that day;
9 is that correct?

10 A Yes, sir.

11 Q I'm showing you State's Number 22 through 36. Can
12 you take a moment and review those photographs?

13 Have you had a chance to review them?

14 A Yes, sir.

15 Q Do these accurately reflect what you saw and what you
16 seized from the house at [REDACTED] Road on October 7,
17 2011?

18 A Yes, sir.

19 MR. ROSS: Your Honor, at this time, we'd move
20 for 22 through 36 into evidence.

21 THE COURT: What says the defense?

22 MS. ZMROCZEK: No objection.

23 THE COURT: They're admitted without objection.

24 (WHEREUPON, State's Exhibits Nos. 22-36 were
25 admitted into evidence.)

1 BY MR. ROSS:

2 Q Detective Barnes, now I'm showing you State's Numbers
3 37 all the way down to 71. Can you take a moment to look
4 at these photographs? Do those accurately reflect what
5 you found in the shed?

6 A Yes, sir.

7 MR. ROSS: Your Honor, we'd move 37 to 71 into
8 evidence.

9 MS. ZMROCZEK: Without objection.

10 THE COURT: They're admitted without objection.

11 (WHEREUPON, State's Exhibits Nos. 37-71 were
12 admitted into evidence.)

13 BY MR. ROSS:

14 Q Finally, Detective, I'm going to show you State's
15 Number 72 through 76. Take a look at these, please.

16 A Yes, sir.

17 Q Are those accurate reflections of the marijuana after
18 it was taken from the pots?

19 A Correct.

20 MR. ROSS: Your Honor, we move 72 through 76
21 into evidence.

22 MS. ZMROCZEK: Without objection.

23 THE COURT: They're admitted.

24 MR. ROSS: Your Honor, at this time, I'd like to
25 publish to the jury on the projector.

1 THE COURT: You may.

2 (WHEREUPON, State's Exhibits Nos. 72-76 were
3 admitted into evidence.)

4 BY MR. ROSS:

5 Q Detective Barnes, this is State's Number 22. Can you
6 describe what is in this photograph?

7 A That's the front side of the residence where
8 Mr. Aguirre and Ms. Perez were currently staying. That's
9 Mr. Aguirre sitting on the porch right there, and that is
10 Sergeant Kevin Blake standing beside him.

11 Q When did you take this photograph?

12 A That was the first photo I took. It was about 20
13 minutes after I was there.

14 Q Okay. Now, State's 23. This is the same house?

15 A Yes, sir. I just take the overall photo of the house
16 prior to doing anything.

17 Q Now, this shed back here, is that the shed where you
18 found the marijuana?

19 A No, sir.

20 Q This is the right side of the house?

21 A Yes, sir.

22 Q What is this? Is that the front door?

23 A That's the front door. I generally take a picture of
24 that to show that there is no damage to the door.

25 Q What do we have here?

1 A That's the inside of the living room, and that door
2 leads to the master bedroom.

3 Q This door here?

4 A Uh-huh.

5 Q And did you search this master bedroom in there?

6 A I did.

7 Q Is that a photograph of the master bedroom, Number
8 27?

9 A Yes, sir. That's his side of the bed. That's his
10 items.

11 Q Okay. And now I'm going to show you 29. That is
12 difficult to see, but who is in this photograph?

13 A Mr. Aguirre.

14 Q We've got 30. What is this a photograph of?

15 A He had a cabinet-type of thing in his closet, and
16 inside of that was the ammunition, the safe, the gun, the
17 passport, the naturalization papers, and the digital
18 scales.

19 Q So everything you seized is right there in that
20 cabinet?

21 A Yes, sir.

22 Q What is this right here?

23 A It's a medicine bottle with his name on it.

24 Q That's his name right there?

25 A Yes, sir.

1 Q What is 31 here?

2 A That's the safe where the gun and the naturalization
3 and passport was found.

4 Q Okay. Is that the safe open in Number 32?

5 A Yes, sir. And he provided me the key to open the
6 safe.

7 Q Okay. Is that the gun right there?

8 A Yes, sir.

9 Q All right. It's a little bit dark. How about 33?

10 A That's the handgun, the Taurus, that was in the safe.

11 Q Is that the serial number written down right there?

12 A Yes, sir.

13 Q What caliber handgun was it?

14 A A 25.

15 Q Tell me what this document is.

16 A That's his naturalization paperwork.

17 Q And is that his photograph?

18 A Yes, sir.

19 Q And is that his name?

20 A Yes, sir.

21 Q Does that appear to be the original?

22 A Yes, sir.

23 Q Now we have got 35?

24 A That's his passport.

25 Q Is that his name written right there?

1 A Yes, sir.

2 Q And again, the photos don't show well on the
3 projector, whose picture is that?

4 A Mr. Aguirre.

5 Q What is this and where was it found?

6 A It was in the safe as well. It was a check stub for
7 Mr. Aguirre.

8 Q I'm going to move onto the photos of the shed.

9 A That's the shed where the marijuana was located.

10 Q How did you enter the shed?

11 A Through a door on the side right there.

12 Q Right there?

13 A Yes, sir.

14 Q What are these objects right here?

15 A Bird cages.

16 Q Tell me what 38 is.

17 A That's the door entrance into the shed down the
18 little hallway.

19 Q The projector has a lot of dark space right here. Is
20 the photograph, is it dark?

21 A It's a dark area.

22 Q Okay. And again, these items to the side?

23 A Bird cages.

24 Q What is all this?

25 A That is chemicals to help maintain healthy plants,

1 pesticides. Marijuana typically gets spider mites, so
2 they use the chemicals to keep the plants healthy.

3 Q And down here, are these the same bottles?

4 A Yes, sir.

5 Q And what is this object here?

6 A The water filtration system.

7 Q The water filtration system, you have to explain that
8 to me. What is that?

9 A Basically what that is, is it provides water to the
10 plants constantly so they don't go dry. That large bucket
11 or whatever you call that white thing, that holds water
12 and it just pumps water throughout the plants.

13 Q And to give some context to the shed as far as where
14 everything was located, what is this?

15 A That's the garage door.

16 Q Okay. Number 41, what is that?

17 A That's all the electrical tapping he had done to
18 constantly provide electricity to the shed.

19 Q What was the heat source for all these plants?

20 A The lights.

21 Q How many lights did he have?

22 A Eighteen.

23 Q Are these the same electrical devices?

24 A Yes, sir. There were -- we call them transformers.

25 I know that's not the proper name for them, but there were

1 25 transformers, the little boxes that help provide
2 electricity.

3 Q Okay. And 43, 44, 45 and 46, those are all the same
4 electrical system, wiring system?

5 A Yes, sir. It's very dangerous.

6 Q Did you touch those electrical systems?

7 A I did not touch those specific ones, but I have
8 touched one in the past and it burned me.

9 Q Okay. Let me show you State's 49. If we could
10 please, cut the lights.

11 Forty-nine, if you could please step down Agent
12 Barnes. Explain to the jury what we have got in State's
13 49, please.

14 A Those are the marijuana plants that were in the --
15 inside the room. You can see they're really tall.

16 Q How about 47 there?

17 A That's just showing the smaller marijuana plants, and
18 that's also the reflective paneling he had on the
19 building.

20 Q Is this a closeup picture in 50?

21 A Yes, sir.

22 Q Now, tell the jury about the distinguishing features
23 on these plants.

24 A The larger areas that you see, like right in here,
25 are considered the buds, which is the best part of the

1 marijuana. They hold the most THC, and that's considered
2 high grade marijuana.

3 Q Are these male or female marijuana plants?

4 A They're female.

5 Q How can you tell?

6 A Males don't bud.

7 Q So if you see a marijuana plant, there is no bud to
8 it --

9 A It's a male plant.

10 Q -- it's a male plant.

11 Again, in 51, are these the same buds you were
12 talking about?

13 A Yes, sir. That's just closer.

14 Q Fifty-eight?

15 A That is the lighting. Basically this light that's so
16 high powered is almost like direct sunlight.

17 Q How many of these lights were there?

18 A Eighteen.

19 Q And those were the heating source for all these
20 plants?

21 A Yes, sir.

22 Q Another light?

23 A Another light.

24 Q Now, tell me about this silver snake-looking thing on
25 64.

1 A That's the ventilation system.

2 Q Why is that necessary for this type of operation?

3 A Typically, it's used to keep the air moving
4 throughout the inside of the building so it doesn't go
5 stagnant. And a lot of times, they use it to try to
6 control the odor.

7 Q Sixty-seven?

8 A That's the ventilation system. The air is sucked in
9 through here and it comes back out.

10 Q Sixty-eight?

11 A That's the lights that he had just up against the
12 wall. He was not using them, but they were ready to be
13 used.

14 Q Sixty-nine?

15 A That's just the light he had hanging inside.

16 Q I would like to go over the next batch of photos with
17 you right there, Detective Barnes. State's 72?

18 A That's all the marijuana plants located inside of the
19 building that still have the root balls.

20 Q This is after they have been cut and removed from the
21 pots they were in?

22 A Correct.

23 Q This photo 73 is a similar photograph?

24 A Yes, sir.

25 Q Seventy-five?

1 A Those are the pots that they were in.

2 Q Seventy-six?

3 A Same pots they were in.

4 Q Now, did you take a photograph of every pot that a
5 marijuana plant was in in this case?

6 A No, sir, I did not.

7 Q And what pots didn't you take a photograph of?

8 A The nursery.

9 Q Now, explain what the nursery was.

10 A The nursery were the cloned plants from the mother
11 plant. They were the smaller marijuana plants.

12 Q So how big were they, you say smaller?

13 A They were anywhere from here to here.

14 Q Baby marijuana plants?

15 A Baby marijuana plants.

16 Q All right. Please have a seat.

17 Agent Barnes, you made reference to the term
18 high grade marijuana. What is that?

19 A Basically it's a more expensive high quality brand of
20 marijuana. Marijuana can range from anywhere to what we
21 call dirt weed to cush to mid grade to high grade
22 marijuana. There's all different forms of it. It's the
23 way you grow it, it's the way you take care of it, treat
24 it, include the seeds, take the stems out.

25 Q So is it a fair statement to say the more work you

1 put into growing this plant, the better quality of plant
2 you'll get?

3 A Absolutely.

4 Q Were the plants you seized at [REDACTED], were
5 they high grade marijuana plants?

6 A Absolutely.

7 Q How much -- what is the street value of everything
8 that was seized there that day? Can you calculate that or
9 estimate that?

10 A Just the plants themselves, the value was \$54,000.

11 Q How do you reach that figure?

12 A The federal government, DEA, places an amount of
13 street value on the plants.

14 Q Okay. Now, you said some of these plants were baby
15 marijuana plants, the ones in the nursery, right?

16 A Yes, sir.

17 Q And others were up to six, seven feet tall?

18 A Yes, sir.

19 Q How much marijuana can each plant produce typically?

20 A Well, that's kind of a tricky question.

21 Q Okay.

22 A Because one plant, if you're cloning, can typically
23 produce up to a million different plants, a million same
24 plants.

25 Q Okay. So one plant can become another plant produce

1 another plant, kind of like the exponential-type deal?

2 A The cloning.

3 Q Each plant that you have in a pot -- let's not talk
4 about cloning. Each plant you have in a pot, how much
5 marijuana can that plant produce?

6 A I do not have an accurate figure on that.

7 Q Okay. You said Mr. Aguirre told you that all the
8 marijuana in the shed was his; is that correct?

9 A That's correct.

10 Q When did he say that?

11 A After he was Mirandized.

12 Q Is Mr. Aguirre, the man who said that statement, in
13 court today?

14 A Yes, sir.

15 Q Is that him right there?

16 A Yes, sir.

17 Q Sitting beside Ms. Zmroczek?

18 A Yes, sir.

19 Q The defendant?

20 A Yes, sir.

21 MR. ROSS: Thank you, Agent Barnes. Please
22 answer any questions Ms. Zmroczek has.

23 CROSS-EXAMINATION

24 BY MS. ZMROCZEK:

25 Q Good morning, Agent Barnes. How are you?

1 A I'm good. You?

2 Q You did a report for this case?

3 A I did.

4 Q When did you type up that report?

5 A The same day.

6 Q And to whom did you turn that report in?

7 A It's a computer, it gets sent over to my supervisor.

8 Q Who is your supervisor?

9 A At this current time?

10 Q Or who was your supervisor at that time?

11 A Sergeant John Moore.

12 Q Was he there at that location that day?

13 A I really cannot recall if he was or not.

14 Oh, yes, he was. I'm sorry. He was, yes.

15 Q How many narcotics agents did you all have there that
16 day?

17 A It was myself, Lieutenant Hamilton, Sergeant John
18 Moore, and Agent Slice.

19 Q About five of you all?

20 A Four.

21 Q Okay. I kind of want to go back through a few things
22 with the pictures first. I had a couple of questions.

23 The pictures that you took inside the house,
24 were those every single room in the house?

25 A No.

1 Q Was it a large house, was it real fancy? Can you
2 describe the house for us?

3 A It was a double-wide trailer.

4 Q It shows that you took a picture of the gun and --
5 several pictures of the gun and all the ammunition and
6 stuff. But Mr. Aguirre was legally able to have a gun,
7 correct?

8 A Correct.

9 Q In fact, he had never been arrested ever, correct?

10 MR. ROSS: Objection, Your Honor, to relevance.

11 THE COURT: The objection is sustained.

12 THE WITNESS: But just to be clear, he could
13 have been charged with possession of a firearm during the
14 commission of a violent crime.

15 THE COURT: The objection was sustained. The
16 response is stricken. Next question.

17 THE WITNESS: I'm sorry.

18 BY MS. ZMROCZEK:

19 Q Did you take a picture of the big digital scale?

20 A I did not.

21 Q Can you describe again for the jury what's depicted
22 in these pictures?

23 A That's the Remington 25 automatic bullets, the
24 9-millimeter Luger bullets, the lamp, Bayer aspirin,
25 medicine with his name on it, DVDs.

1 Q Did you know that Mr. Aguirre was diabetic?

2 A No, I did not.

3 Q But that would explain all his medical materials that
4 were right in his room?

5 A I wasn't concerned with his medical materials.

6 Q What about the baggies to wrap all this marijuana in?
7 Where were they located?

8 A I don't believe any baggies were found.

9 Q How about some cash? Did you find a lot of cash in
10 the house?

11 A No. He had profit in the shed.

12 Q He had -- I'm sorry?

13 A All his profit was in the shed. He was getting ready
14 to harvest the plants.

15 Q And he told you this?

16 A Uh-huh.

17 Q He told you he was getting ready to harvest the
18 plants?

19 A In about three days.

20 Q When did he tell you this?

21 A After he was Mirandized.

22 Q So he said, All the marijuana's mine or all the stuff
23 in the shed was mine, do you remember which one?

24 A "All the marijuana in the shed is mine."

25 Q And I'm getting ready to harvest it?

1 A Yes. He was going to cut them down. He didn't say
2 harvest. He said he was getting ready to get rid of them
3 in the next few days.

4 Q And you took a picture of his paycheck.. He worked at
5 Wal-Mart, right?

6 A Yes, ma'am.

7 Q And I think it reflects that he worked maybe a little
8 over 80 hours at Wal-Mart as a stocker, correct?

9 A That's what that says.

10 Q This electrical outlet system that you found in the
11 garage, have you seen one of these before?

12 A I have.

13 Q Where had you seen these before?

14 A Back in 2008, I saw one on Two Notch Road in
15 Lexington. I've seen them a lot of places. It's hard for
16 me to recall everywhere that I've seen them.. I've
17 probably been on more than 50 indoor marijuana grows.

18 MR. ROSS: Your Honor, I'm going to object to
19 this line of questioning as far as relevance to seeing
20 other electrical devices like this.

21 THE COURT: Well, I believe we'll hear the next
22 question.

23 MR. ROSS: If I may please approach, Your Honor.

24 THE COURT: All right.

25

1 (A bench conference was held with the judge and
2 attorneys in the presence of the jury but out of the
3 hearing of the jury.)

4 BY MS. ZMROCZEK:

5 Q You said that Lieutenant Hamilton contacted you that
6 day?

7 A Correct.

8 Q Was he at the scene already when he contacted you?

9 A No, ma'am.

10 Q And you indicated that you were called out to [REDACTED]
11 [REDACTED] because of an indoor marijuana grow house?

12 A I was called out to [REDACTED] in reference to
13 the power company was out there, and there was a possible
14 indoor marijuana grow.

15 Q The power company was out for a possible indoor
16 marijuana grow. Sergeant Blake showed you the house and
17 showed you around. Once you guys got there, he kind of
18 stepped back and the narcotics team took over?

19 A Well, since I was there by myself originally as a
20 narcotics investigator, they stood by and made sure that
21 everything was fine, and I could start processing the
22 scene until everybody else arrived on the scene.

23 Q Nobody was yelling or screaming or trying to run or
24 hide, correct?

25 A No.

1 Q And all of the materials that you found in the shed
2 were collected?

3 A They were destroyed.

4 Q Did mr. Aguirre have any identifying items in the
5 shed?

6 A No, ma'am.

7 Q He didn't have any papers, anything that said "this
8 is my shed"?

9 A No.

10 Q I believe that this is an aerial picture. Do you
11 recognize that?

12 A Yes, ma'am.

13 Q About how far is the shed from the house?

14 A A hundred yards.

15 Q And is it located right out in the center or is it in
16 the clearing? And I can show you this picture. Are there
17 trees around the shed?

18 A Yes.

19 Q I think that's the picture that you took?

20 A Yes.

21 Q So it's kind of back in the trees?

22 A Uh-huh.

23 Q You said that there were elaborate systems set up in
24 there to protect the odor, so when you walked up to the
25 shed, there was not an odor emanating from the shed, was

1 there?

2 A There was.

3 Q There was from the shed? So let's say when you
4 walked up to the front door, could you smell it?

5 A No. The front door of the residence or the front
6 door of the shed?

7 Q Front door of the residence?

8 A No, I could not smell it.

9 Q When you were walking around the yard, could you
10 smell it?

11 A As I got closer to the shed, yes.

12 Q Didn't run any numbers through that cell phone, did
13 you?

14 A I'm sorry?

15 Q You didn't run a check on the cell phone numbers, did
16 you?

17 A No, I did not.

18 Q Did you maintain the scales?

19 A I placed them in evidence. I bagged them and put
20 them in evidence.

21 Q Did you run a test on the scales to find out how much
22 marijuana residue was on there?

23 A No, I did not.

24 MS. ZMROCZEK: That's all the questions I have.

25 REDIRECT EXAMINATION

1 BY MR. ROSS:

2 Q Aside from law enforcement, who was on the scene when
3 you got there in that home?

4 A The defendant, his wife, their child, Mid-Carolina,
5 and two deputies.

6 Q Anybody else?

7 A No, sir.

8 Q Did you arrest any other person other than
9 Mr. Aguirre?

10 A No, sir.

11 Q Did any other person tell you, "the marijuana in that
12 shed is mine"?

13 A No, sir.

14 MR. ROSS: Thank you, Agent Barnes.

15 THE COURT: Anything further?

16 MS. ZMROCZEK: Nothing from the defense, Your
17 Honor.

18 THE COURT: You may step down.

19 Next witness.

20 MR. ROSS: The State calls Lieutenant Thomas
21 Hamilton to the stand.

22 THOMAS HAMILTON, after being duly sworn,
23 testified as follows:

24 THE CLERK: Once you're seated, state your full
25 name, spelling your last on the record.

1 THE WITNESS: My name is Thomas Hamilton,
2 H-A-M-I-L-T-O-N. And I work for Lexington County
3 Sheriff's Department. At the time of this incident, I was
4 the supervisor over the Lexington County Multi-Agency
5 Narcotics Enforcement Team.

6 DIRECT EXAMINATION

7 BY MR. ROSS:

8 Q So you were the chief of the narcotics unit?

9 A I was head supervisor, yes, sir.

10 Q Agent Barnes testified that her supervisor was a
11 Sergeant Moore. How does he relate in the chain of
12 command with you and Agent Barnes?

13 A The agents for the narcotics team, they're
14 investigators, they answer to Sergeant -- Sergeant Moore,
15 and Sergeant Moore answers to me.

16 Q So Sergeant Moore was -- you were Sergeant Moore's
17 boss?

18 A Yes, sir.

19 Q And Sergeant Moore was Agent Barnes' boss?

20 A Yes, sir.

21 Q Before you tell the jury about what you did on
22 October 7, 2011, in regards to this case, would you tell
23 them a little bit about your background in law
24 enforcement?

25 A I started law enforcement in 1993 with the University

1 of South Carolina Police Department. I went to the
2 academy in 1994. Left there, went to the City of Cayce.
3 Subsequently left the City of Cayce, came to Lexington
4 County Sheriff's Department. Started here in 1999. I
5 started as a narcotics investigator with the City of Cayce
6 in approximately '97, could have been '96.

7 Q So what types of cases do you investigate in that
8 role?

9 A I have been a criminal investigator as well as a
10 narcotics investigator. I have done investigations in
11 everything from murder investigations to drug
12 investigations of all types, whether it be as in this case
13 marijuana, heroin, crack, methamphetamine, cocaine,
14 Ecstasy, LSD.

15 Q So what were your job duties on October 7, 2011?

16 A I was the supervisor of the narcotics unit.

17 Q Okay. Tell me about your specific training in
18 addition to your field experience as it relates to
19 narcotics.

20 A I have been through numerous classes to include
21 clandestine labs. While most people think of clandestine
22 labs as methamphetamine, there are many types of
23 clandestine labs. Marijuana grows are also considered to
24 be a clandestine lab. I'm a technician through the DEA
25 for clandestine labs.

1 Q Now, did you process the scene in this case?

2 A Yes, sir. I was called by dispatch originally and
3 advised that Sergeant Blake and South region deputies were
4 on the scene with a marijuana grow. I then contacted
5 Agent Barnes, and she went ahead and went down there to
6 the scene to check it out and see what we had, see what we
7 would need as far as equipment, agents, and things of that
8 nature.

9 Q Well, let me interrupt you. When you told Agent
10 Barnes to go to the scene, did you have any idea what the
11 scope of this operation was?

12 A No, sir. I spoke to a dispatcher who then radioed or
13 had phone contact with the sergeant, road sergeant, and I
14 knew little information other than they needed a narcotics
15 agent there.

16 Q What happened next after you sent her to the scene?

17 A She went to the scene. She then called me and said
18 that it was a large scale operation. I then proceeded to
19 call other agents, Sergeant Moore and I went and picked up
20 an enclosed trailer that we have through the sheriff's
21 department property that we use for hauling large amounts
22 of evidence.

23 Q Did you go to the scene at that point?

24 A Yes, sir. I then responded to the scene.

25 Q Did the other agents that were coming in to assist

1 you, did they respond at the same time?

2 A Yes, sir.

3 Q Were they under your direct supervision at that time?

4 A Yes.

5 Q That was Sergeant Moore and another agent?

6 A Yes, sir, Agent Brandon Slice.

7 Q And did they assist you in processing the scene?

8 A Yes, sir. What we normally do to do a quicker job on
9 scenes, we usually divide job duties up. Agent Barnes,
10 who is the case agent and the boss of this scene, was
11 dealing with the defendant and the interior of the
12 structure, the residence there. Myself, Sergeant Moore,
13 and Agent Slice went and broke down, dismantled the grow
14 house.

15 Q So tell me how you go about doing that. How do you
16 break down a grow house?

17 A The first step in this is you take photographs of how
18 it is when you get there. Agent Barnes had already done
19 that prior to our arrival. Then what we'll do is pull
20 everything that we're going to take with us out.

21 As Agent Barnes was testifying to, there are
22 dangers and hazards inside of a grow house. Some of the
23 things are it can be an oxygen rich environment because
24 it's green plants putting off extra oxygen. The other
25 thing is in some of these, we have seen where they'll add

1 CO2, carbon dioxide, to increase the growing of the
2 plants. That is a health hazard, inhaling too much of
3 that.

4 One of the big problems is the possibility of
5 mold and things like that because it's a wet environment,
6 there is constantly moisture in there, and you have very
7 bright for 14 to 16 hours a day, but it's very dark the
8 rest of the time, and mold and bacteria will grow and
9 become harmful.

10 Q Okay. So what did you all specifically do here?

11 A What we did is we took -- to make things easier for
12 us, we usually try and lay something out on the ground.
13 In this case, there was aluminum-sided insulation boards,
14 approximately four by eight sheets. We took a couple of
15 those that were laying in there out and put them on the
16 ground outside of the shed, then proceeded to pull the
17 plants out of the pots and lay them on top of that. That
18 way -- the reason we do that, number one, is to isolate
19 them from the ground so we don't leave any. That would
20 not be a good idea for us to have left any evidence on the
21 scene. We lay them out there, do another count to check
22 for accuracy.

23 Q Did you do that second count?

24 A Yes, sir.

25 Q How many plants were there?

1 A There were 54 plants there.

2 Q Did you all cut the roots?

3 A Yes, sir.

4 Q Why do you all cut the roots?

5 A There is a couple of reasons. Number one, evidence
6 does not want a big root ball. As you can see in the
7 photos of what we pulled, sitting in there dropping dirt
8 and everything else, possibly contaminating, you know,
9 everything about there. We remove them also because that
10 is extra weight to have to haul and everything else. And
11 when you're hanging plants, it would still delay the
12 drying time.

13 Agent Barnes testified to drying the marijuana.
14 If you do not dry the marijuana prior to packaging it,
15 it's going to mold because it's a green plant. And if you
16 leave the root ball on there, it will continue to bring
17 moisture out of the atmosphere and continue to stay green.

18 Q So once you all put all 54 plants on that insulation
19 thing, where did you all load them at that point?

20 A That insulation was right next to the large enclosed
21 trailer that I had towed down there. We cut off the root
22 balls, then put them in the trailer. I secured the
23 trailer with a lock I carry at all times. And then I
24 proceeded to -- directly to Lexington County evidence from
25 that location.

1 Q Now, the agents that assisted you cut those plants,
2 put them on the insulation, loaded them into the trailer,
3 were they under your direct supervision the whole time?

4 A Yes, sir.

5 Q Did they put any plant on that insulation and in that
6 trailer that was not from the shed?

7 A No, sir.

8 Q Were the plants seized from the shed within you all's
9 care, custody, and control from the point you cut them
10 from the pots to the point you put them into evidence?

11 A Yes, sir. When we pull them from the pots until we
12 cut off the root balls and secured them in the trailer,
13 they never left our sight.

14 Q How did you all put them into evidence?

15 A I took the trailer, backed it up to the roll-up door,
16 which is located on the side of the exterior evidence
17 room. We tied them up with a twine, and then Agent Barnes
18 was bringing them to me in three to four-plant bundles. I
19 was on top of a rolling ladder hanging them on the
20 specific beam that was for that case.

21 Q How much distance in between plants seized from one
22 case to another case?

23 A In this instance, and I'm, of course, approximating
24 distance, I would say 25 feet, maybe 30 is the --

25 Q Now, when you hang all these 54 plants up?

1 A Yes, sir.

2 Q How much space did those 54 plants take up?

3 A They only take up approximately six feet of rafter.

4 Q So roughly your wing span?

5 A Yes, roughly.

6 Q How can you fit 54 plants within an average man's
7 wing span?

8 A Plants, when they're hung upside down, the stems --
9 excuse me -- the limbs of the plant fall down, and they
10 are in a fairly tight, compressed bundle.

11 Q When you all hung them up, was there an evidence
12 custodian there on scene with you?

13 A Yes, sir.

14 Q Are you all allowed in the evidence room without an
15 evidence custodian there?

16 A No, sir, we are not.

17 Q Now, did the evidence custodian mark these 54 plants
18 in any way?

19 A Yes, sir.

20 Q How did she do that?

21 A Hung a tag that included a bar code on that row of
22 plants on the plant.

23 Q And that included a case number as well?

24 A Yes, sir, it includes a case number.

25 Q Is there any way to confuse, once you hang these

1 plants seized from [REDACTED], with any other
2 plants seized by the sheriff's department?

3 A No, sir.

4 Q Again, the plants were within your care, custody, and
5 control from the point they were taken from the shed to
6 the point you all hung them up on the rafter in the
7 evidence room?

8 A Yes, sir.

9 Q Same condition from the point you seized them until
10 the point you turned them in?

11 A Yes, sir.

12 MR. ROSS: That's all the questions I have.
13 Answer anything Ms. Zmroczek has.

14 MS. ZMROCZEK: No questions.

15 THE COURT: Thank you. You may step down.

16 Ladies and gentlemen, we'll take a break now.
17 Please go to the jury room. Please do not discuss the
18 case.

19 (The jury left open court at approximately
20 10:46.)

21 THE COURT: All right. Mr. Ross, how many more
22 witnesses do you have?

23 MR. ROSS: I've got one, two, three more
24 witnesses. Essentially, the evidence custodian, an
25 additional chain witness, and the chemist.

1 THE COURT: Okay. All right. I'm trying to
2 figure out scheduling. We scheduled a status conference
3 on a case from Aiken at 2 o'clock. I'm sure we can -- I
4 mean, they can wait if they get here before that time.
5 I'm just trying to factor that in. I just wanted to let
6 you all know that.

7 All right. We'll take a few minutes.

8 (A break was taken.)

9 THE COURT: Ready for the jury?

10 MR. ROSS: Yes, Your Honor.

11 THE COURT: Have them come on.

12 (The jury came into open court at approximately
13 11:04 A.M.)

14 THE COURT: The jury is back. Your next
15 witness.

16 MR. ROSS: The State calls Candy Kyzer to the
17 stand.

18 CANDY KYZER, after being duly sworn, testified
19 as follows:

20 THE CLERK: Once you're seated, speak up loud
21 and clear. State your full name, spelling your last.

22 THE WITNESS: Candy Kyzer, K-Y-Z-E-R.

23 DIRECT EXAMINATION

24 BY MR. ROSS:

25 Q Ms. Kyzer, you're an evidence custodian with the

1 sheriff's department; is that correct?

2 A I am.

3 Q How long have you been with the sheriff's department?

4 A Almost 18 years.

5 Q And what are your present job duties as an evidence
6 custodian?

7 A I get in and sign in evidence from deputies,
8 investigators, narcs. And then we package it and store it
9 until it's needed for court or for testing.

10 Q Now, what is the sheriff's department's policy
11 regarding storing marijuana plants prior to them being
12 tested and prior to trial?

13 A If they are needed to be dried, we have to store them
14 or hang them up for them to be dried, and then if they
15 need to be -- the leaves need to be pulled off, then the
16 narcs have to come in and pull the leaves off, then we
17 package it and store it in our drug room.

18 Q Now, when the leaves are drying, where are they
19 stored at that point?

20 A In our warehouse.

21 Q Who has access to that warehouse?

22 A Just the three evidence custodians.

23 Q So who actually hangs the leaves and the plants up on
24 the rafters?

25 A The narcs come in and actually hang the plants. One

1 of the evidence custodians is present with them.

2 Q Now, when you say "narcs," are you referring to a
3 narcotics officer?

4 A Yes.

5 Q Now, when you hang these plants, how do you keep them
6 separate from plants on other cases?

7 A We print out a bar code label and attach that bar
8 code label to the plants, and we also have it tagged with
9 a piece of paper with the case number on it.

10 Q Okay. How far away from other -- plants from other
11 cases are these things hung?

12 A Usually about 25 to 30 feet.

13 Q Okay. Is there any way to mix up plants from one
14 case to another case?

15 A No.

16 Q Okay. Now, after they dry, you say narcotics
17 officers will come in to strip the material?

18 A Yes.

19 Q That is from the plant?

20 A Yes.

21 Q And when they come in to do that, does an evidence
22 custodian go with them to do it?

23 A That's correct.

24 Q Okay. And from that point, what happens?

25 A They put it in a box, and we store it until it's

1 needed for testing. Once they tell us that they're
2 wanting to test it, we sign it out.

3 Q Who is "they"?

4 A The --

5 Q Chemist?

6 A The chemist or the drug person.

7 Q For lack of a better term, drug tester?

8 A Yes.

9 Q So the drug tester checks it out. Does he give it
10 back to you?

11 A Yes, he does.

12 Q Tell me about this particular case. Were marijuana
13 plants turned in in the case of State versus Leandro
14 Aguirre?

15 A Yes, there was.

16 Q When were they turned in?

17 A They were turned in on October 7th, 2011.

18 Q Who turned them in?

19 A Paige Barnes.

20 Q And how did she turn them in? What happened at that
21 point?

22 A She came in, and one of the evidence custodians went
23 out with her and hung them up.

24 Q Okay. And did you document the fact that she turned
25 them in?

1 A It's put on the computer system when she enters all
2 the items into it.

3 Q And was an evidence tag and a bar code given at that
4 point?

5 A Yes, it was.

6 Q Were these 54 plants isolated from other plants?

7 A Yes, they were.

8 Q What next happened to the 54 plants that were turned
9 in?

10 A Once they were stripped and everything, the chemist
11 or the drug tester came in. Wanted to sign them out to be
12 tested, so we signed them out, and then he brought them
13 back.

14 Q Okay. When they were stripped, were they placed in
15 boxes?

16 A Yes, they were.

17 Q And at that point, were there some bar codes put on
18 the box?

19 A Yes.

20 Q Okay. And then you said the drug tester checked them
21 out?

22 A Yes.

23 Q And when did that happen?

24 A That happened on November the 15th, 2011.

25 Q And specifically who checked them out?

1 A D.I. Blackwell.

2 Q And did you sign them out to him?

3 A Yes.

4 Q When you signed them out to D.I. Blackwell, was the
5 seal on those boxes intact?

6 A Yes, they were.

7 Q So from the point that these marijuana plants were
8 turned in on October 7, 2011, to the point you signed out
9 those boxes to D.I. Blackwell, were those plants within
10 the care, custody, and control of the evidence room the
11 whole time?

12 A That's correct.

13 Q Did Mr. Blackwell ever return these boxes?

14 A He did.

15 Q When did he do that?

16 A On November 16th, 2011.

17 Q And have those boxes been within you all's care,
18 custody, and control since he turned them in?

19 A Yes, they have been.

20 Q Have the boxes been opened for anybody since they
21 were turned in?

22 A Yes, they have been.

23 Q And was that in the presence of a defense attorney?

24 A Yes.

25 Q Is that customary to do that in a case?

1 A It is.

2 Q Did you bring those two boxes to court today?

3 A I did.

4 MR. ROSS: Can you hand them to me, please, so
5 we can mark them?

6 (WHEREUPON, State's Exhibits Nos. 77-78 were
7 marked for identification only.)

8 BY MR. ROSS:

9 Q I'm showing you State's Exhibit Number 77 and 78.
10 Are these the two boxes in this case?

11 A Yes.

12 Q And these are the boxes that the marijuana were
13 placed in when they were stripped?

14 A That's correct.

15 Q And these are the same boxes that you handed to D.I.
16 Blackwell to check them out?

17 A Yes.

18 Q And these are the same ones that he turned back in?

19 A Yes.

20 Q Okay. You can have a seat now.

21 Was any other evidence turned in to the evidence
22 room in addition to 54 marijuana plants?

23 A Yes, there was.

24 Q And tell me what that evidence was.

25 A We also got in some 9-millimeter and 25 rounds, a

1 Taurus 25 gun, and a passport, Certificate of
2 Naturalization, a cell phone, and some digital scales.

3 Q You mentioned digital scales. Did you bring those
4 digital scales into court today?

5 A I did.

6 MR. ROSS: And can you give them to me so I can
7 mark them as a court's exhibit?

8 (WHEREUPON, State's Exhibit No. 79 was marked
9 for identification only.)

10 BY MR. ROSS:

11 Q I'm showing you State's Number 79. Are these the
12 digital scales that were turned in October 7, 2011?

13 A Yes.

14 Q Are they in the same condition now as when they were
15 turned in?

16 A Yes.

17 Q Have they been within the care, custody, and control
18 of the evidence room since they were turned in?

19 A Yes.

20 MR. ROSS: Your Honor, at this point, we would
21 move State's Number 79 into evidence.

22 MS. ZMROCZEK: No objection.

23 THE COURT: It's admitted.

24 (WHEREUPON, State's Exhibit No. 79 was admitted
25 into evidence.)

1 BY MR. ROSS:

2 Q You said there were some other documents in this
3 case?

4 A Yes, there was.

5 Q And passport and a naturalization document?

6 A That's correct.

7 Q Did you bring those into court today?

8 A I did.

9 MR. ROSS: Can you take them out of this box and
10 let me put them into evidence as well?

11 (WHEREUPON, State's Exhibit No. 80 was marked
12 for identification only.)

13 BY MR. ROSS:

14 Q I'm showing you State's 80. Is that the
15 naturalization certificate that was turned in?

16 A Yes.

17 Q Is it in the same form now as when it was turned in?

18 A It is.

19 Q Has it been within you all's custody the whole time?

20 A Yes.

21 MR. ROSS: Your Honor, we move 80 into evidence.

22 MS. ZMROCZEK: No objection.

23 THE COURT: It's admitted.

24 (WHEREUPON, State's Exhibit No. 80 was admitted
25 into evidence.)

1 (WHEREUPON, State's Exhibit No. 81 was marked
2 for identification only.)

3 BY MR. ROSS:

4 Q I'm showing you 81. Is that the passport?

5 A Yes.

6 MR. ROSS: We'd move 81 into evidence.

7 MS. ZMROCZEK: Without objection.

8 THE COURT: It's admitted.

9 (WHEREUPON, State's Exhibit No. 81 was admitted
10 into evidence.)

11 MR. ROSS: Thank you, Ms. Kyzer.

12 Please answer any questions Ms. Zmroczek has.

13 CROSS-EXAMINATION

14 BY MS. ZMROCZEK:

15 Q How are you?

16 A I'm fine.

17 Q This is in the exact same condition now as it was
18 when it was turned in to you?

19 A Yes.

20 Q And it's just this one scale?

21 A Yes.

22 Q You all kept saying scales. I just didn't know if
23 there was another one.

24 A No. Just one scale.

25 MS. ZMROCZEK: No further questions.

1 REDIRECT EXAMINATION

2 BY MR. ROSS:

3 Q The scale, it was tagged and bagged, right?

4 A Yes, it was.

5 Q And it was in one of those brown shopping bags?

6 A Paper bag.

7 MR. ROSS: Okay.

8 THE COURT: Anything further?

9 MR. ROSS: No, Your Honor.

10 THE COURT: Thank you. You may step down.

11 Next witness.

12 MR. ROSS: The State calls Agent Dennis Tracy to
13 the stand.

14 DENNIS TRACY, after being duly sworn, testified
15 as follows:

16 THE CLERK: Once you're seated, state your full
17 name, spelling your last on the record, sir.

18 THE WITNESS: Dennis Tracy, T-R-A-C-Y.

19 DIRECT EXAMINATION

20 BY MR. ROSS:

21 Q Agent Tracy, how are you doing this morning?

22 A Doing well.

23 Q Where are you employed?

24 A South Carolina Law Enforcement Division.

25 Q What do you do for them?

1 A Narcotics investigator.

2 Q When did you start with SLED?

3 A Last November.

4 Q Okay. On October 7, 2011, where were you working?

5 A Lexington County Sheriff's Department.

6 Q In what capacity?

7 A As a narcotics investigator.

8 Q How many years do you have total in working in
9 narcotics?

10 A About 11.

11 Q Okay. What types of cases were you working on
12 October 7, 2011?

13 A I worked the full gamut of narcotics investigations,
14 interstate transportation of narcotics, distribution of
15 narcotics, manufacturing narcotics.

16 Q Okay. What was your specific role as it relates to
17 this case of State versus Leandro Aguirre?

18 A I took the plant material off of the full plants and
19 boxed it for examination.

20 Q Okay. And why do you all strip the plants from --
21 leaves and the buds from the plants?

22 A The only really usable parts of a marijuana plant are
23 the leaves and the bud material or the vegetative material
24 on top of it. There's THC throughout the plant, but the
25 amounts are so miniscule in stalks and stems, that's not

1 really usable, and it's not fair to charge a defendant
2 with the weight of a stalk.

3 Q Okay. When you strip the plants, did anybody assist
4 you?

5 A Agent Finch assisted me.

6 Q Did you all do this at the evidence room?

7 A We did.

8 Q Was an evidence custodian with you when you did it?

9 A Yes, sir.

10 Q Are you allowed into that evidence with room without
11 an evidence custodian there?

12 A No, sir.

13 Q Tell me physically how you all stripped the plants
14 and put them in the boxes.

15 A We physically take each plant and break off as much
16 stalk or stem material as we can, and then take the
17 remaining leaves and plant material and place it into a
18 box. We set up two -- we had a lot of plant material in
19 this case, so we set up two boxes to toss the testable
20 material into.

21 Q How do you know you were stripping plants as they
22 relate to this case against Mr. Aguirre?

23 A This case was segregated from any other marijuana
24 grow cases that were made. This case also had the case
25 number attached to the bundling material for the plants.

1 Q Okay. And you all put the plant material in two
2 boxes?

3 A We did.

4 Q Okay. Did you put anything in those boxes that
5 weren't on those plants?

6 A No, sir.

7 Q Did defense put anything in those boxes that weren't
8 on those plants?

9 A No, sir.

10 Q Did you try and separate the stems and the stalks
11 from the rest of the plants?

12 A As best as we could.

13 Q Okay. Right beside you are State's Number 78 and 77.
14 If you could please step down and take a look at these
15 boxes.

16 Are those the boxes that you put the plant
17 material in this case?

18 A Yes, sir.

19 Q How do you know that?

20 A My initials are placed on both boxes in the tops and
21 bottoms in a tape and my initials and the date that we did
22 this.

23 Q Okay. When you -- after you put the plant material
24 in those boxes, did you seal them up?

25 A We did.

1 Q With tape you said?

2 A Yes, sir.

3 Q And what did you do with the boxes then?

4 A We then turned -- we then handed them back to the
5 evidence custodian and wrote a supplemental report.

6 Q Okay. When you relinquished custody of those boxes,
7 were the plants within your control from the point you
8 started stripping them and put them in the boxes, were
9 they still within your control when you turned the boxes
10 over to the evidence custodian?

11 A Yes. We basically had a table that we had the boxes
12 sitting on, and we take the plants down, we had a pile of
13 plants. We would strip the vegetative material off of it,
14 throw it into the box, and then take the unusable stalk
15 and put it in a pile to be destroyed.

16 Q At any point in time that you were stripping these
17 plants, did anyone else come into possession of the plants
18 other than you and Agent Finch?

19 A No, sir.

20 Q The plants were within your care, custody, and
21 control from the point you began stripping them until the
22 point you handed the boxes over to the evidence custodian?

23 A Yes, sir.

24 MR. ROSS: Please have a seat.

25 That's all the questions I have for you, Agent

1 Tracy. Please answer anything Ms. Zmroczek has.

2 CROSS-EXAMINATION

3 BY MS. ZMROCZEK:

4 Q Agent Tracy, you know Mr. Wilson from MCEC, don't
5 you?

6 A I do.

7 Q You know him because you called him three days before
8 the arrest was made in this case about other drug grow
9 houses, correct?

10 MR. ROSS: Objection, Your Honor. Relevance.

11 THE COURT: The objection is overruled.

12 THE WITNESS: I do.

13 BY MS. ZMROCZEK:

14 Q Did you meet Mr. Wilson out at those other grow
15 houses?

16 A I don't believe I went to the original address, but I
17 met with him that day.

18 Q Which day?

19 A That would be the -- I guess the 4th.

20 Q Oh, okay. I was confused.

21 A I'm sorry.

22 Q No, that's fine.

23 So you met him on the 4th. When you met him on
24 the 4th of October, was it at one of the locations?

25 A It was.

1 Q And were there other people there? Describe the
2 scene when you met him on October 4th.

3 A We had executed search warrants in regards to grow
4 houses. We had suspects in custody, we had other officers
5 present, and we had MCEC personnel there to render the
6 location safe.

7 Q And then did you meet him again on the 5th at the
8 next house?

9 A No.

10 Q Or the 6th at the next house?

11 A No.

12 Q And you came across all those houses from information
13 due to a confidential informant, correct?

14 A Yes, ma'am.

15 Q And that information provided by that confidential
16 informant didn't have [REDACTED] --

17 MR. ROSS: Objection, Your Honor, relevance
18 again.

19 THE COURT: The objection's sustained.

20 BY MS. ZMROCZEK:

21 Q Did you meet Mr. Wilson on October 13th?

22 A Possibly. I may have.

23 Q Is it possible that he contacted you all or you all
24 contacted him about a potential power theft and grow house
25 on Ben Franklin Road?

1 A It's possible.

2 Q You know the name Jennifer Izquierdo, don't you?

3 A I do.

4 Q Tell the jury how you know that name.

5 A She was somehow related to occupants of one of the
6 target locations of our investigation.

7 Q How many marijuana collections had you done for the
8 month of the October?

9 A How many grow houses did we disable?

10 Q Yes.

11 A I believe seven.

12 Q Seven grown houses just in that little month of
13 October?

14 A I believe. There may have been more, but I know
15 there was seven the initial day. Including this one,
16 there was maybe up to nine, but I want to say seven
17 originally.

18 MS. ZMROCZEK: I have no further questions.

19 REDIRECT EXAMINATION

20 BY MR. ROSS:

21 Q Agent Tracy, you said Jennifer Izquierdo was related
22 to some of those targets in the other grow houses that you
23 talked about on cross-exam; is that correct?

24 A Yes, sir.

25 Q When you said she was related, is that related by

1 blood or marriage or something like that?

2 A We weren't a hundred percent sure. We believed in
3 the information we had received was that she was married
4 to one of the gentlemen involved in one of the houses.

5 Q Okay. Was she ever found at any of these houses?

6 A No.

7 Q How many houses did you go to prior to [REDACTED] [REDACTED]

8 [REDACTED]?

9 A We disabled seven grow houses, but I think we went to
10 a total of nine or ten houses.

11 Q Okay. At any of these houses, did you find Jennifer
12 Izquierdo?

13 A No, sir.

14 Q So you have been a narcotics officer how long?

15 A I have been working narcotics about 11 years.

16 Q Let me show you some photographs that were admitted
17 into evidence. Specifically, I'm going to show you 46 and
18 74 as a representative sample in this case.

19 A Yes, sir.

20 Q Would you expect whoever is behind this, would you
21 expect this to be a one-man operation?

22 A No, sir.

23 Q For these marijuana networks, you need somebody to
24 grow it, right?

25 A Yes, sir.

1 Q You need somebody to ship it, right?

2 A Yes, sir.

3 Q You need somebody to sell it, right?

4 A Yes, sir.

5 Q One man typically doesn't do all of those tasks,
6 correct?

7 A That's correct.

8 Q Is it common to arrest or have multiple people
9 involved in these networks?

10 A Common to a point, if I can explain.

11 Q Please.

12 A We do get one-person marijuana grows, that somebody
13 will decide to grow marijuana in their closet in their
14 house, and it's for personal use or they might distribute
15 to their friends. This conglomeration of cases we made we
16 knew was going to be large scale, we knew it was involving
17 multiple locations, a lot of plant count. I think we
18 seized a total of almost 600 plants total in this entire
19 operation. We got packaging material for sale, we got 51
20 pounds of product. So this case, we knew this case was
21 going to be large. We knew this had multiple working
22 parts to it. We had distribution networks, we had people
23 that were paid specifically to tend these grows. Their
24 job was to sit at that house and basically monitor these
25 plants. They had no part in the actual distribution, they

1 were simply to monitor these plants, make sure they grew
2 properly.

3 MR. ROSS: That's all the questions I have for
4 you, Agent Tracy.

5 MS. ZMROCZEK: I have a few more questions now,
6 Your Honor.

7 THE COURT: Yes.

8 RE CROSS-EXAMINATION

9 BY MS. ZMROCZEK:

10 Q This operation that you referred to, you received
11 that information from a confidential informant, correct?

12 A Yes.

13 Q And that confidential informant is reliable, correct?

14 A Yes.

15 Q And they gave you very specific information and very
16 specific names?

17 MR. ROSS: Objection on the confidential
18 informant, Your Honor. Relevance.

19 THE COURT: I need to hear the entire question.

20 BY MS. ZMROCZEK:

21 Q How many names has that confidential informant given
22 you?

23 A Fifteen, somewhere like that, somewhere around there.

24 Q Mr. Aguirre's name was not in there at all, was it?

25 A No, ma'am.

1 Q His address was not in there at all?

2 A No, ma'am.

3 Q In your 11 years as a narcotics agent, you have seen
4 a lot of arrests?

5 A Yes, ma'am.

6 Q And when you go to arrest someone, you have backup,
7 you have all of your guns, sometimes you use a SWAT team?

8 A Yes, ma'am.

9 Q Because these drug traffickers are dangerous, aren't
10 they?

11 A Some.

12 Q More than some, fair?

13 A I wouldn't say all. I would say that a portion of
14 them are violent. A portion of them can fly under the
15 radar.

16 Q But you still show up with guns and SWAT teams to
17 protect yourself when you go, correct?

18 A Not necessarily.

19 Q On these you did?

20 A On these we had search warrants. We were forcing
21 entry to somebody's house. We did equip ourselves to
22 protect ourselves due to the fact we were forcing entry
23 into somebody's house.

24 Q And you said you did have search warrants, but those
25 were on those cases, not on Mr. Aguirre's house?

1 A Correct.

2 MS. ZMROCZEK: No further questions.

3 THE COURT: Thank you, sir.

4 Next witness.

5 MR. ROSS: The State calls D.I. Blackwell to the
6 stand.

7 D.I. BLACKWELL, after being duly sworn,
8 testified as follows:

9 THE CLERK: Have a seat, please, sir. Once
10 you're seated, state your full name, spelling your last.

11 THE WITNESS: Donald I. Blackwell,
12 B-L-A-C-K-W-E-L-L.

13 DIRECT EXAMINATION

14 BY MR. ROSS:

15 Q Investigator Blackwell, you test marijuana for the
16 sheriff's department; is that correct?

17 A Yes, sir.

18 Q Do you have any other job duties for them?

19 A I also work the AFIS machine, about anything they
20 need me for.

21 Q What are your qualifications to test marijuana for
22 the sheriff's department?

23 A I have been certified by South Carolina Law
24 Enforcement Division since 1980.

25 Q Certified in what?

1 A To examine marijuana.

2 Q And was your certification current on October 7,
3 2011?

4 A Yes, sir. I'm recertified every three years.

5 Q Have you been qualified as an expert in marijuana
6 analysis in circuit court before?

7 A Yes, sir.

8 Q How many times?

9 A I stopped counting at a hundred.

10 Q So you've come in to court to testify over a hundred
11 times?

12 A Yes, sir.

13 MR. ROSS: Your Honor, at this time, we move for
14 Investigator Blackwell to be qualified as an expert in
15 marijuana analysis.

16 MS. ZMROCZEK: Without objection.

17 THE COURT: He is so qualified.

18 Ladies and gentlemen, when a witness is
19 qualified as an expert witness, they can offer their
20 opinions in areas where other witnesses cannot.

21 BY MR. ROSS:

22 Q Tell me about you all's chain of custody procedures
23 when you receive drugs to test.

24 A I pick them up from the evidence custodian. I take
25 them to our lab which is across the parking lot. I secure

1 them if I'm not going to test them right then, or if I
2 have more than I can test at one sitting, I secure them in
3 a locker. Then I take them out of the locker and test
4 them.

5 When I test them, if it's -- it happens
6 sometimes that the evidence is closed, I will place them
7 back in the locker that I only have the key for, and wait
8 until the next day and turn them back into evidence.

9 Q Did you receive boxes of suspected marijuana to test
10 in this case?

11 A Yes, I did.

12 Q Who did you receive them from?

13 A Candy Kyzer.

14 Q Okay. Did you subsequently perform tests on what was
15 in those boxes?

16 A Yes, sir, I did.

17 Q And tell me, what tests did you run?

18 A There's two tests that you do. There this a
19 microscopic test looking for certain hairs, and a chemical
20 test, Duquenois-Levine reagent test, to test for the
21 presence of THC, tetrahydrocannabinol.

22 Q You tested both boxes?

23 A Yes, sir, I did.

24 Q What was the results of those tests?

25 A Box one had 2401.50 grams of marijuana. Box two

1 contained 3209.30 grams of marijuana.

2 Q After you tested the marijuana, did you subsequently
3 bag the marijuana?

4 A Yes, I did.

5 Q And how many bags were per box?

6 A There was a total of six -- correction. Six on the
7 first box and six on the second box.

8 Q Now, were all six bags, did you test the contents of
9 all six bags?

10 A Yes.

11 Q Do you separate stems from marijuana plant material?

12 A Yes.

13 Q And how did you do that in this case?

14 A I opened the box. I made proper procedure to keep
15 the marijuana from migrating to other places, and then I
16 would pull out an amount out of the box, checking it for
17 stems, any foreign material other than plant material.
18 And as I pull out an amount that I figured was enough, and
19 was easy to handle, I would cut a bag or make a bag, and
20 weigh the bag, zero it out.

21 Q Let me interrupt you. What do you mean by zero it
22 out?

23 A Place it on the scale and bring the numbers to zero.

24 Q So does the weight of the bag go into the figures you
25 read just now?

1 A No.

2 Q The weight of the bag isn't part of the final weight?

3 A No.

4 Q After you did the testing, did you subsequently put
5 the marijuana back in the two boxes?

6 A Yes, I did.

7 Q And I'm going to show you State's 78. Is this the
8 box?

9 A Yes, it is.

10 Q Okay. Now I'm going to show you 77. Is this the
11 other box?

12 A Yes, it is.

13 Q Are your initials on these boxes?

14 A Right. With the evidence tape and also with the
15 regular tape that's there.

16 Q And after you tape these boxes back and put your
17 initials, did you turn them into the evidence room at that
18 point?

19 A Yes, I did.

20 Q Now, these boxes, these are good size boxes here.

21 How do you know that each leave, each bud, is marijuana?

22 I mean, did you test one little sample or how did you go
23 about doing it?

24 A Each bag -- each box and bag has at least ten tests I
25 do to satisfy myself and so I can testify that it is

1 marijuana. I do at least ten tests per area.

2 Q So at least ten tests, ten samples for this one and
3 ten samples for this one?

4 A Yes.

5 MR. ROSS: Your Honor, at this time, we would
6 move 77 and 78 into evidence.

7 THE COURT: What says the defense?

8 MS. ZMROCZEK: Without objection.

9 THE COURT: It's admitted.

10 (WHEREUPON, State's Exhibits Nos. 77-78 were
11 admitted into evidence.)

12 BY MR. ROSS:

13 Q Did you create a report in this case?

14 A Yes, I did.

15 Q Is it your general business practice to do that?

16 A Every test I conduct, I generate a report.

17 Q Did you bring it to court today?

18 A I have a copy of the report.

19 (WHEREUPON, State's Exhibit No. 82 was marked
20 for identification only.)

21 BY MR. ROSS:

22 Q I'm showing you State's Number 82. Is this the
23 report that you did in this case?

24 A Yes, it is.

25 MR. ROSS: Your Honor, we move 82 into evidence.

1 MS. ZMROCZEK: May I see it, please?

2 Without objection.

3 THE COURT: It's admitted.

4 (WHEREUPON, State's Exhibit No. 82 was admitted
5 into evidence.)

6 MR. ROSS: No further questions for this
7 witness, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. ZMROCZEK:

10 Q Good morning, Mr. Blackwell. Can you describe the
11 scales that you use to weigh your marijuana?

12 A I have two different sets, both of them are
13 electronic scales. They are calibrated before each test
14 when I do a test.

15 Q How big are they?

16 A One is about eight inches by eight by 17, 18 inches.
17 One is about 18 inches square.

18 Q Is that -- could you weigh a good size of marijuana
19 with those, right?

20 A Yes.

21 MS. ZMROCZEK: No further questions.

22 MR. ROSS: Nothing further, sir.

23 THE COURT: Thank you. You may step down.
24 Your next witness.

25 MR. ROSS: Your Honor, the State rests.

1 THE COURT: Ladies and gentlemen, that is the
2 State's case. Please go to the jury room for a break. We
3 need to discuss some things with the lawyers.

4 (The jury left open court at approximately 11:43
5 a.m.)

6 THE COURT: Any matters of law?

7 MR. ROSS: Nothing from the State, sir.

8 MS. ZMROCZEK: Your Honor, at this time, I would
9 like to renew all my objections and also renew -- strike
10 that.

11 And actually, that's all I have at this time,
12 Your Honor.

13 THE COURT: All right. You move for directed
14 verdict or you do not?

15 MS. ZMROCZEK: Yes. I'm sorry. I was trying to
16 put my thoughts straight.

17 Yes, renew all my old objections and move for a
18 directed verdict based on what we feel like is the lack of
19 evidence to go to the jury.

20 THE COURT: Mr. McNair, Mr. Ross?

21 MR. ROSS: Judge, I think we've presented more
22 than enough evidence for a jury to decide this,
23 considering what was found, his connection to the
24 residence, his statements, and the ultimate testing in
25 this case.

1 THE COURT: All right. The motion is denied.
2 It's a jury question as to all these issues.

3 All right. Ready to proceed with the defense?

4 MS. ZMROCZEK: Your Honor, we will not be
5 calling any witnesses.

6 THE COURT: All right. Would you like for me to
7 speak with the defendant about his right to testify or not
8 testify?

9 MS. ZMROCZEK: Yes, Your Honor, and I've
10 discussed it with him, but for the record, if we could
11 just put it on.

12 THE COURT: All right. If you'll come forward,
13 please.

14 Mr. Aguirre, at this time, I'm going to -- swear
15 him, please.

16 LEANDRO AGUIRRE, after being duly sworn,
17 testified as follows:

18 THE COURT: Mr. Aguirre, at this time, I'm going
19 to explain to you certain of your rights. If you do not
20 understand anything I say, please let me know. If you
21 want me to explain anything in more detail, please let me
22 know. Do you understand?

23 THE INTERPRETER: Yes.

24 THE COURT: We've now reached the stage of the
25 trial where you may present your defense. You have the

1 right to claim the protections given to you by the Fifth
2 Amendment to the Constitution of the United States. This
3 Amendment states in part, no person shall be compelled in
4 any criminal case to be a witness against himself. This
5 means that you cannot be required to testify in this case.
6 You do, however, have the right to testify on your own
7 behalf. However, no one can make you testify. This is a
8 personal right, and no one can waive this right except
9 you.

10 Now, if you decide to testify, you will be
11 subject to the same rules that govern other witnesses, and
12 you may be examined and cross-examined on any relevant
13 issue in this case.

14 In addition, if you have any convictions
15 involving dishonesty or false statements or crimes
16 punishable by imprisonment for more than one year, and I
17 determine that the probative value of admitting this
18 evidence outweighs its prejudicial effect to you, the
19 solicitor will be able to introduce your record to attack
20 your credibility.

21 If you decide to testify, this decision on your
22 part must be freely, voluntarily, and intelligently made
23 with knowledge of the protections given to you by the
24 Fifth Amendment and the consequences of your decision to
25 testify.

1 If you decide not to testify, I will instruct
2 the jurors that they cannot give the fact that you did not
3 testify any consideration whatsoever, and that there is to
4 be absolutely no prejudice to you because you did not
5 testify. It is left entirely up to you whether or not you
6 testify. You may talk with your lawyer, Ms. Zmroczek,
7 your family, friends, or anyone else, but the final
8 decision will be left entirely up to you.

9 Do you understand what I have explained to you?

10 THE INTERPRETER: Yes.

11 THE COURT: Do you have any questions about what
12 I have explained to you?

13 THE INTERPRETER: No.

14 THE COURT: Have you discussed with your lawyer
15 whether or not you should testify?

16 THE INTERPRETER: Yes.

17 THE COURT: Do you wish to talk to your lawyer
18 anymore at this time about whether or not you should
19 testify?

20 THE INTERPRETER: No.

21 THE COURT: Do you wish to testify?

22 THE INTERPRETER: No.

23 THE COURT: All right. Thank you, sir.

24 And you're telling me then that the defense
25 rests?

1 MS. ZMROCZEK: Defense rests, Your Honor.

2 THE COURT: All right. We'll discuss jury
3 charges. We'll take a few minutes, and then we'll go to
4 closing arguments.

5 MR. ROSS: Your Honor, if I may respectfully
6 request a lunch break prior to close.

7 THE COURT: I understand.

8 Well, let's see. That puts us in a pickle. We
9 have lunch coming at 1, the hearing at 2.

10 MR. ROSS: I'm prepared to suck it up until
11 then, Your Honor.

12 THE COURT: I figured you would. You're a real
13 trooper.

14 We can take a break, but we would love to do
15 closing before so that the jury could be out during the
16 other case, if they're still out.

17 Let's talk about requested charges first.

18 Now, as far as the defense's request to charge,
19 Ms. Zmroczek, you have -- we have a standard charge for
20 trafficking, reasonable doubt, presumption of innocence,
21 credibility of witnesses, except you've added to your
22 credibility charge comments such as the defense has no
23 burden to prove the truthfulness or credibility of
24 defense -- of course, you have no defense witnesses.

25 Defense is not obligated to prove the truth of

1 its evidence. Of course, you're not offering evidence.

2 So the credibility charge, what seems to be left
3 is a standard credibility charge.

4 Do you have any other comment on that?

5 MS. ZMROCZEK: The standard is fine, Your Honor.

6 THE COURT: All right. With regard to the
7 State's request to charge, I note that Mr. Ross has pulled
8 from the credibility the case where the Court was dealing
9 with this question of a person possesses a certain amount
10 of marijuana, they're presumed to be -- to intend to
11 distribute or certain presumptions that the Court held to
12 be unconstitutional and switched it from presumptions to
13 permissive inferences. It doesn't shift the burden from
14 the State to the defense as the Court held in the case
15 when the person presumed to be guilty if they have a
16 certain quantity and so forth, and we've shifted from that
17 to permissive inferences, and the burden still remains on
18 the State and never shifts. And I certainly understand
19 that principle, I'm trying to figure out how it should be
20 tied into this.

21 MR. ROSS: You're referring to number three on
22 our charge?

23 THE COURT: Yes, sir, State v Andrews.

24 MR. ROSS: Judge, if you look at the actual
25 altering, bypassing electric line statute that he was

1 charged with --

2 THE COURT: Yes, sir.

3 MR. ROSS: -- it includes the prima fascia
4 language that's included on the intent to distribute
5 statute for PWIDs. I should have a copy of that.

6 THE COURT: I'm looking the statute now. It
7 says, a meter found in a condition which has been -- which
8 would cause electricity to be diverted from the recording
9 apparatus of the meter or cause the meter to inaccurately
10 measure the use of electricity or the attachment to it of
11 any device or wire which would permit the use of unmetered
12 electricity or would cause a meter to inaccurately measure
13 the electricity use is the prima fascia evidence that a
14 person in whose name the meter was installed or the person
15 for whose benefit the electricity was diverted was prima
16 facie -- was diverted or caused the electricity to be
17 diverted from going through the meter or the meter to
18 inaccurately measure the electricity -- the use of
19 electricity.

20 MR. ROSS: It's a bit confusing, but what I did,
21 Your Honor, is I just essentially cut and pasted from the
22 statute itself. So those are the legislature's words, and
23 I think if you apply all the PWID case law on burden
24 shifting to the electricity statute, I think that is a
25 constitutional --

1 THE COURT: You took out the -- you doctored the
2 statute to make the statute constitutional.

3 MR. ROSS: Yes, Your Honor, in accordance with
4 the case law.

5 THE COURT: Okay.

6 MR. ROSS: And I also removed references to
7 water meters simply because it's not relevant.

8 THE COURT: Okay. I understand what you're
9 doing.

10 What do you think about that, Ms. Zmroczek?

11 MS. ZMROCZEK: Honestly, I felt like that he
12 probably did the right thing with the statute, so we have
13 no problem with that.

14 THE COURT: All right. I understand now.

15 Okay. Well, we will -- any other objections to
16 any other request to charge by the State?

17 MS. ZMROCZEK: Your Honor, actually, I don't
18 know about this one line. "The resulting implication only
19 permits rather than requires the jury to infer." I don't
20 think that they -- I mean, you're reading to them what the
21 law is, so I don't think --

22 THE COURT: The resulting --

23 MS. ZMROCZEK: Implication.

24 THE COURT: You're on number three again?

25 MS. ZMROCZEK: Yes. I just want to be mindful

1 of what --

2 THE COURT: Yes. Well, Mr. Ross?

3 MR. ROSS: I just have a little hesitance in
4 modifying what the appellate courts have already ruled to
5 be the constitutional way to say that.

6 THE COURT: Of course, when the Court is
7 speaking of the jury, then they're speaking from an
8 appellate setting. They're not speaking from the trial
9 setting. So when they refer to the jury, then they're
10 giving instructions to -- you're talking about the portion
11 of the opinion which is giving instructions to the trial
12 court as to how they should instruct the jury. But in the
13 trial setting with me talking to the jury, it's a
14 different setting, so it flows a little different. I
15 understand your point on that.

16 MR. ROSS: So that line is stricken?

17 THE COURT: Yeah. That line that speaks of the
18 jury.

19 MR. ROSS: And with regard to one, two, and
20 four, Your Honor? Four is a standard constructive
21 possession charge.

22 MS. ZMROCZEK: Your Honor, possession --
23 constructive possession doesn't apply in trafficking
24 cases. I'm not allowed to, like, argue mere possession or
25 anything like, so I don't believe that that would be

1 applicable here.

2 MR. ROSS: The statute itself says actual or
3 constructive possession.

4 THE COURT: And trafficking is a multiple
5 definition. There are multiple means of trafficking,
6 include possessing.

7 It says knowingly or intentionally in actual or
8 constructive possession. That's part of the indictment
9 itself. It's part of the statute itself.

10 MS. ZMROCZEK: And I believe that charge is --
11 that's what you'll be charging him with, for the
12 trafficking?

13 THE COURT: We have to define the terms,
14 including actual and constructive, and also there is an
15 inference when property is found or a substance is found
16 on premises under the control of the accused or it's an
17 inference, but it's not -- the State still has the burden
18 of proof.

19 MS. ZMROCZEK: Okay.

20 THE COURT: With regard to the weight aspect of
21 the charge, regarding the first charge, the defendant does
22 not have to have actual knowledge of the weight, what's
23 your thoughts on that, Mr. Ross?

24 MR. ROSS: Your Honor, I think that just comes
25 straight from the case law, that any argument that the

1 defendant had knowledge that the actual weight of
2 trafficking exceeded ten pounds, I don't think that's a
3 requirement. And I think the jury may get hung up on
4 that. They may erroneously think that's a burden we have
5 to prove, and case law says otherwise.

6 THE COURT: That he knew the weight of what he
7 possessed?

8 MR. ROSS: No, that he knew what he was
9 possessing, manufacturing, or aiding, abetting, assisting
10 and conspiring to manufacture. He had knowledge of it,
11 and it beyond a reasonable doubt exceeded ten pounds. Not
12 that in his head, he knew it was ten pounds, but that he
13 knew it was there, he was connected to it, and it
14 ultimately weighed over ten pounds beyond a reasonable
15 doubt.

16 MS. ZMROCZEK: Your Honor, that sounds to me to
17 be more confusing to the jury.

18 THE COURT: You have State v Taylor with you
19 there?

20 MR. ROSS: I'm sorry, Your Honor, I don't.

21 THE COURT: I have it, I'm sure. I want to look
22 at it.

23 Under 473, State v Taylor, this guy was
24 convicted of trafficking and -- this lady was convicted of
25 trafficking methamphetamine, and she appealed. Carroll

1 Connor wrote the opinion, the defendant could not be
2 convicted if she acted only with criminal negligence. The
3 defendant could not be convicted -- defendant could be
4 convicted even if she did not know that that amount of
5 drugs involved in the transaction exceeded ten grams. So
6 SLED went to her house to find crank and presented
7 evidence that she was involved in the sale, scales and all
8 that, and she measured, it says, according to the scale
9 which indicated that it weighed 14 grams. And the person
10 doing the buying complained to her about including the
11 weight of the bag in the substance she purchased -- he had
12 purchased and told him they would make it up next time.
13 Taylor's attorney requested the Court to charge the jury
14 they could not find her guilty of trafficking unless she
15 knew there were ten grams or more. The Court refused to
16 give the charge. She argued that the refusal to charge
17 that made her strictly liable for anyone who sells ten
18 grams or more even if they had no knowledge of the amount.

19 And they said in this case, it's undisputed that
20 Pruitt purchased 13 grams of amphetamine, an amount that
21 exceeded the ten grams, I guess. Therefore, they
22 correctly charged on the trafficking statute.

23 She was trying to get a charge on a lesser than
24 trafficking charge based on what she claims to have not
25 known the weight of the substance to be.

1 So that's sort of a fact specific situation,
2 where they're debating whether she -- what she knew, and
3 she's requesting a charge on a lesser offense. In this
4 case, it's either guilty or not guilty of trafficking and
5 the meter charge of guilty or not guilty. So I don't know
6 if we need to get into the minutia of it.

7 MR. ROSS: Yes, Your Honor.

8 THE COURT: So -- because we have that he's
9 charged with trafficking between that amount.

10 MR. ROSS: It's either the whole enchilada or
11 nothing, there are no lesser included.

12 THE COURT: That's right. That's the
13 distinction between this particular case and the Taylor
14 case.

15 All right. Anything else?

16 MR. ROSS: I just need to move the podium.

17 THE COURT: We're going to give you a break.
18 We'll give you all a break to get your thoughts and get
19 organized. Let's take about 15 minutes.

20 (A break was taken.)

21 THE COURT: One other thing on the charges,
22 Mr. Ross, regarding Number 2 or 3, about a compound or a
23 mixture thereof?

24 MR. ROSS: Yes, Your Honor.

25 THE COURT: That seems to apply to cocaine. At

1 least in the case of State v Kerr, that refers to a
2 mixture thereof. I know the statute refers to that
3 subsection, but the specific -- the statute specifically
4 refers to compound and a mixture thereof and all that.
5 But you -- basically, in this case, the weight of the
6 marijuana is what he's testified to. And you didn't bring
7 in any stalks and other things.

8 MR. ROSS: Well, on the report, Judge, there is
9 reference to stalks.

10 THE COURT: On the what?

11 MR. ROSS: On the chemist's report, he does
12 reference stalks not being included in the weight
13 consistent with his testimony.

14 If it's not applicable, it's not applicable.

15 THE COURT: Right. Well, it's not applicable
16 because it's just -- well, maybe even the stalks, I don't
17 know, could be included. There is no distinction made for
18 marijuana. The distinction is for other drugs that has to
19 be mixed, cocaine, because in that particular case, there
20 was some question as to how pure the cocaine was, and that
21 was the basis for the appeal. That a pure form put it
22 less than the applicable amount for trafficking, but that
23 doesn't apply to this situation.

24 MR. ROSS: Yes, Your Honor.

25 THE COURT: All right. Anything else before the

1 jury comes?

2 MS. ZMROCZEK: No, Your Honor.

3 MR. ROSS: Nothing from the State.

4 THE COURT: So the State opens, defense closes.

5 Are you going to put in any exhibits or

6 anything?

7 MS. ZMROCZEK: No, Your Honor.

8 THE COURT: Okay. Let's bring them on.

9 And you will rest in the presence of the jury?

10 MS. ZMROCZEK: Yes, sir.

11 (The jury came into open court at approximately

12 12:40 p.m.)

13 THE COURT: Madame forelady, members of the

14 jury, you've heard the State's case. It's now the

15 defense's turn.

16 Ms. Zmroczek.

17 MS. ZMROCZEK: Your Honor, the defense rests.

18 THE COURT: All right. Ladies and gentlemen,

19 the defense has rested. That means you have heard all the

20 evidence in the case. It's now time for closing arguments

21 from are the State.

22 Mr. Ross.

23 MR. ROSS: May it please the Court, Your Honor.

24 THE COURT: Yes, sir.

25 MR. ROSS: If it walks like a duck and if it

1 quacks like a duck, ladies and gentlemen, what is it that
2 you have? You've got yourself a duck. Sometimes things
3 really are just that simple. This case is one of those
4 times. This case is one of those times. That's really
5 the way the system is supposed to work.

6 Mr. Aguirre has now had his day in court. He
7 has had his attorney look at all the evidence from every
8 single angle, and no matter what way you look at this
9 evidence, you look at it from over here, it's still a
10 duck. You come over here from the left, it's still a
11 duck. Look at it from up top, it's a duck. The bottom,
12 it's a duck. No matter which way you look at this case,
13 it is that simple, it is that crystal clear.

14 Leandro Aguirre was trafficking marijuana on
15 October 7, 2011. Undisputed. So what are we talking
16 about? Mr. McNair, my co-counsel, briefly told you what
17 trafficking marijuana is, and I'm a little bit old
18 fashioned. I want to actually look at the law itself.
19 When you start talking about the law, let's take a look at
20 what does the law actually say. Well, take a look.

21 Trafficking marijuana captures multiple actions,
22 multiple things can be trafficking marijuana. What's key
23 is the ten pounds. If you possess ten pounds of
24 marijuana, if you manufacture ten pounds of marijuana, if
25 you aid, abet, assist, or conspire with someone else, if

1 you help them make marijuana, you're equally guilty
2 regardless of whether or not you have it in your
3 possession, regardless of whether or not you're sitting
4 there pouring the Miracle-Gro in all those marijuana
5 plants, tending the lights, holding the key to the shed
6 for somebody, or if you're aiding, abetting or assisting
7 somebody else to make it, the law considers it all the
8 same.

9 So what do these words mean when you talk about
10 possession? That seems simple enough. When you have
11 something in your pocket, you have possession of it. The
12 judge will explain to you that is called actual
13 possession, when it's in your pocket. But when you have
14 dominion and control over things, you're also in
15 constructive possession of it. All the items I got over
16 on my table, constructive possession. The law books in my
17 office, constructive possession. The things in my garage,
18 constructive possession.

19 Manufacturing, simple, you make it. You're
20 growing marijuana.

21 And then aiding, abetting, assisting or
22 conspiring. We don't have to prove all of those things,
23 we only have to prove one of those things.

24 But the facts in this case lead to one
25 conclusion, that he was doing all of them. He had

1 possession of those marijuana plants, he held the key to
2 the shed. He was making those marijuana plants. That was
3 his house, his Miracle-Gro out in the shed. His account
4 paying for the power. His name on these credit bills. We
5 didn't really go over it a lot in direct exam, but you're
6 going to have a chance to take a look at it.

7 What name is on all of these credit card
8 payments? It's Leandro Aguirre, all of these transactions
9 ending in 4323. I'm sure some of you all, most of you all
10 probably buy stuff online. When you use a credit card, if
11 you're Jane Doe, and you have a credit card that says Jane
12 Doe, and it's shipped to Joe Smith, can you use a credit
13 card in somebody else's name?

14 So what is the evidence in this case to prove
15 all these elements that you see here on the statute?
16 Well, the evidence is simple. You really don't need a
17 great attorney to argue this case. Number one, his
18 residence. He was living there nine or ten months before
19 the police knocked on his door. How unlikely is it for
20 someone to live at a home for nine or ten months and not
21 know there are 54 marijuana plants growing in the shed?
22 That shed was a gold mine. You heard the testimony from
23 the narcotics agents. That was high grade marijuana.
24 Each one is worth at least a thousand dollars. He had
25 \$54,000 sitting in his garage. He ain't involved?

1 Somebody just left \$54,000 in his garage? Has that
2 happened to you all? Have you all ever walked out to your
3 garage found and \$54,000 sitting there waiting on you?

4 How else do we know that he was controlling that
5 shed? Well, he was living there, so he's either involved
6 in trafficking marijuana or he's the most unlucky fool in
7 the world to be living there eight or nine months and not
8 know it was out there. So without any other evidence, we
9 pretty much know what is going on here.

10 But that's not all the evidence we have in this
11 case. That is not all the evidence these officers relied
12 upon. Who had the key to the shed? Wasn't Mishelin
13 Perez, it wasn't Jennifer Izquierdo. It was Leandro
14 Aguirre. How did they open the door to that shed?
15 Mr. Aguirre gave them the key. And he doesn't know what's
16 in the shed? He's not involved with making, growing that
17 marijuana? He had the key in his hand.

18 What other information in this case? What did
19 they find in his room right by his naturalization
20 certificate? A set of digital scales. What do you all
21 think this was being used for? Is he going to mail some
22 postage? Is he weighing letters on this sucker? No, he's
23 weighing bags of marijuana. And you heard the agent
24 testify, this is not something that weighs out a gram,
25 half a gram, not for small amounts of cocaine that you

1 would line and chop up. Five pounds. This is to weigh
2 heavy stuff.

3 Now, they talked about there not being residue
4 on this device. Well, this wasn't a kid with a bag of
5 marijuana in his pocket, with an eighth of an ounce of
6 marijuana, a dime bag. They were weighing pounds, they
7 were producing pounds.

8 What else? His statements. His statements
9 admitting his guilt. Well, duh? What did he say to
10 Deputy Fine when they found that spliced wire? "I know
11 what you're looking for, it's in the shed." What did he
12 do when he said that? He put his hands behind his back,
13 because at that point, he knew he had been caught. You
14 can't talk your way out of that situation.

15 What did he say when Sergeant Blake started
16 asking about the key? I know where the key is, that's not
17 the key you're looking for, it's with the others. She
18 brought out a second key. Is this the key? He nods his
19 head. And then Detective Barnes comes in, a completely
20 new officer on the scene, she walks up to him. She hadn't
21 heard that anything was going on. She hadn't spoken to
22 him yet, and she speaks with him. He again admits it to
23 her. Marijuana's all mine.

24 Well, my dad is fond of saying a million Elvis
25 fans can't all be wrong. He laughs when he says it. And

1 if everybody is saying the same thing, don't you think
2 there is some truth to it? Are all these officers
3 mistaken? Did they all mishear what the defendant said?
4 Of course not.

5 So what is your defense in a case like this,
6 what have you got? Well, number one, you're going to say
7 I don't speak English. Okay. Okay, you don't speak
8 English. You have been living here over 20 years. This
9 is your certificate for one of those prized statutes in
10 this world, being an American citizen. He has been a
11 citizen for 20 years. Don't you have to pass a test to be
12 a citizen? So he's living here 20 years, he passed the
13 test, now all of a sudden, he can't speak English? Spoke
14 it pretty damn fine to Deputy Fine, Sergeant Blake, these
15 gentlemen right here. Detective Barnes. They don't speak
16 Spanish. They understood what he was saying.

17 I've spent some time with the Army overseas, and
18 we would speak to local nationals, and the way you
19 understand whether or not somebody is telling you or
20 understands the language is when you ask them a question,
21 where are you from, typically if they don't understand
22 you, they'll say something like Toyota Corolla. Where you
23 from, yellow. Where you from, 35. Things are out of
24 context.

25 What were his statements here? He was talking

1 about the spliced wire that was robbing the power company.
2 He was talking about the marijuana in the shed and the
3 line going from the spliced meter all the way up to supply
4 the power to those 18 grow lamps. Got it so hot that you
5 would need an air filtration system to pump out all that
6 heat. You need a water filtration system. You had all
7 that Miracle-Gro.

8 What is your other defense? Well, Ms. Zmroczek
9 kind of alluded to it on cross-examination of several of
10 these officers. She made it a point to bring to your
11 attention that the defendant was calm, he was cool, he was
12 collected during this entire time that Mid-Carolina was
13 looking for those spliced lines.

14 And ladies and gentlemen, I can tell you, I work
15 for the Solicitor's office, I carry a badge, but when I
16 get pulled over for speeding, I see that police officer
17 come up to my window, I get scared. I get a little
18 nervous. I have the privilege to get to work with some of
19 these deputies, like Deputy Fine, Sergeant Blake, Agent
20 Barnes. I know a lot of folks on the road. I see
21 somebody come up, I still get a little scared. I'm not a
22 criminal.

23 Some people don't get scared. That is a sign of
24 somebody that knows what they're doing. It's a sign of a
25 good criminal. It's a sign that he's good at what he does

1 because if you keep your cool, you tend to get out of
2 trouble. You tend not to raise the suspicion of those
3 folks over there. So him being calm, cool, and collected
4 is a sign of his sophistication. Just like all this other
5 mountain of evidence over here. Sophistication. This
6 ain't a kid with a dime bag in his pocket, this is an
7 organization.

8 Which is the other thing, Jennifer Izquierdo.
9 Her name came up. Detective Tracy kind of filled in the
10 blanks there. Who is Jennifer Izquierdo? She's just a
11 name on a piece of paper. That same name, turns out she
12 was related to individuals involved in the other cases.
13 Should that surprise you? Should it surprise you that the
14 defendant was part of something bigger?

15 This is a business. You can't operate a
16 business with one person. You need somebody to grow the
17 marijuana, you need somebody to ship the marijuana, and
18 you need somebody to sell the marijuana. So the fact that
19 you have somebody else connected to this case, that's
20 irrelevant. The issue is his guilt, was he in possession
21 of the marijuana? Did he have dominion and control over
22 the marijuana? Was he growing it? Was he aiding,
23 abetting, assisting, or conspiring with somebody else?
24 Shouldn't surprise you at all that other people were
25 probably involved. Rarely do you have crimes,

1 particularly drug crimes, where it's a one-man show.
2 Rarely do you have a person, a kid with a bag of dope in
3 his pocket.

4 To suggest that Mr. Aguirre's not guilty because
5 of the name on that piece of paper is almost like you have
6 three children. They all have their hands in the cookie
7 jar, all three of them, coming at different angles. Then
8 momma walks in. Then one of them says, it wasn't me, it
9 was him. Does that make him any less guilty because of
10 the actions of others? You don't excuse misconduct by
11 misconduct or the other criminal actions of other
12 individuals. The issue of relative guilt doesn't come up
13 at this stage. Leandro Aguirre guilt is what's relevant
14 now.

15 What else did they say? Well, what did
16 Ms. Zmroczek say during her opening statement? When
17 you're in this kind of situation, their defense is going
18 to be, well, let's attack the police. What did she say in
19 her opening statement, that you don't simply arrest
20 somebody for the color of their skin, for their accent.
21 You're absolutely right, you don't make assumptions. You
22 arrest somebody for their actions. You arrest somebody
23 because they had 54 plants growing in their shed. You
24 arrest somebody because they have a key to that shed. You
25 arrest somebody because they know they're caught, and they

1 admit to it.

2 Those officers were polite, courteous, and
3 professional to them, gave them a chance to tell their
4 side of the story. They didn't knock on the door and
5 throw them under arrest. They let Mid-Carolina do their
6 thing because that was another day in the life of these
7 deputies, just like any other call. And then they found
8 something. And even then, they waited to see what the
9 evidence was. You hold people accountable for their
10 actions, not who they are. They didn't rush to judgment.
11 They did it by the book and didn't do anything wrong.
12 They took action. And they knocked out a sophisticated
13 marijuana grow house. Job well done.

14 I'm not going to take up too much more of your
15 time. I would like to talk about presumption of innocence
16 and the reasonable doubt standard. Those two things that
17 the judge, I believe, has alluded to, Ms. Zmroczek has
18 alluded to them, Mr. McNair did as well.

19 Presumption of innocence, what does that mean?
20 Anybody in this country, everybody in this country,
21 doesn't matter who you are, the facts of your case,
22 anything, the day you walk through those doors, the doors
23 to this courthouse, that day you step foot, you're
24 presumed innocent. It doesn't matter what happened in the
25 past, you step foot in this courtroom, you're presumed

1 innocent. That is at the start.

2 Mr. Aguirre has had his day in court, he has had
3 two days in court. The evidence is in, and that
4 presumption of innocence is shattered. Nothing he can do.
5 He can't really challenge this, the evidence in this case.

6 Reasonable doubt, what does that mean? Those
7 are not magic words, that you've got to be convinced
8 beyond a reasonable doubt before you can find him guilty.
9 Reasonable doubt simply means are you firmly convinced
10 that Leandro Aguirre is guilty of this crime? Are you
11 firmly convinced about it? It's not guilt beyond all
12 doubt because, ladies and gentlemen, nothing in this world
13 is beyond all doubt, not a single thing, not a single
14 thing. Are you firmly convinced of his guilt? Firmly
15 convinced.

16 If I were to tell you that somebody had 54
17 marijuana plants in their shed, they had lived in that
18 place for nine or ten months, would you be firmly
19 convinced? How about if I told you he had a key to that
20 shed, would you tell me you're firmly convinced yet? What
21 if he had this sucker also sitting right by his
22 naturalization ticket? Are you starting to get firmly
23 convinced yet? And then he admits to it to Deputy Fine,
24 to Sergeant Blake, to Detective Barnes. Are you all
25 firmly convinced yet? You know he's guilty, he knows he's

1 guilty.

2 It's time for me to sit down now, but before I
3 do, I want thank you for your jury service. When you all
4 came in here on Monday, a lot of people stood up, a lot of
5 people got excuses, but you didn't. You came in, you did
6 your civic duty, and you should be commended for that.
7 Because nothing the police ever do can come to fruition
8 without 12 honest citizens ready, willing, and able to
9 stand in judgment of somebody else. And you all, that is
10 not an easy thing to do. It's not easy to stand in
11 judgment of somebody. It ain't easy, but it's necessary.
12 It's necessary to hold people accountable for their
13 actions. It's necessary to enforce the law. So right
14 now, there is only one thing left to do, find him guilty
15 as charged on both counts.

16 THE COURT: Ms. Zmroczek.

17 MS. ZMROCZEK: Your Honor, may it please the
18 Court.

19 THE COURT: Yes.

20 MS. ZMROCZEK: I want to touch on a few things
21 before I talk to you about why I'm here today.

22 Mr. Ross said something very, very important.
23 It's that Mr. Aguirre is a citizen, and that he has a
24 really -- you guys have a really high duty. Those aren't
25 words, and I'm not going to stand up here and argue

1 reasonable doubt. It's not -- it's not why I'm here. Why
2 I'm here is my client says he's not guilty, those are his
3 words. By coming to court, those are his words. He says
4 to the State, your burden is to prove me guilty beyond a
5 reasonable doubt. And I will argue that, but I want to
6 talk about reasonableness.

7 When I got this case, they gave what's called
8 discovery, and we've gone through all of it. And I had
9 questions. It's my job, and it should be your job, to ask
10 questions, because let me tell you, if more people just
11 stood up and said drugs are in there, arrest me, I'd be
12 out of a job. But more importantly, I'd be worried that
13 nobody is checking to see what's being done on this side.

14 A lot of things don't make sense, they just
15 don't make sense to me, and that's why we're here.
16 Because if one or two things didn't make sense, then that
17 would be fine. If Sergeant Blake forgot to have somebody
18 witness it, that's fine. I mean, those are little things,
19 little inconsequential things that don't make sense. But
20 when you get a lot of things that don't make sense, that's
21 reasonable doubt.

22 Let's start with why we're here, which I find
23 interesting because the first three or four witnesses were
24 real reluctant to tell me exactly what happened that day.
25 What happened that day, October 7th? Mr. Wilson makes a

1 phone call, and says -- I wrote it down. Well, I had to
2 get it from the report because nobody would -- nobody
3 would just admit to it. We think they may be stealing
4 power because there are abnormal readings on the electric
5 meter consistent with illegal activity, which then they
6 try to come back and correct and say, I didn't know about
7 electricity and stuff, so I put illegal activity on the
8 electric meter, but it was really a blown transformer.
9 Okay. I mean, just that, that's fine. Five months
10 earlier, a blown transformer.

11 But then the second thing listed on his report,
12 Jennifer Izquierdo, the name of the person who has
13 requested electric service be turned on at the residence.
14 Well, Mr. Ross kept showing you the bills and the notes
15 and kept saying Leandro Aguirre. Well, actually, Mishelin
16 Perez, his common-law wife, but again, I mean, it's
17 inconsequential, but what isn't inconsequential is that it
18 was Ms. Perez and her husband who requested service out
19 there, not Jennifer Izquierdo.

20 They're trying to -- I would have more respect
21 for them if they said, you know what, we know that they're
22 related, and we think they're growing pot, and we want to
23 check it out. I'd be okay with that. But don't tell me
24 that you're going to investigate electrical theft based on
25 a blown transformer five years (sic) ago. That doesn't

1 make sense to me. Tell me something that makes sense. If
2 it makes sense, then I'm fine with it. If you think that
3 there is pot out there, then get a warrant. They didn't
4 want to have to go through all that. They didn't want to
5 have to do all that. They were like, we suspect it, and
6 we found it, so we're right.

7 But that's not -- that shouldn't be good enough.
8 That shouldn't be good enough for you. They shouldn't be
9 able to come to your house and say I think something's
10 buried in the back yard, but we don't want to do all the
11 work to establish that something's buried in the backyard,
12 so we're going to get the cable company through all these
13 other places where people who have stuff buried in their
14 back yard, and then we're going to get them over here
15 because, you know what, your cable went out five months
16 ago. And that's minimizing it, but that's exactly what
17 they did instead of doing their job.

18 I'm not trying to make anybody look like a liar.
19 Drugs are bad. Drugs are bad. And I respect that the
20 police are out there trying to fight it. What I don't
21 respect is that they are out here trying to paint someone
22 in a bad light.

23 If I have to hear that the scales and -- which
24 still has the Pitney Bowes in it just in case they wanted
25 to, I guess, mail the drugs, but if I have to hear that it

1 was found with his naturalization papers, and then I look
2 at the picture that Ms. Barnes took, there wasn't a scale
3 and naturalization papers. There was a safe, just like
4 you and I have, with personal items, a tiny little
5 handgun, some bullets, and all your important papers in a
6 fireproof safe. That's what was in there.

7 But let's take it out of the house, and let's
8 just bring you a little few things, lay them in front of
9 you because that looks bad. It's not their job to make
10 him look bad. It's their job to say this is all the
11 evidence, you decide. You decide if they've met their
12 burden.

13 They made a big deal about the scale not having
14 residue. Actually, that really wasn't my point. If I'm
15 trafficking pounds of drugs, this is not the item to do it
16 with, a batteryless scale that was quite honestly found in
17 another room. Show me the pictures where it was found.

18 There is talk of a nursery. Show me the
19 pictures. If you can show it to me and show me that you
20 did it all, and that there is no question, then I wouldn't
21 be here. But there are too many questions, and that is
22 just my job, just to make sure. Because if I don't ask
23 the questions and if you don't ask or answer those
24 questions, then they can just go around arresting whomever
25 for whatever reason.

1 Is it reasonable that Mr. Wilson was so
2 concerned for his safety, he and his crew were so
3 concerned for his safety that they called Lexington
4 County, and they said we're concerned. Everybody has a
5 right to do that. I'm not arguing that. I'm not arguing
6 they didn't have a right to be on the property. But it
7 doesn't make sense because they're so concerned about
8 their safety.

9 And Sergeant Blake calls narcotics, and they
10 confirm that this name is involved in narcotics. But then
11 he -- this is what was so telling to me -- he just goes --
12 he and Officer Fine just go and knock on the door. And I
13 found that the most compelling of their testimony. If it
14 doesn't make sense, then why demonstrate just knocking on
15 the door? If we're scared that they're drug people, if
16 the MCEC crew is so scared because of what happened at all
17 these other places, it doesn't make sense to me that
18 you're just going to walk up to the door and say, how you
19 doing.

20 And the environment was so relaxed. If I'm a
21 sophisticated drug trafficker, and my wife answers the
22 door at 9 o'clock in the morning, and I'm in the back
23 bedroom and they're not asking to see me, bye-bye, I'm
24 gone. Am I going to say come on in? They didn't know
25 that that power was there. Why didn't they bring somebody

1 to say that they lived in the house before and that there
2 was no power into the shed? That's not our burden. Our
3 burden is not to do that. I don't have to prove anything.
4 He's innocent. But it's their burden to prove that he's
5 not. Beyond a reasonable doubt, that he is not. They
6 didn't bring anybody in here to say there was no power --
7 in fact, there was power already at the house existing.
8 They had just rented it. Even Sergeant Blake testified
9 when he walked up, you can't tell that there's buried
10 hidden cables.

11 I think Mr. Ross and maybe Detective Barnes said
12 sophisticated, high quality pot, sophisticated, elaborate
13 setup. Mr. Aguirre worked third shift at Wal-Mart putting
14 things, Detective Fine's words, putting things on shelves.
15 If I have \$54,000 worth of marijuana, am I going to go to
16 work at third shift at Wal-Mart? It's a double super
17 cover. It just doesn't make sense to me.

18 If he was harvesting marijuana in three days,
19 because that's what he told Detective Barnes, where were
20 the bags? Where's all the money? Where's all the stuff?
21 Clearly they did a thorough search of the house, but they
22 didn't find it. They didn't find it because it wasn't
23 there. It wasn't there because he's not a drug
24 trafficker.

25 He lives -- he and his wife and their

1 11-year-old daughter live in the country. They live in
2 Batesburg-Leesville where hopefully people don't bother
3 them. May have some relatives that are clearly involved
4 in other -- in drugs. I mean, there is just no if, ands,
5 or buts about it. And would I like to assume that
6 Mr. Ross and the State is just being nice and if they have
7 conspiracy charge against Mr. Aguirre, that they wouldn't
8 have brought that, too? Where are all the witnesses? Oh,
9 yes, he trafficked drugs, he was the grower, I was the
10 seller. They don't have that because he wasn't involved.
11 They have a CI, a confidential informant, who is providing
12 information on all of these people, but not Mr. Aguirre.

13 What Mr. Aguirre has, he has a house with a shed
14 way back here that backs up to the woods. You remember
15 the one shed that they kept talking about, the one that
16 they actually used right by the house, has their personal
17 stuff in it. She was like, please don't mess with my
18 personal stuff. And they kept referencing religious or
19 voodoo. It's just their personal stuff, don't get in
20 there, because that is what we use. That other shed, he's
21 in there somewhere. He handed them the key after he said,
22 "the marijuana is mine," and put his hands behind his
23 back. It just doesn't make sense. It's just not
24 reasonable.

25 Another one of the things that they want to do

1 is paint Mr. Aguirre in this terrible light, with the
2 scales, with the picture of his diabetic medication. I
3 don't care what his medical problems, I don't care about
4 his medical. With all due respect, if you're going to put
5 a picture in that has needles and medication and let you,
6 the fact finders, infer whatever you want to infer without
7 telling you here's a possible explanation, it's a little
8 disheartening.

9 A big time \$54,000 marijuana trafficker.
10 Sophisticated. Right here, that's the State's case. And
11 if they prove to you, if you can walk out with no
12 questions, no question he did it, he said he did it,
13 right? If that makes sense to you and you don't ask
14 yourself why didn't they bring Jennifer Izquierdo in here?
15 Why didn't they bring all the other drug traffickers? Why
16 were they reluctant to talk about it? Why didn't they
17 show us a picture of where the scale was found? Why
18 didn't they show us the nursery? Why didn't they take the
19 time to check for evidence that would put Mr. Aguirre in
20 that shed? You saw all the pictures and the bottles. Run
21 a fingerprint test for five minutes to show me that this
22 stocker at Wal-Mart has a double secret agent life as a
23 sophisticated marijuana grower who can construct elaborate
24 electrical boards that would put his wife and his
25 11-year-old daughter in danger if they blew up, but he's

1 working third shift as a cover.

2 I don't have the duty to create -- it's not my
3 duty to create reasonable doubt. But the law says it is
4 their duty to remove all reasonable doubt.

5 When you walk out, if you convict Mr. Aguirre
6 today, that decision's final. If you're sitting at dinner
7 tonight and somebody's asking you about the case and the
8 last two days craziness, oh, but he's guilty? Yes, I'm
9 pretty sure. That's not good enough. There was no
10 question in my mind when he walked out of here -- when I
11 walked out of here that he was guilty. And there are 12
12 of you that are going to be in that room. And if you have
13 a question that wasn't answered, you don't have to
14 convince -- and that's reasonable doubt, then you don't
15 have to convince anyone. You don't even have to have a
16 reason. You don't have to say why you have some doubt.
17 That decision is yours. You don't have to explain it to
18 anyone.

19 We have that reasonable doubt standard so that
20 innocent people aren't just swept under the rug because of
21 what police think they find or what the State thinks they
22 find. If they see the duck, and they don't want to
23 investigate any further, then that is not good enough.
24 And that is why when you make your decision and you come
25 back with a verdict of not guilty, no one's going to

1 question you.

2 THE COURT: Madame Forelady and members of the
3 jury, you've heard the testimony, the evidence, and the
4 arguments of the State and the defendant. I will now
5 explain to you the law that applies in this case.

6 Under the Constitution and laws of South
7 Carolina, you are the finders of the facts of this case.
8 I do not have the right to pass upon the facts or even to
9 express any opinion that I might have as to them because
10 this is a matter solely for you, the jury, to determine.
11 As jurors then, it is your duty to determine the effect,
12 the value, the weight, and the truth of the evidence
13 presented during this trial.

14 You are also the judges, the sole judges, of the
15 credibility, that is the believability of the witnesses
16 who have testified and of the evidence which has been
17 presented during this trial. In passing upon credibility,
18 you may take into consideration many things, such as the
19 demeanor or manner of testifying, whether the witness had
20 reason to be biased or prejudiced, whether a witness'
21 testimony was contradicted on the one hand or supported
22 and corroborated on the other hand. All these things you
23 will consider, bearing in mind that you should give the
24 defendant the benefit of any reasonable doubt. It becomes
25 your duty as jurors to analyze and to evaluate the

1 evidence and determine that evidence which convinces you
2 of its truth.

3 Now, as the trial judge, it is my responsibility
4 to preside over this trial and to rule upon the
5 admissibility of the evidence offered during this trial.
6 You are to consider only the testimony which has been
7 presented from this witness stand together with any
8 exhibits which have been made part of the record. I have
9 the additional duty to charge you the law applicable to
10 this case, and as the presiding judge, I am the sole judge
11 of the law of this case. It is your duty as jurors to
12 accept as correct the law as I now state it to you and
13 then reach your verdict.

14 And finally, I charge you in this regard that
15 you should not be concerned about what you think the law
16 ought to be, but rather what I charge you that the law is.

17 Now, the fact that the defendant was arrested,
18 charged, and indicted is not evidence in this case, and
19 cannot be considered as evidence of guilt in this case.
20 Nor does it create any presumption or inference of guilt.
21 The indictments are simply the formal written instruments
22 which contain the charges made against the defendant. An
23 indictment is a formal document by which a case is brought
24 into court.

25 Now, the indictments in this case allege two

1 different offenses against the defendant. The charges are
2 trafficking marijuana between ten and one hundred pounds
3 and altering, tampering with, or bypassing an electric
4 meter. Each indictment charges a separate and distinct
5 offense. You must decide each indictment separately on
6 the evidence and the law applicable to it uninfluenced by
7 your decision as to the other indictment. The defendant
8 may be convicted or acquitted on either indictment. You
9 will be asked to write a separate verdict of guilty or not
10 guilty for each indictment.

11 The defendant has pled not guilty to the charges
12 of each indictment, and that plea puts the burden on the
13 State to prove the defendant guilty.

14 A person charged with committing a criminal
15 offense in South Carolina is never required to prove
16 himself innocent. I charge you that it is an important
17 rule of the law that the defendant in a criminal trial, no
18 matter what the seriousness of the charge may be, will
19 always be presumed to be not guilty of the crime for which
20 the indictments were issued unless guilt has been proven
21 by evidence satisfying you of that guilt beyond a
22 reasonable doubt.

23 The presumption of innocence does not end when
24 you begin your deliberations, but it accompanies the
25 defendant throughout the trial until you reach a verdict

1 of guilt based on evidence satisfying you of that guilt
2 beyond a reasonable doubt. The presumption of innocence
3 is like a robe of righteousness placed about the shoulders
4 of the defendant which remains with the defendant until it
5 has been stripped from the defendant by evidence
6 satisfying you of the defendant's guilt beyond a
7 reasonable doubt.

8 Now, the presumption of innocence is not a mere
9 legal theory, it's not just a legal phrase. It is a
10 substantial right to which every defendant is entitled,
11 unless you, the jury, are satisfied from the evidence of
12 the defendant's guilt beyond a reasonable doubt.

13 The State must prove the defendant guilty beyond
14 a reasonable doubt. So what is a reasonable doubt in the
15 law? A reasonable doubt is a doubt which makes an honest,
16 sincere, conscientious juror in search of the truth to
17 hesitate to act. Proof beyond a reasonable doubt must
18 therefore be proof of such a convincing character that a
19 reasonable person would not hesitate to rely and act upon
20 it in the most important of his or her own affairs. Proof
21 beyond a reasonable doubt can also be described as proof
22 that leaves you firmly convinced of the defendant's guilt.

23 Now, there are very few things we know in this
24 world with absolute certainty, and in criminal cases, the
25 law does not require proof that overcomes every possible

1 doubt. If based on your consideration of the evidence you
2 are firmly convinced that the defendant is guilty, then
3 you must find him guilty. If, on the other hand, you
4 think that there is a real possibility that he is not
5 guilty, you must then give him the benefit of the doubt
6 and find him not guilty.

7 Now, I instruct you and emphasize that the fact
8 that the defendant did not testify is not a factor to be
9 considered by you in any way in your deliberations and in
10 your consideration on the question of the guilt or the
11 innocence of the defendant. It must not be considered by
12 you in any manner whatsoever. A defendant has the
13 constitutional right to remain silent, and the assertion
14 of this right must not be considered by you in your
15 deliberations. So I repeat, under your oath, you're to
16 draw no conclusion whatsoever from the fact that the
17 defendant in this case did not testify. The fact that the
18 defendant did not testify should not even be discussed in
19 the jury room. The burden of proof, as I stated to you,
20 is on the State. The defendant is not required to prove
21 his innocence. The burden of proof remains on the State
22 to prove guilt beyond a reasonable doubt.

23 Now, a statement alleged to have been made by
24 the defendant has been admitted into evidence in this
25 case. While the Court has determined that the statement

1 is admissible, I instruct you that you make the ultimate
2 decision of whether or not the defendant made the
3 statement. If the defendant made the statement, you must
4 determine whether the statement was made by the defendant
5 voluntarily and of his own freewill. This means that the
6 statement was not caused by pressure, force, fear,
7 threats, coercion, or intimidation or by hope or a promise
8 of leniency or a reward of any kind.

9 In determining whether the statement was
10 voluntary, you should consider both the characteristics of
11 the defendant and the details of the questioning. Some of
12 the factors that you must consider are the age of the
13 defendant, the defendant's education or lack of education,
14 the defendant's mental ability or capacity, the
15 defendant's IQ or intelligence, the defendant's background
16 and environment, the length and place of the detention,
17 the nature of the questioning, and the advice or lack
18 thereof to the defendant of his constitutional rights
19 including but not limited to the right to remain silent,
20 that any statement could be used against him in a court of
21 law, the right to have a lawyer present, that if he could
22 not afford a lawyer, a lawyer would be appointed to
23 represent him without any cost, and that he could stop
24 making a statement at any time. You must carefully
25 consider all of the circumstances, surrounding

1 circumstances, before you give any weight to an alleged
2 statement.

3 The State has the burden of proving beyond a
4 reasonable doubt that the alleged statement was voluntary.
5 If you determine that it was, you may give the statement
6 any further consideration that you deem proper.

7 You must decide what weight, if any, should be
8 given to the alleged statement. If you determine the
9 alleged statement was not the free and voluntarily
10 statement of the defendant, you should not consider the
11 statement at all.

12 The defendant is charged with altering,
13 tampering with, or bypassing an electric meter. The State
14 must prove beyond a reasonable doubt that the defendant in
15 Lexington County between December 29, 2010, and October 7,
16 2011, knowingly, willfully, intentionally, and unlawfully
17 altered, tampered with, or bypassed a meter which was
18 installed for the purpose of measuring the use of
19 electricity. A meter found in a condition which would
20 cause the electricity to be diverted from the recording
21 apparatus of the meter or to cause the meter to
22 inaccurately measure the use of electricity or the
23 attachment to a meter or a distribution wire of any
24 device, mechanism, or wire which would permit the use of
25 unmetered electricity or would cause the meter to

1 inaccurately measure the use gives rise to a permissive
2 inference that the person in whose name the meter was
3 installed or the person for whose benefit electricity was
4 diverted caused the electricity to be diverted from going
5 through the meter or the meter to inaccurately measure the
6 use of electricity.

7 Now, this permissive inference does not relieve
8 the State from actually proving beyond a reasonable doubt
9 that the element of intent, the element of intent, and it
10 is simply an evidentiary fact to be taken into
11 consideration along with other evidence in this case.

12 Now, knowingly means with knowledge,
13 consciously, that it's not accidentally. Intentionally
14 means willfully intending the result which actually
15 occurs, not accidentally or involuntary. Intent may be
16 shown by acts and conduct of the defendant and of the
17 circumstances which from you may naturally and reasonably
18 infer intent.

19 The defendant is charged with trafficking in
20 marijuana between ten and one hundred pounds. The State
21 must prove beyond a reasonable doubt that the defendant in
22 Lexington County on or about October 7, 2011, knowingly
23 manufactured, cultivated, provided financial assistance,
24 or otherwise aided, abetted, attempted, or conspired to
25 manufacture, cultivate, was knowingly in actual or

1 constructive possession, or knowingly attempted to become
2 in actual or constructive possession of marijuana between
3 ten and one hundred pounds. The State must also prove
4 beyond a reasonable doubt that the amount of marijuana was
5 ten pounds or more but less than one hundred pounds.

6 Actual possession means that the marijuana was
7 in the actual physical custody of the defendant.

8 Constructive possession means that the defendant had
9 dominion and control or the right to exercise dominion or
10 control over either the marijuana itself or the property
11 on which the marijuana was found.

12 Mere presence at the scene where the drugs were
13 found is not enough to prove possession. Actual knowledge
14 of the presence of the marijuana is strong evidence of the
15 defendant's intent to control its use or disposition. The
16 defendant's knowledge and possession may be inferred when
17 a substance is found on the property under the defendant's
18 control. However, this inference is simply an evidentiary
19 fact to be taken into consideration by you along with the
20 other evidence in the case, and to be given the weight you
21 decide it should have.

22 Madame Forelady and members of the jury, I am
23 required to charge you the law as I have done through
24 these instructions now being given to help guide you to a
25 just and lawful verdict. Whether some of these

1 instructions will apply will depend on what you find to be
2 the facts. The fact that I have instructed you on the
3 various subjects of this case must not be taken as
4 indicating an opinion of this Court as to what you should
5 find to be the facts or what your verdict should be.

6 In conclusion, you have been selected by both
7 the State and the defense, defendant, to be fair and
8 impartial jurors. It is your duty, then, in your joint
9 deliberations to determine the truth in this case, giving
10 the defendant the benefit of every reasonable doubt on
11 every charge. And from the facts that you determine to be
12 true, you take and apply the law which I have just given
13 you and thus arrive at a verdict which speaks the truth in
14 this case.

15 I've told you the standards you have to apply to
16 the charges of trafficking marijuana between ten and one
17 hundred pounds, and altering, tampering with, or bypassing
18 an electric meter. I will give you a copy of these
19 instructions in written form. During your deliberations,
20 you may refer to the instructions to guide your decision
21 making. You must consider the instructions as a whole and
22 not follow some and ignore others.

23 You've heard the evidence and now you've heard
24 the law. Whatever your verdict as to each indictment,
25 guilty or not guilty, Madame Forelady, you will indicate

1 by writing it on the indictments. You will then sign and
2 date each indictment. And on the indictments, there is a
3 space on the back that says verdicts, you will sign, write
4 the verdict, guilty or not guilty, sign and date the
5 indictments. Certainly there is no significance in the
6 manner or the order in which I state the possible
7 verdicts.

8 Remember that although the forelady is the only
9 juror who writes the verdict, it is not hers alone. The
10 verdict has to be a unanimous verdict.

11 Madame Forelady, you are not authorized to write
12 the verdict until all of you have agreed as to what the
13 verdict should be.

14 Ladies and gentlemen, now I'm going to send you
15 to your jury room, but do not begin to discuss the case
16 until you've received a copy of this jury charge, the
17 indictments, and the exhibits. Once you receive these
18 things, that would be your signal to begin your
19 deliberations. Once you begin your deliberations, you
20 will deliberate until you have reached a verdict, at which
21 time you will knock on the door, advise the bailiff, and
22 we will bring you out to receive your verdict.

23 I understand that lunch is here, and we have
24 gone beyond the time. In whatever order, certainly you
25 can take a break in the jury room for lunch before

1 beginning to deliberate. All that is up to you.

2 So please go to the jury at this time. All of
3 you except the last juror selected. If you'll stay with
4 us as the others leave.

5 (The jury left open court at approximately 1:43
6 p.m.)

7 THE COURT: Are there any additions or
8 exceptions to the charge?

9 MR. ROSS: No, Your Honor. No objections.

10 MS. ZMROCZEK: No.

11 THE COURT: All right. If you-all will check on
12 the exhibits and see that they're all ready, that they are
13 ready for the jury, and then we'll have them begin their
14 deliberations.

15 (A break in proceedings was had while other
16 proceedings were taken.)

17 (The alternate juror was excused.)

18 (WHEREUPON, the jury began deliberations at
19 approximately 1:52 p.m.)

20 THE COURT: Let's bring them on.

21 (The jury came into open court at approximately
22 2:50 p.m.)

23 THE COURT: Madame Forelady, have you reached a
24 verdict?

25 THE FOREPERSON: Yes, sir.

1 THE COURT: Is it unanimous?

2 THE FOREPERSON: Yes, sir.

3 THE COURT: Thank you. If you'll pass it up.

4 The defendant will stand.

5 You may publish the verdict.

6 (Whereupon the verdict of the jury is published
7 as follows:)

8 VERDICT

9 THE CLERK: Indictment 2011-GS-32-3799, the
10 State versus Leandro Aguirre, indicted for trafficking
11 marijuana between ten and one hundred pounds, verdict
12 guilty.

13 Indictment 2013-GS-32-01171, the State versus
14 Leandro Aguirre, indicted for altering, tampering with, or
15 bypassing electric, gas or water meters, verdict guilty.

16 And they are both so signed, Leslie Clamp,
17 Foreperson, signed 4-25-2013.

18 Madame Forelady, ladies and gentlemen of the
19 jury, if this is your verdict, please indicate so by
20 raising your right hand.

21 All hands raised, Your Honor.

22 THE COURT: Any additional polling requested?

23 MS. ZMROCZEK: Yes, Your Honor, we would like
24 the jury polled.

25 THE COURT: If you'll do individual polling,

1 please.

2 THE CLERK: Yes, sir, Your Honor.

3 As I call your name, if you'll hold your hand up
4 so I can recognize you. I will ask you as to the verdicts
5 were these your verdicts and are they still your verdicts.
6 Once I finish that second part, please respond then with
7 your answer.

8 Daryel Ezell, as to the verdicts, were these
9 your verdicts, are they still your verdicts?

10 THE JUROR: Yes.

11 THE CLERK: Leslie Clamp, as to the verdicts,
12 were these your verdicts, are they still your verdicts?

13 THE FOREPERSON: Yes.

14 THE CLERK: Leigh Ann McNatt, as to the
15 verdicts, were these your verdicts, are they still your
16 verdicts?

17 THE JUROR: Yes.

18 THE CLERK: Beatrice Fulmer, as to the verdicts,
19 were these your verdicts, are they still your verdicts?

20 THE JUROR: Yes.

21 THE CLERK: Craig Hess, as to the verdicts, were
22 these your verdicts, are they still your verdicts?

23 THE JUROR: Yes.

24 THE CLERK: Jessica Dunning, as to the verdicts,
25 were these your verdicts, are they still your verdicts?

1 THE JUROR: Yes.

2 THE CLERK: Myra Flowers, as to the verdicts,
3 were these your verdicts, are they still your verdicts?

4 THE JUROR: Yes.

5 THE CLERK: Amy Kendrick, as to the verdicts,
6 were these your verdicts, are they still your verdicts?

7 THE JUROR: Yes.

8 THE CLERK: Barbara Gortman, as to the verdicts,
9 were these your verdicts, are they still your verdicts?

10 THE JUROR: Yes.

11 THE CLERK: Tamara Ulmer, as to the verdicts,
12 were these your verdicts, are they still your verdicts?

13 THE JUROR: Yes.

14 THE CLERK: Geraldine Swygert, as to the
15 verdicts, were these your verdicts, are they still your
16 verdicts?

17 THE JUROR: Yes.

18 THE CLERK: Christopher Murdaugh, as to the
19 verdicts, were these your verdicts, are they still your
20 verdicts?

21 THE JUROR: Yes.

22 THE CLERK: All jurors polled, Your Honor.

23 THE COURT: All right. The verdict is the
24 unanimous verdict of the jury.

25 Any post-trial motions?

1 MR. ROSS: Nothing from the State, sir.

2 MS. ZMROCZEK: Your Honor, at this time we would
3 ask that the verdict be struck and we be granted a new
4 trial based on several issues, the first being the
5 testimony given pretrial and during the trial, and also
6 that we still affirm that there's been not enough in
7 evidence to convict Mr. Aguirre.

8 THE COURT: All right. Any response, Mr. Ross?

9 MR. ROSS: Your Honor, I think we've offered
10 more than enough evidence in this case, and I believe that
11 that's it.

12 THE COURT: All right. The evidence presented
13 overwhelmingly shows that the defendant is guilty and I
14 respectfully deny the motion.

15 Ladies and gentlemen, once you have found a
16 person guilty, then it's my duty to impose a sentence, and
17 we'll proceed with that at this time. You have no role in
18 the sentencing, but you're welcome to stay as we conduct
19 sentencing.

20 Anything further from the State?

21 MR. ROSS: Nothing prior to sentencing, Your
22 Honor.

23 THE COURT: All right. If the defendant will
24 come forward.

25 MR. ROSS: Your Honor, here are the sentencing

1 sheets.

2 THE COURT: All right. Mr. Ross.

3 MR. ROSS: Your Honor, the sentencing range as
4 indicated on that sentencing sheet for the trafficking
5 charge is one to ten. That's a violent offense. It's
6 also not suspendible, nor is probation eligible. For the
7 tampering charge, it's zero to 30 days and a small fine.

8 Your Honor, the State's position in this is,
9 number one, Mid-Carolina Electric is the victim in this
10 case. We didn't get into the amount of money that was
11 stolen from them because of this spliced wire, but it is a
12 significant amount. We didn't get into that figure
13 because it wasn't an element of the crime.

14 I understand it was well in excess of \$12,000.
15 I believe the representatives from Mid-Carolina Electric
16 are still in court. And if Mr. Aguirre objects or, first
17 off, if Your Honor is inclined to award restitution, we
18 would obviously ask for that on behalf of Mid-Carolina
19 Electric. And if Your Honor's inclined to aware
20 restitution, then either a restitution hearing would be
21 necessary or the defendant could waive that, Your Honor.

22 No prior record that we can find, Judge.

23 The case speaks for itself: One to ten, no
24 probation, no suspension.

25 THE COURT: All right. Ms. Zmroczek.

1 MS. ZMROCZEK: Thank you, Your Honor.

2 Mr. Aguirre has been working. Prior to his
3 arrest here he was at Wal-Mart for two years. He was at
4 the Wal-Mart in Texas for three years.

5 He's got a wife and a daughter. He's been the
6 sole provider and supporter for them. And as the State
7 said, he has no record.

8 When they did go to arrest him, you've heard all
9 the facts, he was very cooperative, didn't run, didn't
10 yell, stayed right there, and in fact was present I think
11 the testimony was.

12 Your Honor, I think he's likely the victim of
13 some very bad circumstances and some very bad family
14 members, but he would request that he receive a very
15 minimum sentence.

16 THE COURT: Mr. Aguirre, anything you'd like to
17 say?

18 THE INTERPRETER: No.

19 MR. ROSS: And, Judge, if I may add, if you're
20 not inclined to award restitution, I would ask for as much
21 prison time as you're comfortable giving him in lieu of
22 restitution.

23 THE COURT: What is the defense's position
24 regarding that issue?

25 MS. ZMROCZEK: Your Honor, some information was

1 provided regarding their request for restitution. If it's
2 going to be him getting more time versus paying
3 restitution, I mean he's going to be a jail so I don't
4 know how he's going to pay.

5 THE COURT: They're separate indictments, so I
6 look at them separately.

7 MS. ZMROCZEK: We have -- we don't request any
8 independent restitution hearing. He accepts what the
9 restitution is, what they say it is. And they did provide
10 us documentation.

11 MR. ROSS: Judge, that figure is \$12,821, if
12 they will confirm that.

13 MR. WILSON: Yes, sir.

14 THE COURT: With respect to the stealing of
15 electrical services, the sentence is 30 days, credit for
16 time served. I'm going to defer that issue of
17 restitution.

18 With respect to trafficking marijuana, the
19 sentence is six years, with credit for time served.

20 MS. ZMROCZEK: Thank you, Your Honor.

21 MR. ROSS: Thank you, Your Honor.

22 THE COURT: Did he do any time?

23 MS. ZMROCZEK: I believe he did. I can look up
24 the number. I think it was a week. I can look up the
25 number of days.

1 THE COURT: We'll just say credit for time
2 served as determined by the Department of Corrections.

3 MS. ZMROCZEK: Yes, it was four days.

4 THE COURT: Credit for four days.

5 MR. ROSS: Thank you, Your Honor.

6 THE COURT: All right. Thank you all, ladies
7 and gentlemen. You all have concluded your service on
8 jury duty.

9 Any wise words from the Clerk, Ms. Carrigg, for
10 your jurors?

11 THE CLERK: We appreciate your service and your
12 sacrifice on behalf of me and Lexington County. It does
13 conclude your service for three years. If you have any
14 questions, if you have any concerns, please feel free to
15 call my office and we'll assist you in any way we can.

16 You will receive a check in the mail in seven to
17 ten days. However minimal that is, it certainly doesn't
18 cover all the sacrifices that you've made for your time
19 here.

20 Thank you very much.

21 THE COURT: Thank you all very much.

22 (The proceedings were concluded.)

23 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

24 VOLUME 2 OF 2

25

1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5 COUNTY OF LEXINGTON)
6
78 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Lexington County, South Carolina, on the 25th day of
15 April, 2013.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18
19

20 November 5, 2013

21 
2223 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

WITNESSES

Lexington County Sheriffs Department

Paige B. Tucker

Law Enforcement Case #: 11031015

MDR

ARREST WARRANT NUMBER**13-STR-00021**

Ref: M-303356

ACTION OF GRAND JURY

TRUE BILL*Ron Brasington*
Foreperson of Grand Jury

Date: 4-8-13

VERDICT

*guilty**Leslie C. Clamp*
Foreperson of Petit Jury

Date: 4/25/13

DOCKET NO. 2013GS3201171**The State of South Carolina****County of Lexington**

COURT OF GENERAL SESSIONS

APRIL TERM 2013

THE STATE**vs.****Leandro Aguirre**

CDR #: 1197

Indictment for**Altering, Tampering With, Or Bypassing
Electric, Gas or Water Meters****§ 16-13-0385**

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF LEXINGTON) Altering, Tampering With, Or Bypassing Electric,
) Gas or Water Meters
)

§ 16-13-0385

At a Court of General Sessions, convened on April 2013, the Grand Jurors of Lexington County present upon their oath:

That **Leandro Aguirre**, a person unauthorized to alter, tamper with, or bypass a meter which has been installed for the purpose of measuring electricity, gas, or water, did in Lexington County, South Carolina between December 29, 2010 and October 7, 2011, knowingly, willfully, intentionally, and unlawfully, alter, tamper with, or bypass a meter which has been installed for the purpose of measuring the use of electricity, gas, or water: To Wit: The Defendant altered, tampered with, and/or bypassed a meter located at [REDACTED] for the purpose of operating an indoor marijuana grow house.

This done in violation of Section 16-13-385 of Code of Laws for the State of South Carolina, 1976 as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Paige B. Tucker

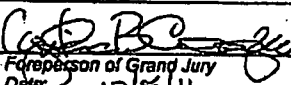
Law Enforcement Case #: 11031015

MDR

ARREST WARRANT NUMBER

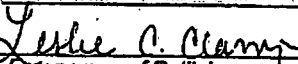
M303356

ACTION OF GRAND JURY**TRUE BILL**


Foreperson of Grand Jury
Date: 12/3/11

VERDICT

guilty


Foreperson of Petit Jury
Date: 4/25/13

DOCKET NO. 2011GS3203799**The State of South Carolina**

County of Lexington

COURT OF GENERAL SESSIONS**DECEMBER TERM 2011**

THE STATE
vs.

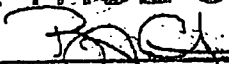
Leandro Aguirre

CDR #: 2360

Indictment forTrafficking Marijuana -
Between Ten and One-Hundred Pounds

§ 44-53-0370(e)(1)(a)

DONALD V. MYERS, SOLICITOR**A TRUE COPY**


Lex. Co. C.C.P., G.S. & F.O.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

INDICTMENT FOR
 Trafficking Marijuana –
 Between Ten and One-Hundred Pounds

§ 44-53-0370(e)(1)(a)

At a Court of General Sessions, convened on December 2011, the Grand Jurors of Lexington County present upon their oath:

That Leandro Aguirre did in Lexington County, South Carolina on or about October 7, 2011, knowingly, intentionally, willfully, and unlawfully sell, cultivate, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of marijuana, a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in a quantity of ten (10) pounds or more but less than one hundred (100) pounds, in violation of § 44-53-370 (e)(1)(a), Code of Laws of South Carolina, 1976, as amended, such being the first offense.

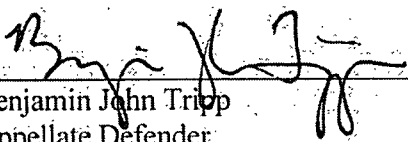
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 24, 2014


Benjamin John Tripp
Appellate Defender

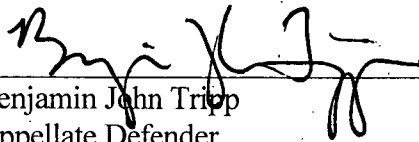
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 24, 2014


Benjamin John Tripp
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

RECEIVED

MAR 24 2014

SC Court of Appeals

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Clifton Newman, Circuit Court Judge

RECEIVED

MAR 24 2014

THE STATE,

SC Court of Appeals
RESPONDENT,

V.

LEANDRO AGUIRRE,

APPELLANT

APPELLATE CASE NO. 2013-001052

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 24th day of March, 2014.

Brandon Hall
Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 24th day of March, 2014.

John McKey (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.