

STATE OF SOUTH CAROLINA

In The Court of Appeals

ORIGINAL

APPEAL FROM LANCASTER COUNTY

DeAndrea G. Benjamin, Circuit Court Judge

RECEIVED

JUN 29 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

SHAWN LEE WYATT,

APPELLANT

APPELLATE CASE NO. 2014-001556

RECORD ON APPEAL

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2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2013-GS-29-1448 to 1451
5

6 State of South Carolina

7 vs.

8 Shawn Lee Wyatt
9

10

11 Lancaster, South Carolina

12 July 14-16, 2014

13 Before the Honorable DeAndrea Benjamin
14

15 APPEARANCES

16 For the State: Doug Barfield

17 For the Defendant: Brandon Steen
18

19 Reported by: Michael C. Watkins

20 Official Court Reporter
21
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25

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VOIR DIRE

1 THE CLERK: One alternate, Your Honor?

2 THE COURT: Yes.

3 THE CLERK: One and two. Juror 123, Daniel Snipes.

4 What say the state?

5 MR. BARFIELD: Please excuse the juror from this trial.

6 THE CLERK: Juror 57, Julie Gandy. Any challenge for
7 cause?

8 MR. BARFIELD: No challenge.

9 THE CLERK: Defendant?

10 MR. STEEN: Please seat the juror.

11 THE COURT: Anything else from the State before I
12 release the remaining jurors from the jury?

13 MR. BARFIELD: No, ma'am.

14 THE COURT: Anything from the defense?

15 MR. STEEN: No, ma'am.

16 (The remaining panel was excused and a lunch
17 break was taken.)

18 (Court resumed in the courtroom with pretrial
19 motions.)

20 THE COURT: All right. Are we ready?

21 MR. BARFIELD: Your Honor. I believe we are ready for
22 the Biggers hearing, if you are.

23 THE COURT: Okay.

24 The witness, BRENDA LIPPE, was first duly sworn
25 and testified as follows:

PRETRIAL MOTIONS

1 DIRECT EXAMINATION

2 BY MR. BARFIELD:

3 Q. Can you tell us your name, please?

4 A. Brenda Lippe.

5 Q. Is there a button on that microphone that makes a green
6 light come on on the base of it? I reckon it's on. Ms.

7 Lippe, where do you work?

8 A. I work at Kershaw Correctional Institution.

9 Q. What do you do at KCI?

10 A. Sir, I'm a sergeant there.

11 Q. And how long have you been at KCI?

12 A. A little over eight years now.

13 Q. Were you an employee of KCI on July 12th of 2013?

14 A. Yes, sir, I was.

15 Q. Were you scheduled to work the dayshift that day?

16 A. Yes, sir, I was.

17 Q. What time did the dayshift start?

18 A. We are to be at the division prior to 6:45 for
19 briefing.

20 Q. What town do you live in?

21 A. I live in Camden.

22 Q. And how do you get to KCI from Camden?

23 A. I take 521 to 601.

24 Q. And 521 and 601 are in what town?

25 A. In Kershaw.

PRETRIAL MOTIONS

1 Q. And what highway is the prison on?

2 A. 601.

3 Q. Is that in Lancaster County?

4 A. Yes, sir, it is.

5 Q. And how far out of Kershaw is KCI out 601 about?

6 A. Give or take approximately three miles, give or take.

7 Q. Okay. What time did you arrive at the prison on July
8 12th, I think it was a Friday, of 2013?

9 A. Approximately six.

10 Q. Were you driving by yourself?

11 A. Yes, sir, I was.

12 Q. Was it daylight or dark?

13 A. Right there at dawn.

14 Q. Were you using headlights in your automobile?

15 A. No, sir, mine automatically come on.

16 Q. So you didn't have to cut them on but they were on; is
17 that correct?

18 A. Correct, sir.

19 Q. Stupid question, but is there a driveway, a paved drive
20 into the prison?

21 A. Yes, sir, there is.

22 Q. As you approached the prison, did you notice anything
23 unusual as you drove along the highway?

24 A. Yes, sir. There was a gentleman walking on the
25 opposite side of the road towards me.

PRETRIAL MOTIONS

1 Q. 601, that area, is it two lane or four lane?

2 A. It's two lane.

3 Q. Does it turn into a turning lane at some point before
4 you enter the prison?

5 A. Yes, sir. There's a turning lane right there at the
6 now Gold Mine Industrial Park and then a turning lane right
7 there at the institution.

8 Q. Now, this person that you saw walking along the road,
9 again, what side of the road was he walking on?

10 A. He was on my left side.

11 Q. Was he walking facing you?

12 A. Yes, sir, he was.

13 Q. Describe the person that you saw walking along the
14 roadway.

15 A. The gentleman I observed walking along the roadway was
16 a medium build, light skinned black gentleman in a black
17 colored shirt with looked to be charcoaled colored shorts.

18 Q. What color was the shirt?

19 A. It was black.

20 Q. Short pants?

21 A. Yes, sir.

22 Q. And you said charcoal colored short pants?

23 A. In that light, yes, sir, they appeared to be a
24 charcoaled color.

25 Q. Any headgear on this person?

PRETRIAL MOTIONS

1 A. No, sir. I observed -- you could tell he looked like
2 he had a nice neat haircut.

3 Q. Notice anything about footwear?

4 A. No, sir, I couldn't really tell with that.

5 Q. Was this person carrying anything?

6 A. Not that I could see, no, sir.

7 Q. How close were you to this person at your closest point?

8 A. Up until I drove right up on him.

9 Q. Me to you, use that as a measure --

10 A. When I first observed him was me to you coming towards
11 me.

12 Q. Okay. Do I need to back up or come closer to?

13 A. No. I probably seen him at the gentleman standing at
14 the back of the room, the officer at the back of the room
15 when I was coming up on him coming up the hill, that's where
16 I can seen him walking briskly towards me.

17 Q. Okay. Did you actually pass by him along the roadway?

18 A. Yes, sir, I did.

19 Q. And how close was the closest point that you and he
20 were together --

21 A. Up until --

22 Q. -- from you being behind the wheel of your car to him
23 being on the side of the road?

24 A. Right up until I met him and kept on going.

25 Q. Now, were you able to make out any facial features of

PRETRIAL MOTIONS

1 this person other than the description that you've given us
2 so far?

3 A. No, sir, not besides the nice neat haircut that the
4 gentleman had.

5 Q. I think I asked you this, if I did I apologize, did he
6 have anything on his hands, was he carrying anything?

7 A. No, sir, not that I could tell.

8 Q. Where in relation to the paved road into the prison off
9 601 did you encounter this person walking on the side of the
10 road?

11 A. Approximately about a half a mile, maybe very little
12 more, very little less than a half mile within distance of
13 the driveway to the institution.

14 Q. All right. Was there anybody with this person?

15 A. No, sir, there wasn't.

16 Q. And how long did you observe this person, from the
17 point that you first saw him until he was out of your sight?

18 A. Just up until I passed by him, within a minute or so.

19 Q. Was the road straight or on a curve where you
20 encountered this person?

21 A. Where I encountered him was coming up the straight
22 prior to going to the small slight curve before the
23 institutional turn-in.

24 Q. But you saw him on the straight road.

25 A. Yes, sir, I did.

PRETRIAL MOTIONS

1 Q. When you drove it -- did you stop and do anything after
2 you saw this person?

3 A. No, sir.

4 Q. What did you do after you passed this person?

5 A. I went straight into the institutional driveway, went
6 and parked my vehicle.

7 Q. Did you see or talk to anybody also employed by the
8 department of corrections when you got out of your car?

9 A. Yes, sir. I spoke with Corporal Hunt concerning the
10 jail.

11 Q. And Corporal Hunt, was he an employee of KCI?

12 A. Yes, sir.

13 Q. What was his job at the time?

14 A. At the time he was corporal over contraband.

15 Q. What did you tell him?

16 A. I let him know I seen a gentleman as described walking
17 briskly towards the Town of Kershaw away from the
18 institution.

19 Q. When you saw this person walking along the road, did
20 you know that there had been an event at KCI?

21 A. No, sir, I didn't.

22 Q. Did you find out at some point that there had been an
23 event at KCI?

24 A. Yes, sir.

25 Q. And generally speaking what was the nature of the event

PRETRIAL MOTIONS

1 that you learned about?

2 A. Once I went into the institution I was informed that I
3 needed to go relieve because there was a package that had
4 been thrown over the fence of the institution.

5 Q. Did anything change in your mindset when you found that
6 out?

7 A. Yes, sir. I then started thinking this could have been
8 the gentleman that threw something that I seen walking down
9 the road.

10 Q. Did you relieve Officer Schnettler?

11 A. Yes, sir, I did.

12 Q. And where had he been working?

13 A. He had been posted in the east tower.

14 Q. And the east tower is what side of the prison property
15 in relation to the Town of Kershaw?

16 A. On the Kershaw side of the institution.

17 Q. How many towers are there on the perimeter of KCI?

18 A. Just two.

19 Q. And one is on -- is the east tower on the Kershaw side?

20 A. Yes, sir, it is.

21 Q. Where is the other one?

22 A. The other one is on the -- I guess I would assume it
23 would be the Pageland?

24 Q. Okay.

25 A. It would be on the Pageland side.

PRETRIAL MOTIONS

1 Q. Did you take control of the tower?

2 A. Yes, sir, I did. I went up there and properly relieved
3 him so he could go down.

4 Q. Did you at any point see the person that you had seen
5 walking on the road subsequent to seeing him walking on the
6 road? That's a bad question. Let me ask it this way. You
7 saw a guy walking on the road. Did you see him again at any
8 time that morning?

9 A. Yes, sir. I identified him when he was brought back
10 towards the institution.

11 Q. Okay. Explain how that happened. Where were you first
12 of all when you identified this person that was brought back
13 to the institution, where were you?

14 A. I was still in the tower.

15 Q. And how did he get brought back to the institution?

16 A. He got brought back by I think it was Lancaster County.

17 Q. Okay. And where did he get brought back to?

18 A. Just at the end of the entrance road before it turns
19 into our perimeter road.

20 Q. And where in relation to the east tower where you
21 worked?

22 A. Almost directly, almost directly in front.

23 Q. And what opportunity did you have to observe the person
24 that was with the sheriff's office brought back to the
25 prison? How did that happen?

PRETRIAL MOTIONS

1 A. They asked the gentleman to step outside -- out of the
2 car, I assume, and I identified him as he stepped out of the
3 police vehicle.

4 Q. Now, how did you identify him first of all? What were
5 you looking through?

6 A. Just a glass window.

7 Q. You were up in the tower?

8 A. Yes, sir, I was.

9 Q. And where exactly was the person that you identified?

10 A. He was standing like directly in front of me down on
11 perimeter road, or entrance road.

12 Q. How far from you was this person when you were in the
13 tower and you identified him?

14 A. Not quite a half a football field, 40 or 50 yards
15 maybe.

16 Q. And what about him made you say -- well, first of all,
17 was the person that you saw who had been brought back by the
18 sheriff's deputy the person you had seen walking along the
19 road?

20 A. Yes, sir, it was.

21 Q. How do you know that?

22 A. I observed the same nice, neat haircut, the black
23 leather shirt and the charcoal pants.

24 Q. Again, anything about facial features other than the
25 haircut?

PRETRIAL MOTIONS

- 1 A. No, sir, there was nothing I could really tell.
- 2 Q. And I'm going to put a picture up on the document
- 3 reader. Have you got a screen in front of you?
- 4 A. Yes, sir, I do.
- 5 Q. What does that picture show generally speaking?
- 6 A. Of a tower.
- 7 Q. And what tower is that?
- 8 A. It looks like it could be the east tower.
- 9 Q. At KCI?
- 10 A. Yes, sir.
- 11 Q. And is that the tower that you had relieved Schnettler
- 12 from?
- 13 A. Yes, sir, it is.
- 14 Q. Are there any automobiles shown in that tower?
- 15 A. No, sir.
- 16 Q. Excuse me, not in the tower, in the picture.
- 17 A. No, sir.
- 18 Q. Can you identify what's shown in that picture?
- 19 A. There's --
- 20 Q. What is the picture of first generally speaking?
- 21 A. Generally of the tower.
- 22 Q. All right. And are there any cars shown in that
- 23 picture?
- 24 A. Yes, sir. Right here to the right if you're looking at
- 25 the picture of the tower.

PRETRIAL MOTIONS

1 Q. And where are those cars?

2 A. In the parking lot. And this right here would be the
3 perimeter road, and when they brought the gentleman down is
4 approximately right here prior to you turning right into the
5 parking lot.

6 Q. All right. So my question is, the car that he was
7 brought to the prison in, was it anywhere near the car shown
8 in that picture?

9 A. He was probably just on the outside like right here.

10 Q. Okay.

11 A. So it was within distance.

12 Q. Now, did you have any -- how sure were you that the guy
13 you were seeing from up in the tower when the deputies
14 brought him back was the same guy you had seen along the
15 roadway?

16 A. 100 percent sure.

17 Q. No doubt about that at all?

18 A. No, sir.

19 Q. About how long was it between when you saw this man
20 walking along the road until you saw him from up in the
21 tower when the deputies brought him back?

22 A. Approximately an hour, maybe an hour and fifteen
23 minutes.

24 Q. How do you know that? How do you put a time on this?

25 A. Briefing for shift starts at 6:45 and at this time --

PRETRIAL MOTIONS

1 or by this time the prior shift, the night shift, was
2 actually coming through to leave and my relief was on its
3 way to relieve him from the tower.

4 Q. So it was after briefing?

5 A. Yes, sir.

6 Q. And about when the deputy brought him back, brought
7 this person back and you identified him from being up in the
8 tower, from your eyeball to his body, about the distance if
9 you can tell us?

10 A. Maybe 45 to 50 yards, half a football field give or
11 take.

12 Q. Okay. Did you ever get down and go right up to him?

13 A. No, sir.

14 MR. BARFIELD: Thank you, ma'am. Answer anything Mr.
15 Steen has.

16 CROSS EXAMINATION

17 BY MR. STEEN:

18 Q. When you stated that you told Corporal Hunt that it was
19 the gentleman as described, when did you hear a description?

20 A. I described him to Corporal Hunt of what he looked
21 like.

22 Q. And what did you describe? What did you describe to
23 Corporal Hunt?

24 A. That there was a light skinned black gentleman with a
25 nice neat haircut, black shirt and looked to be charcoaled

PRETRIAL MOTIONS

1 colored shorts.

2 Q. You were driving from Kershaw towards the prison, is
3 that correct, on 601?

4 A. Yes, sir.

5 Q. And the person you saw, they were walking away from the
6 prison towards Kershaw on 601?

7 A. Yes, sir, they were.

8 Q. Who brought Mr. Wyatt to the tower?

9 A. Who brought him to the entrance road was a Lancaster
10 County deputy, but his name I'm not sure.

11 Q. So there was only the deputy and the subject?

12 A. That I recall, yes, sir.

13 Q. Who did you identify him to at that time?

14 A. Hunt, Corporal Hunt.

15 Q. Was Hunt in the tower with you?

16 A. No, sir. He was with -- there with Lancaster County.

17 Q. So it was Hunt, the deputy and the subject about 40 or
18 50 yards down from the tower?

19 A. Yes, sir.

20 Q. All right. So he was the only one not in uniform?

21 A. Yes. He was the only one not wearing a uniform.

22 Q. And you have no knowledge of the actual incident; is
23 that right?

24 A. No, sir, not until now.

25 Q. Do you normally work on the tower?

PRETRIAL MOTIONS

1 A. No, sir. I was sent there to relieve Officer
2 Schnettler so he could identify and fill out a report.

3 Q. So you identified the subject as the person you saw
4 walking down the road.

5 A. Yes, sir.

6 Q. And that's the extent of it.

7 A. Yes, sir.

8 MR. STEEN: Thank you very much.

9 MR. BARFIELD: No further questions from Sergeant
10 Lippe.

11 THE COURT: All right. You may step down.

12 MR. BARFIELD: Your Honor, Mr. Steen and I have looked
13 at the photographs, we don't have any objection for purposes
14 of this hearing to the four that I'm fixin' to offer. Can
15 we get them marked as Court's Exhibits for this hearing.

16 THE COURT: Yes, sir. Without objection?

17 MR. STEEN: Without objection.

18 (The four photos were marked as Court's 1-4.)

19 The witness, LESLIE JOE SCHNETTLER, was first
20 duly sworn and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BARFIELD:

23 Q. Tell us your name, please, sir.

24 A. Leslie Joe Schnettler.

25 Q. Most people call you Joe?

PRETRIAL MOTIONS

1 A. Yes.

2 Q. And Mr. Schnettler, by whom are you employed?

3 A. State of South Carolina, Department of Corrections,
4 Kershaw.

5 Q. How long have you been employed at the Kershaw
6 Correctional Institution?

7 A. At this time just over four years.

8 Q. What is your job at KCI?

9 A. I'm a correctional officer.

10 Q. Do you from time to time man a tower?

11 A. Yes.

12 Q. Is that your regular duty or do y'all rotate that? How
13 does that work, I'm just interested?

14 A. We rotate it.

15 Q. Were you working on Friday, July 12th of 2013?

16 A. Yes.

17 Q. Do you recall this incident?

18 A. Yes, I do.

19 Q. Was this at the beginning of a shift or at the end of a
20 shift?

21 A. It was at the end of a shift.

22 Q. Describe the tower. First of all, about how -- well,
23 let me just show you Court's Exhibit Number 1. Can you tell
24 us what that's a picture of?

25 A. That's a picture of the tower from the treeline.

PRETRIAL MOTIONS

1 Q. All right. And which tower?

2 A. The east tower.

3 Q. Is that the tower that you were manning on July 12th of
4 2013?

5 A. Yes, it is.

6 Q. I'm going to go ahead and just show you a couple of
7 other pictures. I'm going to show you Court's Exhibit
8 Number 2 -- 2 and 3. What are they pictures of?

9 A. They're images from the tower.

10 Q. Okay. Do those pictures accurately depict your view
11 from being up in the tower?

12 A. Yes.

13 Q. And the view is of what in those two pictures?

14 A. Oak, the rec. field, the perimeter road and the dog run
15 all the way up to the treeline.

16 Q. Now, let me ask you a couple of things about those.
17 When you say oak, what is oak?

18 A. Oak is a dorm.

19 Q. How many dorms are at KCI?

20 A. Six.

21 Q. Okay. And the view is toward the back side of the
22 prison, would that be an accurate way to describe that?

23 A. Yes, it is.

24 Q. Is there a road around the outside of the prison?

25 A. Yes, there is.

PRETRIAL MOTIONS

1 Q. Are there fences between the road and the prison?

2 A. Yes, there is.

3 Q. How many fences between the road and the prison?

4 A. Two immediate fences and then around the rec. fields
5 there's an additional fence.

6 Q. How big is the oak rec. area? Big as this courtroom
7 or --

8 A. Bigger than this courtroom.

9 Q. Bigger. Is it as big as a football field?

10 A. No.

11 Q. And how tall is the tower off the ground from Court's
12 Exhibit Number 1? About how tall is that tower, do you
13 know? Have you ever measured it?

14 A. I've never measured it, I estimate about 35 feet.

15 Q. So tall you don't want to fall out of it I reckon?

16 A. Yeah.

17 Q. Now, did you make an observation -- well, let me hand
18 you one more picture, Court's Exhibit Number 4. What's that
19 a picture of?

20 A. That's a picture from the treeline to the back of the
21 oak unit.

22 Q. Now, you're referring the treeline and the perimeter
23 road and those kinds of things. Is this on the side of the
24 prison -- on the Town of Kershaw side of the prison?

25 A. Yes, it is.

PRETRIAL MOTIONS

1 Q. Anything unusual happen when you were in the tower
2 Friday morning, July 12th of 2013?

3 A. I saw a man run from the treeline to the perimeter
4 road, throw several packages and run back.

5 Q. Let's talk about first of all what -- about what time
6 was it when you saw the man run from the treeline first?

7 A. Approximately 5:45 a.m.

8 Q. What was the lighting when you saw the man first?

9 A. The perimeter and the prison is well lit and the sun
10 had already started coming up.

11 Q. Was there any -- when you say well lit, how, other than
12 God and the sun?

13 A. Perimeter lighting. One every I think it is 40 yards.

14 Q. Okay.

15 A. And then the big cluster lights above the prison.

16 Q. Okay. Was the lighting good or bad?

17 A. Very good.

18 Q. Well, describe -- first of all, describe the man that
19 you saw run from the treeline.

20 A. I saw a light complected man run from the treeline in a
21 pair of jean shorts, long jean shorts and dark shirt.

22 Q. Now, did you get interviewed by Ruby Brockenberry with
23 SCDC about this case?

24 A. Yes.

25 Q. Did you describe a race of this person that you saw?

PRETRIAL MOTIONS

- 1 Do you remember what you told her?
- 2 A. I thought he was a white man.
- 3 Q. You said a white man.
- 4 A. Yeah.
- 5 Q. All right. Describe the clothing again.
- 6 A. Long shorts, denim, and then a dark shirt.
- 7 Q. Dark shirt. How close were you to this man -- well,
- 8 how close were you to the man at your closest point?
- 9 A. Closest point would have been as he was throwing the
- 10 packages at approximately 80 or 90 yards.
- 11 Q. Okay. Now, the man -- were you able to recognize
- 12 facial features?
- 13 A. It was very exciting to me and I was not looking at
- 14 facial features. I was looking at what he was doing so I
- 15 can't do facial features.
- 16 Q. Let me back up a minute, stupid question. Why do y'all
- 17 man the towers? What's your interest in being in the tower
- 18 outside of that prison?
- 19 A. To protect from inmates escaping and people coming in.
- 20 Q. And do you have any training about what to do when you
- 21 see somebody on the outside that you think ought not to be
- 22 there?
- 23 A. Yes. We're to call first responders and try to get as
- 24 much information about it as possible.
- 25 Q. Okay. Is that what you did on this occasion?

PRETRIAL MOTIONS

1 A. I called for -- I called it a man running over the
2 radio, it was a man running. First responders were
3 immediately called at that point.

4 Q. What about the gather information part, did you do what
5 you were trained to do in that regard?

6 A. Yes. I watched him throw package after package after
7 package. I announced that over the radio every time his arm
8 threw another package over so they could get approximately
9 how many, and then watched him run away.

10 Q. Now, I want you to break it down in a little bit of
11 detail about where the man went and what he did. He ran
12 from the treeline and went to where.

13 A. He ran from the treeline, went to the perimeter road --

14 Q. Could you tell when he ran from the treeline that he
15 had anything with him at that point?

16 A. I couldn't tell at that time.

17 Q. What did he do when got to the perimeter road?

18 A. From what it looked like to me he sat them down on the
19 ground and started throwing them over, reach down and throw
20 one, reach down and throw one.

21 Q. And did you count the number of times he appeared to be
22 making the throwing motion?

23 A. I counted more than six.

24 Q. Was there anything else that you observed that stuck in
25 your mind?

PRETRIAL MOTIONS

- 1 A. The skin color of his legs looked different.
- 2 Q. How?
- 3 A. Shiny.
- 4 Q. Okay. Shiny dark, shiny light?
- 5 A. Shiny light.
- 6 Q. When he got through making the throwing motions what
- 7 did this person do?
- 8 A. He turned and ran toward the treeline taking large
- 9 steps, so I got a good look at his thigh -- or not his
- 10 thigh, his calf.
- 11 Q. Anything unusual about his calf other than what you've
- 12 already described about his legs?
- 13 A. That was it.
- 14 Q. Now, did you stay in the tower for some period of time?
- 15 A. Yes.
- 16 Q. Could you tell whether first responders actually
- 17 responded?
- 18 A. Yes.
- 19 Q. Could you see people in the rec. area?
- 20 A. Yes.
- 21 Q. How long from when you first saw this man running from
- 22 the treeline to when you saw him disappear back into the
- 23 treeline after the throw-overs approximately?
- 24 A. Approximately 30 seconds maybe.
- 25 Q. Did you at some point leave the tower?

PRETRIAL MOTIONS

1 A. Yes, I did.

2 Q. What prompted you to leave the tower?

3 A. Sergeant Lippe came and relieved me, said they had the
4 suspect on the side of the road, the police wanted me to
5 come ID him.

6 Q. Was anybody with Sergeant Lippe, or did you get up with
7 somebody when you came down out of the tower?

8 A. Yeah. When I came down out of the tower Sergeant Hunt
9 took me to where the police were on the side of the road and
10 ID'd him there.

11 Q. All right. Now, was there a sheriff's deputy in a
12 sheriff's deputy car on the side of the road?

13 A. Yes, there was.

14 Q. What road was it?

15 A. 601.

16 Q. What side of the prison was it on, the Kershaw side or
17 the Flat Creek side?

18 A. Kershaw side.

19 Q. How far down the road toward Kershaw was the deputy
20 with this person?

21 A. About a mile, mile and a half..

22 Q. Where was the person when you got to the sheriff's
23 deputy's car?

24 A. He was in the back of the patrol car.

25 Q. Did you look at the person as he sat in the back of the

PRETRIAL MOTIONS

1 police car?

2 A. Yes, I did.

3 Q. Could you tell anything about him when you saw him in
4 the back of the police car?

5 A. It looked like the man. I asked the police if I could
6 have him step out so I could see him standing.

7 Q. Did the man in the back of the car get out?

8 A. Yes.

9 Q. Were you hidden in any way behind the hidden screen or
10 anything?

11 A. No.

12 Q. Now, how close were you and the man when you looked at
13 him outside of the car?

14 A. About from me to you.

15 Q. And did you make an identification of this man?

16 A. Yes, I did.

17 Q. And what was the identification?

18 A. That was the man that I saw throw packages over the
19 fence.

20 Q. And what about the appearance of that man enabled you
21 to say that?

22 A. The clothing he was wearing and how light the skin was
23 on his legs.

24 Q. How certain were you that the man you saw standing
25 outside of the police car was the same guy you saw throw the

PRETRIAL MOTIONS

1 packages over the fence?

2 A. 100 percent.

3 Q. No doubt at all?

4 A. No.

5 Q. How long after you saw the man throw the packages over
6 the fence were you looking at him standing outside of the
7 police car?

8 A. Less than a half hour.

9 Q. Was this person somebody that you knew?

10 A. No.

11 Q. Ever seen him before as far as you know?

12 A. No.

13 Q. And I'm going to ask you the same question. Is the
14 Kershaw Correctional Institution in the County of Lancaster,
15 South Carolina?

16 A. Yes, it is.

17 MR. BARFIELD: Thank you, sir. Answer anything
18 Mr. Steen has.

19 CROSS EXAMINATION

20 BY MR. STEEN:

21 Q. You stated this was towards the end of your shift.
22 What time does your shift end?

23 A. 7:00.

24 Q. Just talking about the identification from the tower,
25 do you remember what kind of hairstyle the subject had?

PRETRIAL MOTIONS

- 1 A. No idea. I remember it being short but I couldn't --
- 2 Q. So you don't remember a hair color?
- 3 A. No.
- 4 Q. Do you remember if the subject had any facial hair?
- 5 A. No.
- 6 Q. Do you remember what kind of footwear the subject had
- 7 on?
- 8 A. Dark shoes.
- 9 Q. Did the subject have on gloves?
- 10 A. Couldn't tell.
- 11 Q. When you radioed the control room, how did you describe
- 12 the subject that you saw?
- 13 A. As a runner. And I described him -- I did not do a
- 14 description over the radio, I just said we had somebody
- 15 throwing packages over the fence.
- 16 Q. So the officer who detained the subject on 601 did not
- 17 have a description of him?
- 18 A. Later I gave a description to the -- I didn't do it
- 19 right over the radio. I gave a description when they were
- 20 all talking to me on the phone and so on about him, which is
- 21 what Officer Lippe got when she walked into the facility and
- 22 said that he was walking down the street.
- 23 Q. Did you ever speak with the deputy on the phone?
- 24 A. No.
- 25 Q. The deputy that detained him.

PRETRIAL MOTIONS

1 A. No.

2 Q. Who did you speak with on the phone about the subject's
3 description?

4 A. I don't know.

5 Q. Do you what the person's age could have been that you
6 saw?

7 A. No.

8 Q. You say that you got to the subject about a half hour
9 after?

10 A. Approximately.

11 Q. And did the subject appear winded, out of breath?

12 A. No.

13 Q. But he was between one and one half miles away at the
14 time?

15 A. Yeah.

16 MR. STEEN: One second, Your Honor.

17 (Break in proceedings.)

18 Q. With regards to his legs, you said they were light,
19 shiny?

20 A. They were shiny, they weren't white.

21 Q. And did you notice any kind of identifying marks on his
22 legs such as tattoos?

23 A. No.

24 Q. You said this happened at 5:45, correct?

25 A. Yes.

PRETRIAL MOTIONS

1 Q. The sun was down? The sun was up?

2 A. The sun was coming up, it hadn't broke the horizon yet.

3 MR. STEEN: No further questions. Thank you, officer.

4 THE COURT: Yes, sir?

5 MR. BARFIELD: Beg the Court's indulgence one moment.

6 (Break in proceedings.)

7 REDIRECT EXAMINATION

8 BY MR. BARFIELD:

9 Q. I'm going to show you a couple of articles of clothing.

10 I don't know if I can or not but I'm going to ask if you can

11 identify them. I'm holding up what appears to be a shirt.

12 Do you recognize that?

13 A. It looks like the shirt he was wearing.

14 Q. Does it look like it or can you say that it was? I'm

15 not trying to stretch it at all, I just want to know what

16 your view is.

17 A. Well, how many shirts are made exactly like that, you

18 know? Yes. To me it's the shirt he was wearing.

19 Q. All right. And same question, can you make any

20 identification of these pants?

21 A. They look like the pants he was wearing.

22 MR. BARFIELD: Can I mark the shirt and the pants with

23 a staple and a sticker as Court's Exhibits 5 and 6?

24 THE COURT: Any objection?

25 MR. STEEN: No objection.

PRETRIAL MOTIONS

1 (The shirt and pants were marked as Court's
2 5-6.)

3 MR. BARFIELD: I don't have any further questions for
4 Mr. Schnettler. I call Chuck Kirkley. You may step down
5 but don't leave.

6 The witness, CHARLES KIRKLEY, was first duly
7 sworn and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BARFIELD:

10 Q. Your name, please, sir?

11 A. Charles Kirkley.

12 Q. Mr. Kirkley, by whom are you employed?

13 A. Lancaster County Sheriff's Office.

14 Q. How long?

15 A. Twenty-two years.

16 Q. Were you working for the sheriff's office early morning
17 Friday, July 12th of 2013.

18 A. I was.

19 Q. Did you get a call concerning some issue going on at
20 Kershaw Correctional Institution?

21 A. I did.

22 Q. What was the nature of the call?

23 A. They had called in reference to a subject throwing
24 items over the fence.

25 Q. Did you get a description of a subject -- well, first

PRETRIAL MOTIONS

- 1 of all, where were you when you got the call?
- 2 A. Just coming out of Kershaw.
- 3 Q. On what road, or do you know?
- 4 A. Highway 601, or Gold Mine Highway.
- 5 Q. Were you headed that way anyway?
- 6 A. I was.
- 7 Q. How far out of the -- what road is the prison on?
- 8 A. It's on Gold Mine Highway, 601.
- 9 Q. About how far out of Kershaw is the prison?
- 10 A. Three, four, six miles at the most.
- 11 Q. Did you have a description of somebody when you headed
- 12 that way?
- 13 A. I did.
- 14 Q. What was the description that you had?
- 15 A. A black male wearing a black shirt and jean shorts.
- 16 Q. Okay. Did you encounter somebody generally fitting
- 17 that description?
- 18 A. I did.
- 19 Q. Do you see that person in the courtroom today?
- 20 A. I do.
- 21 Q. Where is he sitting and what is he wearing?
- 22 A. He's sitting to the left over here wearing it looks
- 23 like a green button-up shirt.
- 24 Q. With the collar buttons sitting between the two
- 25 lawyers, two guys with the neck ties?

PRETRIAL MOTIONS

1 A. Yes, sir.

2 Q. Any question at all that that's him?

3 A. No, sir.

4 Q. Where you did you encounter that person?

5 A. Just on the Kershaw side of Tom Gregory Road just on
6 this side of the prison.

7 Q. Now, what is Tom Gregory Road?

8 A. Tomorrow Gregory Road is a road that runs off of
9 Highway 601 that comes out to Pleasant Plains Road, it runs
10 beside the prison..

11 Q. Now, let me put you in your car headed out toward the
12 prison on 601. Is the prison off the right-hand side or the
13 left-hand side off 601?

14 A. Left hand.

15 Q. Is Tom Gregory Road a T-intersection with 601?

16 A. It is.

17 Q. Is it off the right-hand or the left-hand side of 601?

18 A. The left hand.

19 Q. How close is Tom Gregory Road to the prison property?

20 A. It touches the prison property.

21 Q. Is Tom Gregory Road a paved road, a dirt road or a
22 gravel road?

23 A. It's a paved road.

24 Q. And where does it go?

25 A. It goes to Pleasant Plains Road.

PRETRIAL MOTIONS

1 Q. How far is Tom Gregory Road from the paved entrance to
2 the prison?

3 A. From the paved entrance part of it it's probably
4 200 yards.

5 Q. Okay. Where was this man that you saw? Where was the
6 fellow that you pointed out a minute ago when you first saw
7 him?

8 A. Probably about 50 yards the Kershaw side of Tom Gregory
9 Road.

10 Q. Was he walking or running?

11 A. Walking.

12 Q. What direction was he walking on?

13 A. Towards Kershaw.

14 Q. What side of the road was he on from your vantage point
15 as you're headed out toward the prison, from your right or
16 to your left?

17 A. To my left.

18 Q. What did you do when you saw this person?

19 A. I stopped and identified him.

20 Q. Do you remember the lighting conditions?

21 A. It was morning time, it was about 6:00 in. The
22 morning. It was daybreak but it wasn't very, very bright
23 but you could see without headlights.

24 Q. And I just asked you and you answered and I forgot what
25 you said. When you saw the guy what did you do?

PRETRIAL MOTIONS

1 A. Stopped him and made contact with him.

2 Q. Did you stop right there where he was or did you go
3 down the road, turn around and come back? How did you do
4 it?

5 A. I went down to the prison and come back up.

6 Q. All right. Did you find out who the fellow was?

7 A. I did.

8 Q. And who was it?

9 A. Shawn Lee Wyatt.

10 Q. I'm not asking what kind, but did he have some kind of
11 picture identification with him?

12 A. He did.

13 Q. Okay. Did he have anything in his hands that you saw
14 on him?

15 A. A cellphone.

16 Q. Now, did you ask him -- did you tell him why you
17 stopped him?

18 A. I did.

19 Q. What did you tell him?

20 A. I told him we had got a call in reference to someone
21 meeting your description throwing contraband over the fence
22 at the prison.

23 Q. Did you and he have some conversations?

24 A. We did.

25 Q. What was the conversation?

PRETRIAL MOTIONS

- 1 A. I asked him for his ID -- he had stated it wasn't him,
2 I asked him for his ID. I asked him what he was doing and
3 he stated that he was walking back from Lancaster.
- 4 Q. Walking back from Lancaster?
- 5 A. Yes. And he pointed toward Flat Creek.
- 6 Q. Now, what was unusual about that?
- 7 A. Lancaster is not towards Flat Creek, it's in the
8 opposite direction.
- 9 Q. Did he tell you why he was walking back from Lancaster?
- 10 A. Said he'd gotten in an argument with his girlfriend and
11 had left.
- 12 Q. Did he tell you where his girlfriend was?
- 13 A. No, he didn't know.
- 14 Q. Did he tell you who this girlfriend was?
- 15 A. All he knew her by was his honey.
- 16 Q. His honey. No name?
- 17 A. No. Didn't know her name, just knew honey.
- 18 Q. Go ahead. What transpired beyond that?
- 19 A. Got his identification and ran him through our system.
- 20 Q. We don't need to get into all of that right now. Up to
21 that point was he in custody?
- 22 A. Up to that point, no.
- 23 Q. Did he get placed into custody after you ran a check on
24 him?
- 25 A. He did.

PRETRIAL MOTIONS

1 Q. Now, did you take him -- did anybody come to where you
2 were while you had him there in custody on the side of the
3 road?

4 A. He did.

5 Q. Do you remember who it was?

6 A. It was a Hunt, and I can't pronounce that other fellow.

7 Q. Schnettler?

8 A. Schnettler, from the prison.

9 Q. Just describe what transpired when Hunt and Schnettler
10 got to where you were on the side of the road.

11 A. Positively identified him as the subject throwing the
12 contraband over the fence.

13 Q. Who identified him?

14 A. Hunt and Schnettler. I think it was Hunt.

15 Q. Do you personally know the guys that work at KCI?

16 A. I don't.

17 Q. Well, how did the identification procedure occur,
18 that's what I'm asking. Where was Mr. Wyatt when Hunt and
19 Schnettler first got to where you were?

20 A. He was in the back seat my car.

21 Q. Did he move from the back seat of your car to somewhere
22 else?

23 A. No.

24 Q. Was he taken out of your car? Do you remember if he
25 ever got out of your car during that process?

PRETRIAL MOTIONS

1 A. I don't remember whether or not, if not they looked
2 through the window.

3 Q. Don't remember.

4 A. Don't remember.

5 Q. Was he in custody and handcuffed then?

6 A. Yes, sir.

7 Q. Did you transport Mr. Wyatt or did somebody else?

8 A. Another deputy did.

9 Q. Did he -- who was the other deputy?

10 A. Eric Centers.

11 Q. And when did he get there in relation to when you
12 stopped Mr. Wyatt?

13 A. It was probably not long after, I can't remember
14 exactly how it was. He wasn't there very long, just long
15 enough to take him.

16 Q. Okay. And you're sure that's the man that you stopped
17 on the side of the road?

18 A. Yes, sir.

19 MR. BARFIELD: I don't have anything else. Answer
20 anything Mr. Steen has, please.

21 THE COURT: Yes, sir?

22 MR. STEEN: Thank you, ma'am. Thank you, deputy.

23 CROSS EXAMINATION

24 BY MR. STEEN:

25 Q. When you spoke with the subject, where did he say he

PRETRIAL MOTIONS

1 was going?

2 A. He said he was coming from Lancaster. He didn't say
3 where he was going, just where he was coming from.

4 Q. He was coming from Lancaster. And he was walking from
5 the Midway area?

6 A. He was walking from the Flat Creek area.

7 Q. Flat Creek area, that's Highway 903, correct?

8 A. 903, 601, out that way, yes, sir.

9 Q. And you can take 903 back into Lancaster, correct?

10 A. Yeah. You can take it to Lancaster, yeah.

11 Q. If you were at the Kershaw Prison and you were going to
12 Lancaster, would you go right to Kershaw and go to Lancaster
13 or would you go to the left to Flat Creek and go to
14 Lancaster?

15 A. I'm not understanding what you're asking me.

16 Q. Your testimony was that he stated that he was coming
17 from Lancaster.

18 A. Yes, coming from Lancaster.

19 Q. He didn't come from Lancaster from the way he was
20 coming?

21 A. No.

22 Q. He was coming from the Flat Creek area.

23 A. Yes.

24 Q. Which is 903.

25 A. 903, 601 area, yes, sir.

PRETRIAL MOTIONS

1 Q. And 903 goes to Lancaster, correct?

2 A. No. It's not like an X intersection. If you come from
3 Lancaster he would be going the opposite direction, not to
4 Lancaster.

5 Q. Okay. We'll move on. Who did you get your description
6 from of the subject?

7 A. Dispatch and one of the -- Corporal Chris Hunt.

8 Q. And that description was a black male with a dark shirt
9 and dark shorts on?

10 A. Black shirt and jean shorts.

11 Q. That was the only description that you received?

12 A. Yes, sir.

13 Q. About what time did Hunt and Schnettler arrive back at
14 your vehicle?

15 A. I guess I was out there maybe ten or 15 minutes or so
16 before they got there. I'm not 100 percent positive.

17 Q. And who was present at this time?

18 A. Me and Hunt and Schnettler when they arrived. At first
19 it was just me and Mr. Wyatt.

20 Q. And when Hunt and Schnettler arrived immediately he
21 identified Mr. Wyatt in the car?

22 A. He did.

23 Q. I mean, do you remember how that went? Did you say,
24 "Get out of the car?" Did somebody ask him, "Is that the
25 person you saw?"

PRETRIAL MOTIONS

1 A. I can't remember exactly how that transpired, I think
2 we got him out of the car. But it was immediately, "Yeah,
3 that's the guy I saw."

4 Q. But you never heard any dispatch identification and
5 description describing the subject as a black male?

6 A. No.

7 Q. Who took the subject back to Lippe, the other CO, for
8 her to identify?

9 A. I don't remember that part. I remember Eric Centers
10 (sic) transported him to the jail.

11 Q. So y'all went straight from there to the jail?

12 A. Uh-huh. As far as I can remember, yeah.

13 Q. And this was right off Tom Gregory Road?

14 A. Yes, sir, on 601.

15 Q. Make sure I'm getting this straight. From that point
16 you and Deputy Center, one of y'all transported him straight
17 to LCDC.

18 A. Best as I can remember, yeah.

19 MR. STEEN: No further questions.

20 MR. BARFIELD: Just one follow-up.

21 REDIRECT EXAMINATION

22 BY MR. BARFIELD:

23 Q. After you turned Mr. Wyatt over to Eric Center, do you
24 know -- were you with them I guess is my question?

25 A. No, sir, I wasn't.

PRETRIAL MOTIONS

1 Q. Do you remember where they went?

2 A. No, sir, in route to the jail.

3 Q. Do you know whether or not they went back to the prison
4 for any purpose?

5 A. I do not, no, sir.

6 Q. Could that have happened?

7 A. It could have, yes, sir.

8 MR. BARFIELD: Thank you, sir. That's all of the
9 questions I have for Sergeant Kirkley.

10 THE COURT: All right, you may step down, sir.

11 MR. BARFIELD: Your Honor, I'm trying to focus up to
12 this point on the identification procedure out there on the
13 road and I neglected to ask the first two witnesses whether
14 this is the man they saw, I don't know whether they can
15 identify him or not. I guess I probably need to do that to
16 kind of make the picture complete and see what they say
17 about that.

18 THE COURT: All right. And let me just ask you all,
19 it's about ten until 4:00 and I hate to have the jurors
20 sitting in the back for a long period of time. You want to
21 recall those two witnesses?

22 MR. BARFIELD: I want to put them back up and then
23 that's all I'm going to -- just for the limited question of
24 -- issue of whether they can identify him in the courtroom.

25 (Break in proceedings.)

PRETRIAL MOTIONS

1 The witness, BRENDA LIPPE, remained sworn and
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BARFIELD:

5 Q. Sergeant Lippe, one more question, I don't know the
6 answer but I'm going to ask you a question. Do you see the
7 man in the courtroom today that you saw, number one, walking
8 on the side of the road on the morning of July 12th of '13,
9 and that you saw get out of the police car near the tower
10 later on that morning?

11 A. Yes, I do.

12 Q. And where is he sitting and what is he wearing?

13 A. A gray colored button down shirt to my left.

14 Q. Collared all the way up to the neck?

15 A. Collared all the way buttoned up the neck, yes, sir.

16 Q. Between the two guys in the neck ties at the other
17 table?

18 A. Yes, sir.

19 Q. How sure are you that that's the guy you saw those two
20 times on at KCI on July 12th?

21 A. I have re-visioned the same gentleman with the same
22 haircut and he matches the same haircut.

23 Q. No doubt? Do you have any doubt at all about this
24 being the guy?

25 A. No, sir, no doubt.

PRETRIAL MOTIONS

1 MR. BARFIELD: Answer anything Mr. Steen has.

2 CROSS EXAMINATION

3 BY MR. STEEN:

4 Q. Sergeant, who brought the subject back for you to
5 identify?

6 A. The officer.

7 Q. Officer -- which officer?

8 A. I don't know the name, sir.

9 Q. Just one person?

10 A. Yes, sir, him and Corporal Hunt.

11 MR. STEEN: I have no questions.

12 MR. BARFIELD: Nothing else from Sergeant Lippe. Call
13 Officer Schnettler again.

14 THE COURT: You may step down.

15 The witness, LESLIE JOE SCHNETTLER, remained
16 sworn and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BARFIELD:

19 Q. Mr. Schnettler, another question. Do you see the guy
20 in the courtroom today -- do you see the guy in the
21 courtroom today, number one, that you saw run from the
22 treeline and throw stuff over the fence on July 12th, and
23 number two, that you saw outside of the car of the sheriff's
24 deputy on 601 back toward Kershaw later that morning?

25 A. Yes.

PRETRIAL MOTIONS

1 Q. Where do you see him, where is he sitting, what's he
2 wearing?

3 A. He's wearing buttons down shirt, light gray.

4 Q. Buttoned all the way up to the neck?

5 A. Yes.

6 Q. At which table?

7 A. Right there.

8 Q. Between the two guys in the neck ties?

9 A. Yes.

10 Q. How sure are you that that man in the middle at that
11 table is the guy you saw on those two occasions that
12 morning?

13 A. 100 percent.

14 Q. No doubt at all?

15 A. No.

16 MR. BARFIELD: Okay. Answer anything that Mr. Steen
17 has.

18 CROSS EXAMINATION

19 BY MR. STEEN:

20 Q. Officer Schnettler, how did you get back to the prison
21 from --

22 A. Officer Hunt.

23 Q. You and Officer Hunt, and who else?

24 A. That was it. Back to the prison from the officers?

25 Q. From Tom Gregory Road where the identification was made

PRETRIAL MOTIONS

1 of the subject with Deputy Kirkley, how did you get back
2 from that point back to the prison?

3 A. I got to that point and back with Officer Hunt.

4 Q. Just you and Officer Hunt?

5 A. Yes.

6 Q. Do you know where Mr. Wyatt went at that point?

7 A. At that point he was in the police car.

8 Q. Taken to SCDC?

9 A. He was taken to SCDC? No.

10 Q. I mean to the LCDC, I apologize, the Lancaster County
11 Detention Center?

12 A. The officers took him, I didn't -- I don't know where
13 they took him.

14 MR. STEEN: That's all. No further questions.

15 MR. BARFIELD: I don't have any other questions of Mr.
16 Schnettler. Your Honor that's all from the State on this
17 issue.

18 THE COURT: All right. Anything from the defense?

19 MR. STEEN: Motions at this time, Your Honor?

20 THE COURT: Yes, sir. I will glad to hear that.

21 MR. STEEN: Your Honor, we would move for the
22 out-of-court -- well, focus first on Schnettler. We would
23 ask that the in-court and out-of-court statements be
24 suppressed for this trial. Per South Carolina vs. Moore, or
25 State v. Moore, I apologize, single person shows are

PRETRIAL MOTIONS

1 inherently suggestive. That case described it as when
2 there's a subject surrounded by only uniformed officers,
3 that is unduly suggestive as a matter of law. Same exact
4 situation in this case where it was Mr. Wyatt hailed by two
5 deputies and a correctional officer was brought there to
6 him. So he was the only person that was not in the uniform
7 at that time. Regards to that we go on to see if it was
8 reliable under the totality of the circumstances. Officer
9 Schnettler said he was certain but he thought the subject
10 was a white male but it was a black male. He didn't know
11 what the facial features looked like, he didn't know the
12 hair color, he didn't know if he had facial hair, he didn't
13 know if he had on gloves, he didn't know what kind of age he
14 could have been. The only identifying feature was that he
15 had shiny legs, which I would say my client has tattoos all
16 over his legs, but -- sorry. It was a 30 second viewing
17 from approximately a football field away in the predawn
18 hours, that's what we're identifying here where he gave no
19 description, was taken to the officer and then picked him
20 out. For those reasons, Your Honor, we would argue that
21 they were unreliable and it was unduly suggestive and
22 misidentification was possible. With regard to Sergeant
23 Lippe, I'm still not sure of the existence of the
24 identification because no one else states they took him back
25 to the prison, actually no one states that they did go back

PRETRIAL MOTIONS

1 to the prison so I don't know who she was able to identify
2 Mr. Wyatt.. But besides that, again, driving down the road,
3 she saw him for 15 to 20 seconds, again at the predawn hours
4 from 50 yards away. Again, Your Honor, that's the show-up,
5 I'm still not sure when or where that happened at, it should
6 be suppressed from that. Her in-court identification should
7 be suppressed mainly because she didn't see the actual
8 incident; she's identifying someone walking down the road,
9 and that's what Neil v. Biggers is supposed to protect is a
10 misidentification like that that could cause him to be found
11 guilty of this charge. The State's only evidence is -- you
12 heard the State's evidence today to identify Mr. Wyatt to
13 this case. It's all based on unreliable descriptions; black
14 male, white male, predawn hours for a small amount of time
15 with a single person show-up, which is unduly suggestive as
16 a matter of law. For those reasons, Your Honor, we would
17 ask that you suppress these.

18 THE COURT: Thank you.

19 MR. BARFIELD: Your Honor, I concede that the show-up
20 procedure is suggestive, I think it's inherently suggestive,
21 that doesn't mean that it's automatically a cause for
22 suppression. I think one thing you have to think about in
23 this case is these are not civilian witnesses who are called
24 upon to identify somebody who might be a suspect in the
25 crime. These are trained law enforcement officers who as

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1 Officer Schnettler said are taught, number one, to observe
2 and record information mentally and then to report the
3 information so that correct procedures can be undertaken to
4 resolve the situation that has occurred. As to Schnettler,
5 first of all the factors are the opportunity to view Mr.
6 Wyatt at the time this event occurred. First of all it is
7 early morning, the sun is coming up, there is some natural
8 light but there is also some artificial light as Officer
9 Schnettler described around the perimeter of the prison. He
10 said he had no difficulty seeing what he saw based upon the
11 lighting conditions that were present at that time. He was
12 in an elevated tower which is designed to give a good view
13 of the grounds to see people coming out and to see people
14 going in or throwing things over. He described Mr. Wyatt as
15 running from the wood line to the perimeter road some yards
16 ahead of him, no question about that, but along the fence
17 line at Perimeter Road and was there for 30 seconds or more
18 setting things down on the perimeter road and then one at a
19 time individually throwing them over the fence. He
20 described clothing as a dark shirt, and I can't recall the
21 color he described the pants, but pants consistent with
22 faded out denim jeans that we have as Court's Exhibit Number
23 6, I believe. Described a white male, no question about
24 that. But I think Mr. Wyatt, you certainly look at him and
25 somebody can say that looks like a white male from the

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1 distance that Schnettler was looking at him from. He
2 described him as having shiny legs. Of course, we're not
3 looking at his legs here today but that is consistent with
4 his complexion. He did observe him for about 30 seconds, he
5 was paying attention when that was going on because as that
6 was going on he was having to relay information by radio to
7 the first responders to get some action taken concerning
8 what he had seen. I submit that his description of Mr.
9 Wyatt is accurate, although he said white. Mr. Wyatt is
10 black but it's consistent -- complexion-wise it's
11 consistent, the clothing description is accurate and I
12 submit that it's sufficiently accurate in his description
13 for this identification to survive. Certainty of the
14 identification. Mr. Schnettler told when you he observed
15 Mr. Wyatt at the police car down the road from the prison he
16 was absolutely 100 percent sure that is the person that just
17 not too very long before he had seen throwing packages over
18 the fence. And then the time between the crime I guess and
19 the identification was within a hour testimony of all of
20 witnesses, not days later, not weeks later, not months
21 later. This information is fresh in Schnettler's mind and
22 he is taken to where Mr. Wyatt is within an hour and based
23 upon all of that information looked at him and said, "That's
24 the man." In addition to that today here in the courtroom
25 he looked at him and said, "That's the man." Your Honor, as

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1 to Sergeant Lippe, I guess I'll have to clarify, we're not
2 in front of a jury so I'm going to say this, I believe Eric
3 Center took Mr. Wyatt back to the prison. He's not here
4 today to testify about that, but the second officer carried
5 him back to the prison is what I believe to be the facts.
6 But Officer Lippe is at the time not alerted to anything
7 illegal going on but does observe a man walking on the
8 highway toward her as she arrives at the prison. She has
9 some natural light from the sun coming up and she also had
10 her headlights. She sees this man for concededly a brief
11 period of time face to face and is as close to him as a car
12 in the opposite lane would be to somebody walking on the
13 opposite shoulder of the road. She has occasion to describe
14 his clothing, his neat haircut, she described, I think she
15 said a light skinned black male. She described a dark shirt
16 or a black shirt, she described I think dark shorts.
17 Thought nothing of it until she got to the prison and found
18 out that there had, in fact, been an incident and then later
19 on did what I guess we would call another show-up ID from
20 the tower concededly from some 45 to 50 yards away as Mr.
21 Wyatt is brought out of the police car for her to look at
22 and relay information of whether or not that was the man.
23 Same circumstances I would argue as to Schnettler's
24 identification initially from the tower, she has got
25 artificial lighting. By then time has passed and presumably

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1 the sun is up and there is more natural light out there.
2 She looked at him and said she didn't have any doubt at all
3 about that being the same person she'd seen walking along
4 the road. And again, that was within I would submit an hour
5 from the time she saw him walking along the highway. So for
6 those reasons, Your Honor, although the show-up
7 identification is inherently suggestive I think the
8 reliability of the identifications by Lippe and Schnettler
9 exist and I think they ought to be allowed to identify him
10 accordingly in live testimony in front of a jury.

11 THE COURT: All right.

12 MR. STEEN: Quick reply just on two points?

13 THE COURT: Yes, sir.

14 MR. STEEN: Thank you, Your Honor. The solicitor
15 states that Officer Schnettler was trained to identify
16 inmates, but still his answers were I don't know to haircut,
17 to facial hair, I don't know the facial complexion, I don't
18 know the head wear, I don't know the gloves, I don't know
19 what age and I thought he was a white male. If his
20 testimony was based on the training I wouldn't argue this
21 point, Your Honor, but he testified he didn't know this
22 stuff. The solicitor states he also relayed this
23 information as he was trained to do. He testified that he
24 didn't relay the description, he only testified that he said
25 another package over, another package over, another package

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1 over, that was over the radio. He gave the description
2 after the fact on the phone to someone he doesn't even know
3 who he was talking to. But that's it, Your Honor. Thank
4 you.

5 THE COURT: All right. In listening to the testimony
6 and reviewing the case law on this issue, I think the State
7 has conceded to the fact that a single person show-up is
8 disfavored by the courts under the law and are suggestive
9 and are considered to be suggestive. Once the Court
10 establishes that then it is the Court's responsibility to
11 consider the totality of the circumstances of the
12 identification to determine whether or not it is reliable or
13 not. And the test for that is -- the first, I guess, prong
14 with that test is the witness' opportunity to review the
15 perpetrator at the time of the crime. Although she did not
16 view the crime, Officer Lippe testified that she passed by
17 the defendant, that she was in close proximity to him riding
18 down the road, that she got a new view of the defendant at
19 the time that she was on the way to work. As to Mr.
20 Schnettler, he has testified that he was in the watch tower,
21 although he did not -- he did not -- I believe he testified
22 that he did not see him up close and he could not give
23 detailed features, that he was 100 percent sure from
24 looking -- from looking at the defendant and seeing him at
25 the lineup that this was the same person he was watching

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1 from the watch tower. The second prong goes to that -- and
2 I'll address the issues regarding -- I will take judicial
3 notice that the defendant who is seated here in court is an
4 African-American male but he is of a lighter skin
5 complexion, I will take judicial notice of that. The second
6 prong is witness degree of attention. Mr. Schnettler stated
7 that he was watching from the tower but that was his job and
8 he was -- and that is why he was watching the area from the
9 tower over the department of -- the Kershaw Department of
10 Institution. As to Ms. Lippe, she said that she paid close
11 attention to the defendant because she found it odd that he
12 was walking down the street at that time of the morning. As
13 to the accuracy of witness' prior description of the
14 defendant, Ms. Lippe was very adamant regarding the
15 defendant's haircut and she also testified that the
16 defendant was a lighter skinned black man. Once again, I'll
17 take judicial notice that the defendant is a lighter skinned
18 black man, and although he did not get in to details or
19 descriptions regarding his actual features, Mr. Schnettler,
20 he has identified the clothing that the defendant had on as
21 clothing that he saw of the person that was throwing objects
22 over the fence. As to the fourth prong, level of certainty
23 demonstrated by the witnesses. Both witnesses testified
24 here today that they were 100 percent certain that he was
25 the person that they saw on both occasions, and as to the

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1 length of time between the crime and confrontation I believe
2 Mr. Schnettler testified that he was on the scene with the
3 officer within ten to 15 minutes later. And Ms. Lippe
4 testified that it was a half hour to an hour when she was in
5 the tower and she identified him again. Therefore I find
6 that the show-up identification procedures used in this
7 arrest did not create a substantial likelihood of
8 irreparable misidentification. I find that under the
9 totality of the circumstances the identification was
10 reliable and therefore will allow the identification in and
11 it will be admissible. All right. It is 4:15, you all
12 still want to proceed with opening statements?

13 MR. BARFIELD: If we are not going to call witnesses I
14 would prefer just to do openings first thing in the morning
15 too.

16 MR. STEEN: Your Honor, did you rule on whether this
17 was unduly suggestive or not, the show-up?

18 THE COURT: I ruled that it was a single person show-up
19 and that it is suggestive based on -- the law states that
20 single person show-ups are disfavoring and suggestive. But
21 then you have to go to the next prong, and actually I'm
22 looking at the case State vs. Mitchell, it's -- I believe
23 it's unpublished, and also State vs. Moore, but Mitchell is
24 an unpublished opinion. And also State vs. Mansfield, which
25 is 538 Southeastern Second 257, which states that single

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1 person show-ups are disfavorable but if the Court looks at
2 it under the totality of circumstances it can be used if it
3 still is reliable and based on those factors that were
4 stated by the Court.

5 (Break in proceedings.)

6 THE COURT: Let's go ahead and bring them in.

7 (The jury returned to the courtroom.)

8 THE COURT: Juror number 13? All right. I'm going to
9 ask you to serve as our forelady. You're going to need to
10 sit right here so you all can just switch seats. And our
11 alternate is juror 57, Ms. Gandy. And I'll give you all
12 instructions later, but you will be our foreperson. As far
13 as assigned seats, you two are the only ones that have
14 assigned seats. The rest of you can sit wherever you
15 choose. All right. Ladies and gentlemen of the jury, I'm
16 going to ask the clerk to swear you in. Stand up and raise
17 your hands.

18 (The jury was sworn.)

19 THE COURT: What I will say now is intended to serve as
20 an introduction to the trial of this case. These remarks
21 are not a charge on the law in this case, I will charge you
22 on the law applicable to this case at the end of the trial
23 before you retire to consider your verdict. This is merely
24 an explanation of the procedure that we will follow in the
25 trial of this case so that you may better understand what

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1 may be happening. You are not to take notes during this
2 trial. The defendant in this case is charged by indictments
3 filed in the court with the crime of possession of
4 possession of contraband, possession with the intent to
5 distribute cocaine base, possession with the intent to
6 distribute cocaine, and possession with the intent to
7 distribute marijuana, the elements of which will be
8 explained to you later. The indictments are simply the
9 charges by which the case is brought into court and it is
10 not in any sense evidence of any of the allegations it
11 contains. The defendant has pled not guilty to this
12 indictment. The State, therefore, has the burden of proving
13 each of the elements of the indictments beyond a reasonable
14 doubt. And it is your duty, ladies and gentlemen of the
15 jury, to decide whether the State has met that burden. Your
16 purpose as jurors is to find and determine the facts. You
17 are the sole judges of the facts. If at anytime I make any
18 comment regarding the facts you must disregard it. You are
19 to determine the facts from the testimony you hear and the
20 other evidence introduced in court. It is up to you to
21 determine the inferences which you feel may properly be
22 drawn from the evidence. It is especially important that
23 you perform your duty of determining the facts diligently
24 and conscientiously because ordinarily there is no way to
25 correct an erroneous determination of the facts by a jury.

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1 On the other hand and with equal emphasis the same law that
2 makes you the judges of the facts makes me the judge of the
3 law. The law as given by the Court is the only law you may
4 consider. You must accept and follow it even though you may
5 disagree with it. I cannot tell you what the facts are and
6 you cannot disagree with me about what the law should be.
7 Your job is to take the law as I give it to you and apply it
8 to the facts as you find them from the testimony of the
9 witnesses and any other evidence that is introduced. After
10 doing that you will render your verdict, a true and just
11 verdict, under the solum oath that you just took as jurors.
12 Until I advise you to begin your deliberations you must not
13 discuss the case with anyone, including your fellow jurors,
14 friends, family members and anyone involved in the case.
15 This includes discussions face to face and those by
16 telephone, email, texts, blogs or any other method of
17 communication. After the case is submitted to you you must
18 discuss it only in the jury room with the fellow jurors.
19 The attorneys and the parties in this case have been advised
20 that they are not to talk to you at all. So if you see
21 anyone involved in this case and they do not even say hello,
22 they are not being unfriendly, they are just following my
23 instructions. During the trial do not read, listen to or
24 watch any news reports about this case. This includes
25 anything that may be in the newspaper or on the internet,

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1 radio or television. You must not consider anything you may
2 have read or heard about the case outside of the courtroom
3 whether before or during the trial. You are not to -- for
4 those of you who do social networking, you are not to do any
5 posting or tweeting -- posting on Facebook, tweeting or
6 Instagraming or anything regarding your service here this
7 week. It is important that you keep an open mind and not
8 decide any issue in the case until all of the evidence has
9 been presented, the parties have made their closing
10 arguments and I have instructed you on the law in this case.
11 It is your solemn responsibility to determine the guilt or
12 innocent of the defendant and your verdict must be based
13 solely on the evidence as it is presented to you in this
14 trial and on the law as I instruct you during and at the
15 close of the trial. In just a moment the solicitor will
16 make what is called an opening statement in which the
17 solicitor will explain to you the issues in this case or at
18 least what the solicitor thinks the issues are in this case.
19 The attorney for the defendant may also make an opening
20 statement, although he is not required to do so. What the
21 attorneys tell you during their opening statements is not
22 evidence in this case, it is only their contention as to
23 what the issues are. The evidence in this case will be
24 presented to you by the testimony of sworn witnesses from
25 the witness stand and by exhibits that may be introduced

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1 into evidence. From time to time during the trial you may
2 hear one of the lawyers say something like, "Your Honor, I
3 believe we have a question of law or a matter of law to
4 discuss with you," or, "Your Honor, may we approach the
5 bench?" Or sometimes I myself might find it necessary to
6 excuse you from the courtroom for a short while so the
7 attorneys and I can discuss a matter of law. The reason for
8 this is because you are the judges of facts in this case,
9 and sometimes when I am discussing matters of law with the
10 attorneys it may be necessary for me to comment as to the
11 facts in connection in ruling on whether or not a particular
12 law applies. I am not supposed to tell you what I think the
13 facts are so I will excuse you from the courtroom while
14 these discussions take place so that in no way will you be
15 influenced by anything that I may say or do in connection
16 with the facts. We will try not to have you back there. I
17 know we told you to come back early from lunch but we were
18 in here working, I assure you, on some legal matters. We
19 will try to minimize your time in the jury room as best as
20 possible, but there will be some times when I underestimate
21 the amount of time that something may take, it may take a
22 little bit longer, so please be patient with us. In
23 determining what the true facts are in this case you must
24 decide whether or not the testimony of the witness is
25 believable. It will be my responsibility to rule as a

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1 matter of law as to whether certain testimony is admissible
2 at all or not, but once the testimony is admitted whether or
3 not you believe it is solely for you to determine. In
4 deciding whether to believe a witness you have the right to
5 consider the interest of any witness, the bias of any
6 witness, the prejudice of any witness, the opportunity for
7 the witness to have seen matters and things about which the
8 witness may testify, and the way the witness acts on the
9 witness stand. You have a right to consider anything that
10 is in the record that will help you evaluate the testimony
11 of the witnesses, that means that it is your duty to pay
12 close attention to these witnesses, to observe the
13 witnesses, to listen to the witnesses and then pay close
14 attention to the attorneys and the Court. Do not let your
15 thoughts wonder but give strict attention to the testimony
16 in this case so that at the end of all of the testimony
17 after the arguments of counsel and the charge on the law by
18 the Court you will then be in a position to determine what
19 the true facts are and to apply the law to those facts and
20 thus render a true and just verdict. It is your added duty,
21 Madam Forelady, to preside in the jury room and be the juror
22 spokesperson here in the courtroom. It will also be your
23 duty to write the verdict but I will give you further
24 instructions about that at the conclusion of this case. In
25 order to preserve everyone's rights I will give the parties

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1 an opportunity to object to anything I have said. Any
2 objections or exceptions from the State?

3 MR. BARFIELD: None from the State.

4 THE COURT: From the defense?

5 MR. STEEN: None from the defense.

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, we will begin the trial. You will first hear opening
8 statements from the State and then from the defendant.

9 MR. BARFIELD: If the Court please? Mr. Steen? It is
10 4:30, I promise we're not going to stay here too late this
11 afternoon, we're going to get a little bit of this started.
12 This is what this case is about. There's a state prison in
13 Lancaster County, it's called Kershaw Correctional
14 Institution, it's out in the middle of nowhere kind of east
15 of Kershaw off Highway 601. That prison has what they call
16 a perimeter road and it's got two fences inside the
17 perimeter road which is concentric and a few feet apart and
18 they've got razor wire all over the top of them. And that
19 prison has several different dorms, they call them dorms,
20 and one is called the Oak Unit, and each dorm has a rec.
21 field which is also fenced in, a smaller area fenced in.
22 And surprisingly enough every now and then somebody outside
23 the prison goes up to that fence and chunks something over
24 for inmates to get on the inside, and that's what we have in
25 this case. This thing happened about daybreak on Friday,

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1 July 12th of 2013. There are also towers, there are two
2 guard towers on the corners of that prison and they put
3 people in there to watch to see what's going on. And at
4 about daybreak on Friday, July 12th of 2013, a guy named Joe
5 Schnettler, who is a correctional officer, is 30 or 35 feet
6 off the ground in a tower watching down two sides of that
7 prison fence and he sees a guy come out of the woods on the
8 Kershaw side of the prison, run up to the perimeter road,
9 set some stuff down then start chunking stuff over the
10 fences. He alerts the authorities inside, the guy runs back
11 to the woods. Within a short period of time a Lancaster
12 County sheriff's deputy stops a fellow walking along the
13 road who is Shawn Lee Wyatt, and Shawn Lee Wyatt is the
14 person that the State has charged with several offenses for
15 that event that occurred out there at KCI that morning. You
16 will hear testimony of the officers who -- you'll hear
17 Schnettler's testimony of what he saw in the tower. You
18 will hear a correctional officer, Sergeant Lippe, who was
19 going to work that morning and saw who we believe was
20 Mr. Wyatt walking away from the prison down the highway.
21 You will hear Chuck Kirkley from the sheriff's office today
22 in just a few minutes testify about stopping Mr. Wyatt along
23 the highway. And then you'll hear the officers on the
24 inside who went out into the old rec. yard and, in fact,
25 retrieved I think seven or eight different little packages

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1 wrapped up in black duct tape that had been chunked over the
2 fence. And probably the last witness you'll hear some time
3 tomorrow, a guy named Joe Powell who is a drug analyst in
4 the sheriff's office down in Sumter County and he's going to
5 tell you what it was. But as a result of all of that and
6 the analysis of those items that were thrown over the fence
7 Mr. Wyatt is charged with furnishing contraband, or
8 attempting to furnish contraband to an inmate of the South
9 Carolina Department of Corrections. He's charged with
10 possession with intent to distribute something that the
11 judge has called cocaine base, cocaine base is commonly
12 known as crack cocaine. He's also charged with possession
13 with intent to distribute cocaine, or powdered cocaine, and
14 he's also charged with possession with intent to distribute
15 marijuana. The packages contained crack cocaine, powdered
16 cocaine, marijuana, I think you'll hear testimony there was
17 some tobacco in there. You'll hear testimony there was some
18 cellphone and some cellphone chargers in those packages.
19 That's what it is. We've got several witnesses that we're
20 going to call, one this afternoon, some more tomorrow, it's
21 not a real complicated case. It will hinge on
22 identifications made of Mr. Hyatt by some folks with SCDC
23 who observed what occurred that morning. I ask you just a
24 couple of things. Be patient. You've been patient all day
25 today. We never do things when we say we're going to do

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1 them and that's our fault, that's not your fault, but be
2 patient. The courtroom part will move pretty quickly. The
3 sitting back there, waiting on us to get stuff done out here
4 when you aren't in here is what drives you nuts probably,
5 but the courtroom stuff will move pretty quickly in this
6 case. It's not a particularly complicated case and it's not
7 a case that I have 45 witnesses that are going to testify
8 in. Be patient. Give us your attention, because everything
9 that you hear is important. You don't know anything about
10 the case other than what the judge has said preliminary
11 earlier today and what I've said now. You'll hear a little
12 bit more about it from Mr. Steen in a minute, but nothing
13 that you've heard so far is evidence in the case. You don't
14 know anything about the case and it's best and it's really
15 only proper for you not to know anything about the case when
16 you come in here, because if you did know about the case you
17 wouldn't be qualified to be a juror in the case because you
18 would have some preconceived notion about it. So listen
19 carefully because everything we present to you is important
20 and we've got to tell you this story little pieces at a
21 time. Thank you, and we'll get started.

22 THE COURT: Yes, sir?

23 MR. STEEN: Thank you, Your Honor, Solicitor Barfield.
24 You heard the solicitor state he has got a couple of
25 witnesses to say what the drugs were, where they were found,

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1 but really only one witness matters here this week, Joe
2 Schnettler, you heard the solicitor mention him. He is the
3 only one who has even alleged to have seen an individual
4 throw some packages over the fence at Kershaw Correctional
5 Institute. Deputy Kirkley is going to testify today he
6 picked up Mr. Wyatt on the side of the road, that's why Mr.
7 Wyatt is here today because he was on 601 that morning. He
8 was walking down the road, Sergeant Kirkley -- I mean Deputy
9 Kirkley pulled him over. They brought the guard who saw the
10 incident down and he identified Mr. Wyatt. But I want you
11 to pay attention tomorrow when Joe Schnettler testifies. I
12 want y'all to think, is that enough to identify someone?
13 He's going to testify to some different things, but I think
14 after you hear him you will not believe that the
15 identification he made is enough to convict Mr. Wyatt.
16 Again, he is walking down the road, detained, and literally
17 brought to the corrections officer and said, "Was that him?
18 Sure." This was 5:45 a.m. the C.O. is 35 or 40 feet in the
19 air in a tower, he's witnessing this about -- you'll hear
20 testimony on all of this -- between 75 or 80 yards away.
21 That's the identification from that distance at that time of
22 the morning so that's why we're here. I want y'all to pay
23 attention to Mr. Schnettler and I think after you hear
24 everything you'll find Mr. Wyatt not guilty. Thank y'all
25 very much.

CHARLES KIRKLEY

1 THE COURT: All right.

2 MR. BARFIELD: Call Chuck Kirkley.

3 The witness, CHARLES KIRKLEY, was first duly
4 sworn and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BARFIELD:

7 Q. Tell us your name, please, sir.

8 A. Charles Kirkley.

9 Q. People call you Chuck?

10 A. Yes, sir.

11 Q. By whom are you employed?

12 A. Lancaster County Sheriff's Office.

13 Q. What is your rank with the sheriff's office?

14 A. A sergeant.

15 Q. Do you have supervisory capacity over other deputies on
16 your shift?

17 A. I do.

18 Q. How long have you been a police officer?

19 A. For 22 years.

20 Q. How long have you been employed by the Lancaster County
21 Sheriff's Office?

22 A. About 22 years.

23 Q. Do you work in any particular area of the county?

24 A. I do.

25 Q. What area of the county do you work?

CHARLES KIRKLEY

- 1 A. The south end of the county, which is Kershaw.
- 2 Q. Is Kershaw on the south end of the county?
- 3 A. It is.
- 4 Q. Is there a prison in Lancaster County?
- 5 A. There is.
- 6 Q. What is the name of the prison?
- 7 A. Kershaw Correctional.
- 8 Q. Is it in the south end of the county?
- 9 A. It is.
- 10 Q. What road is the prison on?
- 11 A. Highway 601, or Gold Mine Highway.
- 12 Q. How far out of Kershaw?
- 13 A. About six miles.
- 14 Q. What's the general area where the prison is located?
- 15 Is it downtown, Flat Creek or where is it? Describe the
- 16 area.
- 17 A. It's a very rural area, not a whole lot of houses.
- 18 Q. Describe 601, two lane or four lane going out to the
- 19 prison?
- 20 A. Two lane.
- 21 Q. What is Tom Gregory Road?
- 22 A. It's a road that runs beside the prison off of 601 to
- 23 Pleasant Plain Road.
- 24 Q. Now, if you're driving out of Kershaw out 601 to go to
- 25 the prison, is the prison going to be on your left or your

CHARLES KIRKLEY

1 right?

2 A. It's on your left.

3 Q. If you're driving the same direction, is Tom Gregory
4 Road a T-intersection of 601?

5 A. It is.

6 Q. Is it off to your left or your right?

7 A. To your left.

8 Q. Is there someone actually named Tom Gregory, do you
9 know?

10 A. Yes.

11 Q. How close to the prison property is Tom Gregory Road?

12 A. It actually adjoins it.

13 Q. From 601 where does Tom Gregory Road go or come out?

14 A. On Pleasant Plain Road.

15 Q. Is Tom Gregory Road a paved road?

16 A. It is.

17 Q. How do you drive down into the prison? Well, let me
18 ask you another question. From Tom Gregory Road, how far
19 farther beyond Tom Gregory Road is the entrance to the
20 prison?

21 A. The main entrance is probably about 200 yards.

22 Q. And is the entrance to the prison paved, a paved road?

23 A. It is.

24 Q. Were you working on Friday morning, July 12th of 2013?

25 A. I was.

CHARLES KIRKLEY

- 1 Q. And 6:00 o'clock-ish or so, what shift is that back in
2 July of last year?
- 3 A. It will be day shift.
- 4 Q. So you had just come to work?
- 5 A. I came in at 4:00.
- 6 Q. That's when day shift starts?
- 7 A. It does.
- 8 Q. Congratulations. Did you get a call because of some
9 event that occurred at Kershaw Correctional Institution?
- 10 A. I did.
- 11 Q. Now, when I say did you get a call, how do you know
12 you're being called upon to do something?
- 13 A. Radio traffic from dispatch.
- 14 Q. And is there a dispatch time recorded for calls that
15 you are given?
- 16 A. There are.
- 17 Q. And what was the dispatch time for this call?
- 18 A. 06:16, which is 6:00 in the morning.
- 19 Q. 6:16 in the morning?
- 20 A. Yes, sir.
- 21 Q. Now, at 6:16 in the morning that day, was it daylight
22 or dark?
- 23 A. It was daylight.
- 24 Q. What was the nature of the call?
- 25 A. I had received a call that a black male subject was

CHARLES KIRKLEY

1 throwing contraband over the fence at the prison.

2 Q. Did you get -- and of course, why did they call you?

3 A. I was working that area.

4 Q. All right. Did you get a description of this black

5 male who was allegedly throwing stuff over the fence at KCI?

6 A. I did.

7 Q. What was the description that you were given?

8 A. Black shirt, blue jean shorts.

9 Q. I'm going to hand you a couple of things. I'm going to
10 jump way ahead. Did you eventually have interactions with
11 somebody along the highway?

12 A. I did.

13 Q. Was that person wearing clothes?

14 A. They were.

15 Q. I'm going to show you a couple of pieces of clothing.

16 Court's Exhibit Five, do you recognize that item?

17 A. I do.

18 Q. What is that item?

19 A. The shirt that Mr. Wyatt was wearing.

20 Q. All right. And Court's Exhibit Number 6, I believe.

21 Do you recognize that item?

22 A. Yes, sir.

23 Q. What is that?

24 A. The jeans that Mr. Wyatt was wearing.

25 Q. Now, let me just jump ahead since you used the name

CHARLES KIRKLEY

1 Wyatt. The person that you had contact with that morning,
2 we'll get to the detail in a minute, but do you see that
3 person in the courtroom today?

4 A. I do.

5 Q. Where is that person sitting and what is he wearing?

6 A. He's sitting between the two attorneys to the left
7 wearing a grayish button-up shirt with a collar button.

8 MR. BARFIELD: Raise your hand, Mr. Wyatt.

9 Q. Is that the person you're referring to?

10 A. Yes.

11 Q. Is that the person that you had interaction with along
12 the highway that morning?

13 A. It is.

14 Q. Any doubt about that?

15 A. No, sir.

16 Q. All right. Now, where did you see Mr. Wyatt?

17 A. He was just on the Kershaw side of Tom Gregory Road.

18 Q. Was he on foot or on a bicycle or in a car?

19 A. He was on foot.

20 Q. Was he alone or with someone?

21 A. He was alone.

22 Q. Was he carrying anything that you could tell
23 immediately?

24 A. No.

25 Q. Was he walking?

CHARLES KIRKLEY

- 1 A. He was.
- 2 Q. Which direction was he walking?
- 3 A. Towards Kershaw.
- 4 Q. Which side of the road was he on in relation to you?
- 5 Was he to your right or your left?
- 6 A. My left.
- 7 Q. And where in relation to Tom Gregory Road?
- 8 A. He was just past it towards Kershaw.
- 9 Q. What did you do when you saw this man walking down the
- 10 road? Did you see him after you had got the dispatch about
- 11 the man throwing the stuff over the fence?
- 12 A. I did.
- 13 Q. And what did you do after you saw Mr. Wyatt walking?
- 14 A. I made contact with him.
- 15 Q. And what does that mean in law enforcement?
- 16 A. I pulled over and stopped him.
- 17 Q. Did you go by him and turn around and come back or just
- 18 pull straight over and cross the highway and pull in front
- 19 of him?
- 20 A. Went by him, turn around and came back.
- 21 Q. And I'm going to just go ahead and ask you this. Any
- 22 difficulty between you and Mr. Wyatt out there on the road
- 23 that morning?
- 24 A. No, sir.
- 25 Q. When you pulled up did you and he -- when you pulled up

CHARLES KIRKLEY

1 did you arrest him right then?

2 A. No, sir.

3 Q. Did you and he have some conversation?

4 A. We did.

5 Q. Describe the conversation.

6 A. I advised him why I was stopping him.

7 Q. What did you tell him?

8 A. I told him that I had got a call about a subject

9 meeting his description in clothing throwing packages over
10 the fence of the prison.

11 Q. Did you at some point point blank ask him, "Were you
12 doing it?"

13 A. I did.

14 Q. Did he say he was or wasn't?

15 A. He wasn't.

16 Q. Was not.

17 A. He was not.

18 Q. Did you have a further conversation with him?

19 A. Yes.

20 Q. What was it about?

21 A. Where he was coming from.

22 Q. Did you ask him where he was coming from?

23 A. I did.

24 Q. Now, let's orient some folks a little bit here. 601 I

25 guess on a compass, if you're headed out of Kershaw on 601

CHARLES KIRKLEY

1 toward the prison, on the compass what direction are you
2 traveling?

3 A. East.

4 Q. And if you're in Downtown Kershaw as big as it is
5 fixin' to head east to the prison, on the compass which
6 direction is Lancaster?

7 A. Lancaster would be north.

8 Q. Is there a road from Lancaster that somewhere in the
9 world intersects with Highway 601?

10 A. Yes.

11 Q. What is that road?

12 A. Highway 903.

13 Q. And where does it intersect with Highway 601?

14 A. In the Flat Creek area.

15 Q. And where is the Flat Creek area in relation to Kershaw
16 Correctional Institution?

17 A. Just a few miles further east.

18 Q. Did you ask Mr. Wyatt where he was coming from?

19 A. I did.

20 Q. What did he say?

21 A. He was coming from Lancaster.

22 Q. Did he indicate -- physically indicate in any way what
23 direction he was coming from?

24 A. He did. He pointed toward Flat Creek.

25 Q. Is that towards Lancaster?

CHARLES KIRKLEY

- 1 A. No, sir.
- 2 Q. Did you ask him where he had been to be coming from
- 3 Lancaster?
- 4 A. I did.
- 5 Q. Where did he say he had been?
- 6 A. He said he was walking from his girlfriend's house that
- 7 he had had an argument with.
- 8 Q. Did you ask him who his girlfriend was?
- 9 A. I did.
- 10 Q. Was he able to tell you who she was or where she lived?
- 11 A. No. The only thing he knew her as was honey.
- 12 Q. Honey?
- 13 A. Yes.
- 14 Q. Was there any automobile or bicycle or any kind of
- 15 conveyance out there that you associated with Mr. Wyatt?
- 16 A. No, sir.
- 17 Q. Was there anybody else out there that you ever saw or
- 18 associated with Mr. Wyatt?
- 19 A. No, sir.
- 20 Q. Did he have some photo identification on him?
- 21 A. He did.
- 22 Q. Were you satisfied you were talking with Shawn Lee
- 23 Wyatt?
- 24 A. Yes. It was a valid driver's license.
- 25 Q. Now, at some point did you take Mr. Wyatt into custody?

CHARLES KIRKLEY

1 A. I did.

2 Q. And when you took him into custody, what did you do to
3 physically take him into custody?

4 A. I handcuffed him, doubled locked them behind his back.

5 Q. You were in a Crown Vic. police car.

6 A. Yes, sir.

7 Q. And when you got him handcuffed, did you put him
8 somewhere?

9 A. I put him in the back of the car.

10 Q. Okay. Were you by yourself that morning? In your car,
11 were you by yourself other than Mr. Wyatt now being with
12 you?

13 A. I was.

14 Q. At some point later on that morning, or maybe not too
15 much later that morning, but did another deputy get involved
16 in it?

17 A. They did.

18 Q. Who was he?

19 A. Deputy Centers, Eric Centers (sic).

20 Q. And at what juncture did he come up? Did he come to
21 where you were on the road?

22 A. He did.

23 Q. And at what juncture did he come up in relation to you
24 first seeing Mr. Wyatt the way through having him in
25 handcuffs?

CHARLES KIRKLEY

1 A. I believe it was after I had him handcuffed and in the
2 car.

3 Q. Okay. What did Eric Center do to assist you after this
4 all kind of fleshed out?

5 A. Transported Mr. Wyatt.

6 Q. At some point did Mr. Wyatt get out of your car and get
7 into Eric Center's car?

8 A. He did.

9 Q. Were you with him at any point -- after he got out of
10 your car and got in to Eric Center's car, were you with
11 Wyatt anymore that morning?

12 A. No, sir.

13 Q. Do you know precisely where they were or where they
14 ended up?

15 A. No, sir.

16 Q. Now, did you see some folks from Kershaw Correctional
17 Institution out there on the roadway?

18 A. I did. They came to my location.

19 Q. And just explain this to me, why did you not go to
20 them?

21 A. Because I had Mr. Wyatt in my vehicle and detained at
22 the time.

23 Q. Who was it from KCI that you talked to out there on the
24 road?

25 A. Corporal Chris Hunt, and I still can't say the name.

CHARLES KIRKLEY

1 Q. Schnettler?

2 A. Schnettler.

3 Q. Is that the -- from the spelling in your report does
4 that sound like the name?

5 A. That's what it sounds like.

6 Q. Okay. And do you know any detail about what people
7 said they saw -- I'm not asking you to relate it, but do you
8 know the detail of what allegedly happened out at KCI?

9 A. I don't know.

10 Q. Do you know what the roles of Hunt and Schnettler were
11 in that?

12 A. Yes, sir.

13 Q. Just give me a yes or no, I'm not asking for the
14 detail.

15 A. Yes, sir.

16 Q. For what purpose did Schnettler come out there to where
17 you were along the roadway near Tom Gregory Road that
18 morning?

19 A. To see if the subject I had stopped was the person he
20 saw.

21 Q. Did you observe the process that was undertaken while
22 Schnettler was there at the scene with you?

23 A. I did.

24 Q. Well, first of all, do you remember whether Wyatt was
25 ever taken out of your car out there on the road, do you

CHARLES KIRKLEY

1 remember that one way or the other?

2 A. Just when he was placed from my car to Eric Center's
3 car.

4 Q. Okay. Your dispatch time was 6:16 that morning?

5 A. Yes, sir.

6 Q. Do you know how long -- from your dispatch time until
7 you cleared this call about how long it was, which would
8 include your stopping and talking to Mr. Wyatt and the KCI
9 people coming out there and talking to you, how long did
10 this all take place?

11 A. I'm not sure how long it took.

12 Q. Half the morning or a little while?

13 A. It wasn't hours or anything.

14 MR. BARFIELD: Your Honor, I would offer for
15 identification purposes what was formerly Court's Exhibits 5
16 and 6 as State's -- I guess well let's leave them 5 and 6
17 for identification.

18 MR. STEEN: Without objection.

19 THE COURT: All right. So that's State's 5 and 6.

20 MR. BARFIELD: For identification. Do you have any
21 objection to them going in? I've got some more background I
22 can do with that.

23 MR. STEEN: No objection.

24 MR. BARFIELD: I'll offer them as State's Exhibits not
25 for ID.

CHARLES KIRKLEY

1 THE COURT: All right. So that will be State's
2 Exhibits Number 5 and 6 without objection.

3 (The clothing was received as State's 5 and 6.)

4 MR. BARFIELD: Answer anything Mr. Steen has, please.

5 CROSS EXAMINATION

6 BY MR. STEEN:

7 Q. That morning approximately 6:16 you were dispatched to
8 the prison or you heard on the radio that they were looking
9 for a suspect that met the description?

10 A. I was dispatched.

11 Q. You were dispatched to look for the subject?

12 A. Yes, sir.

13 Q. Based on a description of a black male with a black
14 shirt and jean shorts.

15 A. Yes, sir.

16 Q. And when you drove -- you said you drove by Mr. Wyatt
17 one time.

18 A. Yes.

19 Q. Then turned and came back?

20 A. Yes.

21 Q. During that period, was Mr. Wyatt -- were you expecting
22 him to be on the road? Did it look like he left the road
23 area?

24 A. I'm sorry.

25 Q. I'll reask that. When you came -- he continued on his

CHARLES KIRKLEY

1 walk like normal based on what you can tell between your
2 first and second time seeing him.

3 A. Yes.

4 Q. He made no attempts to run into the woods or anything?

5 A. No, sir.

6 Q. He cooperated with you fully.

7 A. He did.

8 Q. At what point did you decide to handcuff him?

9 A. After running his information.

10 Q. And how long was it between the handcuff and Corporal
11 Hunt getting to the scene?

12 A. Just a few minutes.

13 Q. That morning was Mr. Wyatt the only person you seen on
14 601?

15 A. Yes, sir.

16 Q. And based on your experience as a law enforcement
17 officer and as a person who identifies suspects, would you
18 say Mr. Wyatt is a black male?

19 A. Yes.

20 Q. And is that information that you obtained from him
21 identified him as a black male also?

22 A. Yes.

23 Q. And how far was it from the detained spot to the prison
24 property?

25 A. The property?

CHARLES KIRKLEY

1 Q. Yeah, from where he was detained.

2 A. Well, from where the woods is probably about like
3 100 yards total.

4 Q. And did you find -- what did you find on Mr. Wyatt?

5 A. Identification and a cellphone.

6 Q. And did Mr. Wyatt appear winded, out of breath when you
7 came upon him?

8 A. No. He didn't appear to be winded or out of breath,
9 just sweaty.

10 Q. But it was -- July 12th was the incident date, correct?

11 A. Say again?

12 Q. July 12th was the incident date.

13 A. It was.

14 Q. Did you see anything with regards to the actual
15 incident we're here for today? Did you see Mr. Wyatt throw
16 a package over the fence?

17 A. I did not.

18 Q. When you spoke with Mr. Wyatt he stated that he was
19 coming from Lancaster.

20 A. He did.

21 Q. And he was walking down 601 from the Flat Creek area.

22 A. Right.

23 Q. And it's your testimony that there's no way he was
24 coming from Lancaster that way?

25 A. Right.

CHARLES KIRKLEY

1 Q. Does 903 and 601 not meet at the Flat Creek area?

2 A. They do.

3 Q. And does 903 not go from the Flat Creek area to
4 Lancaster?

5 A. You're right, it goes to Lancaster.

6 MR. STEEN: No further questions. Thank you.

7 MR. BARFIELD: Just a couple of redirect.

8 REDIRECT EXAMINATION

9 BY MR. BARFIELD:

10 Q. If you're on 601 in the general vicinity of the prison
11 and you needed to get to Lancaster yourself, would you go to
12 Kershaw and go to Lancaster or would you go out Flat Creek
13 and go to Lancaster?

14 A. From where I was at the time?

15 Q. Yeah.

16 A. You would go to Kershaw and go to Lancaster.

17 Q. You said you got some identification from Mr. Wyatt.
18 Where did he live?

19 A. In Columbia.

20 MR. BARFIELD: Thank you. That's all.

21 THE COURT: All right, sir, you may step down.

22 MR. BARFIELD: May Sergeant Kirkley be excused to leave
23 the courthouse?

24 THE COURT: Yes, sir.

25 MR. BARFIELD: Your Honor, that's all I've got to do

CHARLES KIRKLEY

1 today.

2 THE COURT: All right. Ladies and gentlemen of the
3 jury, it is close to 5:00 so we're going to go ahead and
4 take a break, I know it has been a long day for you. We
5 will start back at 9:30 in the morning. You will report to
6 the jury room, I believe -- no, downstairs, and they will
7 get you to the jury room. You're not to discuss this case
8 with anyone as I discussed with you earlier. You are also
9 not to discuss it with your fellow jurors. You are not to
10 do any social media posts or tweets or anything like that
11 regarding your service. I'm not saying that you can't get
12 on the internet but I'm saying that you cannot go on
13 Facebook or tweet, just not about what's going on here at
14 the Lancaster County Courthouse. I hope that you all have a
15 restful evening and we will see you in the morning at 9:30.
16 Thank you.

17 (The jury left the courtroom and court recessed
18 for the evening and resumed on Tuesday,
19 July 15, 2014 at 9:30 a.m.)

20 MR. BARFIELD: Yesterday I had numbered Court's
21 Exhibits 1 through 4, some photographs, Mr. Steen has no
22 objection to those photographs coming into evidence, so when
23 the jury comes in I'm going to move them into evidence. And
24 then there are three additional photographs which Mr. Steen
25 has no objection to, I'm going to ask if I can go ahead and

CHARLES KIRKLEY

1 get them marked and offer them into evidence.

2 THE COURT: All right. So what number will they be?

3 MR. BARFIELD: Well, the additional three photographs
4 are going to be 7, 8 and 9.

5 (The jury returned to the courtroom.)

6 THE COURT: All right. Good morning, ladies and
7 gentlemen of the jury, I hope that you had a restful
8 evening. At this time we will continue with the testimony
9 and I'm going to ask the State to call their next witness.

10 MR. BARFIELD: Your Honor, before we do that, there are
11 several photographs in this case that I have let Mr. Steen
12 examine, and at this time I will offer them as State's
13 Exhibits 1, 2, 3 and 4, and 7, 8 and 9.

14 THE COURT: All right. Any objection?

15 MR. STEEN: No, ma'am.

16 THE COURT: All right. Those will be entered 1 through
17 4, and 7, 8 and 9 will be entered without objection.

18 (The photographs were received as State's 1-4
19 and 7-9.)

20 MR. BARFIELD: And we call Brenda Lippe.

21 The witness, BRENDA LIPPE, was first duly sworn
22 and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BARFIELD:

25 Q. Tell us your name, please, ma'am.

BRENDA LIPPE

- 1 A. Brenda Lippe.
- 2 Q. And Ms. Lippe, by whom are you employed?
- 3 A. Kershaw Correctional Institution.
- 4 Q. How old have you been employed by the South Carolina
- 5 Department of Corrections?
- 6 A. A little over eight years, sir.
- 7 Q. How long have you been employed at Kershaw Correctional
- 8 Institution?
- 9 A. All of the little over eight years.
- 10 Q. What is your rank at KCI?
- 11 A. Sir, I'm positioned as a sergeant.
- 12 Q. And as a sergeant what is your responsibilities?
- 13 A. It's to maintain security, custody and control, keeping
- 14 the inmates in, making sure there's no contraband coming in,
- 15 keeping the public out where they're not supposed to be and
- 16 keeping them safe along with the public.
- 17 Q. As a sergeant, do you have supervisory capacity over
- 18 other correctional officers?
- 19 A. Yes, sir, I do.
- 20 Q. Were you scheduled to work on Friday, July 12th of
- 21 2013?
- 22 A. Yes, sir, I was.
- 23 Q. What shift were you working that day?
- 24 A. That day I was scheduled and assigned to work a B1
- 25 shift, which is our day shift.

BRENDA LIPPE

- 1 Q. And the hours for day shift were what then?
- 2 A. They're 6:45 to 7:00.
- 3 Q. What happens when shift -- what's the first thing that
- 4 happens when you get to work?
- 5 A. You have a briefing, what's considered a shift briefing
- 6 at 6:45, 15 minutes prior to you taking over and relieving
- 7 the night shift.
- 8 Q. Back then routinely what time did you intend to arrive
- 9 at the institution?
- 10 A. Around the hours of 6:01.
- 11 Q. Why did you get there 45 minutes early?
- 12 A. I got there 45 minutes early due to the fact with me
- 13 being a supervisor over the shift I would prepare what they
- 14 called our shift tables. I was setting up the rosters, the
- 15 count sheets, the shake down reports, everything that we
- 16 needed to carry on our duties throughout the day.
- 17 Q. And who actually did the briefing before a shift, would
- 18 that be you or would it be a lieutenant?
- 19 A. No, sir. That would be a lieutenant or a captain.
- 20 Q. And who was your lieutenant down there at the time?
- 21 A. The lieutenant on shift at the time, I want to say that
- 22 it was Lieutenant Goodwin. I can't remember who the other
- 23 person was, since then it has been changed.
- 24 Q. What town do you live in?
- 25 A. In Camden.

BRENDA LIPPE

1 Q. What road -- do you drive through Kershaw to get to
2 work?

3 A. Yes, sir, I do.

4 Q. And from Kershaw what road do you take to KCI?

5 A. I take 601 into where the institution is located.

6 Q. How many lanes is 601 heading out to the prison?

7 A. It's two lanes.

8 Q. Did you take that path and go to work on Friday, July
9 12th of 2013?

10 A. Yes, sir, I did.

11 Q. Did you notice anything that drew your attention as you
12 drove to the prison?

13 A. Yes, sir.

14 Q. Generally what was it that you saw that drew your
15 attention?

16 A. Approximately a half mile from turning into the
17 institution I noticed a light black gentleman briskly
18 walking on the opposite side of the road towards the Town of
19 Kershaw.

20 Q. Okay. Now, anything unusual about the movement of this
21 person?

22 A. He was on the wrong side of the road and he was like
23 briskly walking at a fast pace.

24 Q. All right. Describe the person that you saw.

25 A. The gentleman I noticed was a light-skinned

BRENDA LIPPE

1 African-American gentleman with a nice neat haircut with a
2 black shirt and what appeared to be charcoal colored shorts.

3 Q. Was anybody with him?

4 A. No, sir, there was not.

5 Q. Did you see anything in his hands?

6 A. No, sir, I did not.

7 Q. Did he have anything like a backpack strapped across
8 his back?

9 A. No, sir, not that I could tell.

10 Q. Did you see any vehicles anywhere along the roadway
11 that you had traveled that you associated with this person?

12 A. No, sir, there was not.

13 Q. Okay. Did you do anything when you saw this person?

14 A. No, sir.

15 Q. What time was it when you saw this person?

16 A. It was approximately 6:00 that morning.

17 Q. What were the lighting conditions, the natural lighting
18 conditions at that time?

19 A. It was dawn, the sun was just starting to come up.

20 Q. Was there any natural light?

21 A. Yes, sir, there was.

22 Q. Did you have -- were you running the headlights on your
23 vehicle?

24 A. I had daytime running lamps that automatically come on.

25 Q. How were you able to see this person?

BRENDA LIPPE

1 A. As I approached him it was that light that I could make
2 him out.

3 Q. Did you have to have your headlights to be able to see
4 him?

5 A. No, sir, I did not.

6 Q. Were you on a straight road or on a curve as you
7 approached him when you saw this person?

8 A. He was straight prior to going into a small slight
9 curve.

10 Q. And was he on the straight or was he on the curve?

11 A. He was on the straight leaving the curve.

12 Q. How close did you get to this person -- did you pass by
13 this person?

14 A. Yes, sir, I did.

15 Q. And what is the closest that you ever got to this
16 person, and use you and I as a reference if you will. You
17 tell me where I need to be to indicate how close you were to
18 him.

19 A. I seen him at a good distance to where you were at
20 prior to passing him.

21 Q. So the closest was the distance between you and me?

22 A. Yes, sir.

23 Q. I'm going to show you State's Exhibits 5 and 6. Can
24 you -- are these items familiar to you?

25 A. Yes, sir. It's a black shirt that I had seen.

BRENDA LIPPE

1 Q. Can you say if this is the shirt or is this just
2 similar to the shirt, do you know?

3 A. It's similar to the shirt that I did see on the
4 gentleman.

5 Q. How about State's Exhibit Number 6, the britches?

6 A. Could have been, I'm not sure what they would look like
7 in the dawn time of the morning. It could have been that
8 charcoal material, charcoal color that I had seen.

9 Q. All right. Now, when you saw this person walking on
10 the side of the road, did you have any knowledge that some
11 event had occurred at KCI?

12 A. No, sir, I did not.

13 Q. Where did you go when you got to KCI?

14 A. Once I parked my vehicle I seen Corporal Hunt in the
15 parking lot who was over contraband at the time, and I
16 immediately went to him and let him know that I seen an
17 individual that kind of seemed sketchy walking down the
18 road.

19 Q. At some point after that did you learn that some event
20 had occurred at KCI?

21 A. Yes, sir, once I went in.

22 Q. Now, when you went in where did you go?

23 A. I went in and proceeded right on to set my stuff down
24 to get the forms and the paperwork we needed to set up for
25 the day shift, and I was instructed to go relieve the

BRENDA LIPPE

1 officer out of the tower.

2 Q. And who was the officer in the tower?

3 A. Officer Schnettler.

4 Q. Did you ever make it to briefing?

5 A. No, sir, I did not.

6 Q. I'm going to show you State's Exhibit Number 1. Are
7 you familiar with what's shown in that photograph?

8 A. Yes, sir.

9 Q. And what is shown in that photograph?

10 A. The tower.

11 Q. And how do y'all refer to that tower as --

12 A. That is the east tower.

13 Q. And in relation to the Town of Kershaw, what side of
14 the prison is that tower on?

15 A. The Kershaw side.

16 Q. And in relation to -- describe for us getting into KCI.
17 If you're going out 601, do you turn right or left to get
18 into KCI?

19 A. You turn left if you're coming from the Town of
20 Kershaw.

21 Q. And what kind of drive or road is it that goes into the
22 facility?

23 A. It is a paved road that curves around and you come to a
24 straight area, or come to a straight-away. Once you get to
25 the straight-away there's a tower that goes directly in

BRENDA LIPPE

1 front of you.

2 Q. And is there a parking lot in that area of the prison?

3 A. Yes, sir, there is. Once you go down the road it's

4 right down there on the right-hand side.

5 Q. Is the parking lot what we would commonly refer to as

6 on the front side of the prison?

7 A. Yes, sir, it is.

8 Q. Can you see that on your screen?

9 A. Yes, sir, I can.

10 Q. Is there a lot of glare in there?

11 A. Yes, sir.

12 Q. And you can actually use your finger to annotate.

13 Circle the deck of the tower.

14 A. The deck of the tower is here.

15 Q. Now draw it.

16 A. This is the deck of the tower.

17 Q. All right. Was manning the tower one of your usual

18 duties as a sergeant?

19 A. No, sir, it's not.

20 Q. Did you go to the tower?

21 A. Yes, sir.

22 Q. Do you know about what time it was when you went to the

23 tower?

24 A. Shortly after 6:00.

25 Q. Did you stay in the tower for some period of time?

BRENDA LIPPE

1 A. Yes, sir. I was up there almost an hour.

2 Q. Did you at any point that morning see the person again
3 that you had seen walking down the roadway?

4 A. Yes, sir, I did.

5 MR. STEEN: Objection. I renew my previous objections
6 that the in-court -- the out-of-court identification is
7 unduly suggestive.

8 THE COURT: All right. That objection is overruled but
9 it is noted for the record.

10 MR. STEEN: All right. Thank you, Your Honor.

11 Q. Did you see again that morning the person that you had
12 seen walking along the roadway as you drove to work?

13 A. Yes, I did.

14 Q. And speak up just a little.

15 A. Yes, sir, I did.

16 Q. Where were you when you saw this person?

17 A. In the tower.

18 Q. Was it during that hour or so that you had spent in the
19 tower?

20 A. Yes, sir, it was.

21 Q. Where was the walker when you saw him the second time?

22 A. He was exiting out of the police vehicle.

23 Q. Whose police vehicle, what agency?

24 A. Lancaster County, I'm sorry.

25 Q. And where was the police vehicle?

BRENDA LIPPE

1 A. It was -- if you were coming down the road to get into
2 the institution almost directly in front of the east tower.

3 Q. Now, how were you observing this person from the tower?
4 Describe that.

5 A. There's windows all around the tower and you're able to
6 see out in all directions.

7 Q. What was the lighting conditions when you saw this
8 person from the tower?

9 A. By then it was daylight and you could actually see all
10 around and everywhere.

11 Q. Your eyeball to this person, have you got an
12 approximate distance that you were looking at him from the
13 tower?

14 A. Maybe 40 yards give or take.

15 Q. Did you recognize that person?

16 A. Yes, sir, I did.

17 Q. And who was the person that you saw from the tower
18 outside the police car of the parking lot?

19 A. The same gentleman I seen walking down the road.

20 Q. How surely are you of that?

21 A. I'm 100 percent sure.

22 Q. And what about what you're looking at him when he's in
23 the parking lot makes you say that's the same guy?

24 A. It was the same black colored shirt, the charcoal
25 colored pants and a nice neat haircut.

BRENDA LIPPE

1 Q. Okay. Do you see the person you saw walking along the
2 side of the road --

3 MR. STEEN: Objection, I renew my previous objection.

4 THE COURT: All right. The objection is overruled but
5 preserved for the record. Thank you.

6 Q. Do you see the person in the courtroom today that you
7 saw walking on the side of the road and outside of the
8 police car at the foot of the tower?

9 A. Yes, sir, I do.

10 Q. Where is he sitting and what is he wearing?

11 A. He's on the left-hand side of the room in a gray button
12 up collared shirt.

13 Q. Buttoned up all the way to the neck?

14 A. All the way to the neck.

15 MR. BARFIELD: Raise your hand, Mr. Wyatt.

16 Q. Is that the person you're referring to?

17 A. Yes, sir, it is.

18 Q. How certain are you today that Mr. Wyatt is the person
19 you saw walking on the road and out of the police car in the
20 parking lot near the tower?

21 A. 100 percent sure.

22 MR. BARFIELD: Thank you, ma'am. Answer anything
23 Mr. Steen has.

24 MR. STEEN: Thank you, Sergeant.

25 CROSS EXAMINATION

BRENDA LIPPE

1 BY MR. STEEN:

2 Q. You described the individual as a light skinned
3 African-American male with a nice neat haircut with charcoal
4 shorts and a black shirt on; is that correct?

5 A. Yes, sir, I did.

6 Q. When you saw this individual walking down the road, how
7 tall would you say this person was?

8 A. Give or take, 5-8 to maybe 6-foot.

9 Q. What body type?

10 A. He's a medium build.

11 Q. Was his head covered or uncovered?

12 A. It was uncovered.

13 Q. And what was the length of his hair?

14 A. It was real short but it was nice, neat and shaped up.

15 Q. How short? Like a half an inch? Shorter than that?
16 Skint head?

17 A. No, it was not skint head. It was just short-short,
18 but it was to where you could tell he had hair. It was
19 shorter than yours.

20 Q. And what color was this person's hair?

21 A. It was black.

22 Q. Did this person have any face wear on? Was his face
23 covered or uncovered?

24 A. It was uncovered.

25 Q. Did this person have any facial hair?

BRENDA LIPPE

1 A. Sir, I couldn't identify that at the time.

2 Q. Did the person have any other distinguishable facial
3 features at the time?

4 A. Sir, I couldn't identify that at the time.

5 Q. And was the individual's shirt short-sleeved or
6 long-sleeved?

7 A. It was short-sleeved.

8 Q. Did the shirt have any markings on it?

9 A. I couldn't tell from the opposite side of the road I
10 was traveling that he was walking on.

11 Q. Was the person wearing any gloves?

12 A. Sir, no, sir, not that I could tell.

13 Q. Did the person's arms have any markings on them?

14 A. I couldn't tell from the side of the road I was on.

15 Q. Did the person's shorts have any markings on them?

16 A. Sir, I couldn't tell that. All I could see is they
17 appeared to be charcoal colored.

18 Q. Did the person's legs have any markings on them?

19 A. I didn't see that low, sir.

20 Q. What type of shoes did the person have on?

21 A. I didn't see that low, sir.

22 Q. And you've identified Mr. Wyatt as the person that you
23 saw walking down the road on July 12th.

24 A. Yes, sir.

25 Q. Did you see Mr. Wyatt throw several packages over the

LESLIE JOE SCHNETTLER

1 perimeter fence at Kershaw Correctional Institute?

2 A. Sir, I was not at the institution when that happened.

3 MR. STEEN: Thank you, ma'am. No further questions.

4 MR. BARFIELD: Nothing else from this witness.

5 THE COURT: All right. Ma'am, you may step down.

6 The witness, LESLIE JOE SCHNETTLER, was first

7 duly sworn and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BARFIELD:

10 Q. State your name, please?

11 A. Leslie Joe Schnettler.

12 Q. People call you Joe?

13 A. Yes, sir.

14 Q. Mr. Schnettler, by whom are you employed?

15 A. South Carolina Department of Corrections, Kershaw.

16 Q. How long have you been employed by SCDC?

17 A. Just over four years.

18 Q. How long have you been working at KCI?

19 A. All that time.

20 Q. What is your job at KCI?

21 A. Corrections officer.

22 Q. Part of your duty, do you ever man the tower?

23 A. Yes, I do.

24 Q. How many towers are there at KCI?

25 A. Two.

1 Q. What are they called to distinguish them?

2 A. East and west tower.

3 Q. Were you working on Friday, July 12th of 2013?

4 A. Yes, I was.

5 Q. What shift did you work that day or the previous day?

6 A. It is A2, which is seven to seven.

7 Q. When the events that you're about to describe occurred,
8 were you at the end of the shift or at the beginning of the
9 shift?

10 A. End of the shift.

11 Q. So you went 7:00 p.m. on July 11th to 7:00 a.m. on
12 July 12th?

13 A. Yes.

14 Q. Okay. What was your duty station for that shift,
15 July 11th and into July 12th?

16 A. I would do perimeter. We rotate where we are every two
17 hours on our shift, that way you don't get complacent.

18 Q. So are you telling us that you worked in one spot for
19 two hours and another spot for two hours?

20 A. Yes. I would drive a rover for two hours and work the
21 back gate for two hours, then work the tower for two hours
22 and then rotate that.

23 Q. And what does a rover do?

24 A. It drives around the perimeter road.

25 Q. How many times would you end up in the tower on a

LESLIE JOE SCHNETTLER

- 1 shift?
- 2 A. Twice.
- 3 Q. Did that occur on this shift, July 11th into July 12th?
- 4 A. Yes.
- 5 Q. What duty station did you end your shift on that
- 6 morning?
- 7 A. The tower.
- 8 Q. I'm going to show you some pictures. I show you
- 9 State's Exhibit Number 1. Can you see that monitor there?
- 10 A. Yes, I can.
- 11 Q. Is it glared up so much that you can't tell anything
- 12 about it or is it okay?
- 13 A. No, I can see it.
- 14 Q. What does that picture show?
- 15 A. That shows the tower that I was manning that day from
- 16 the treeline.
- 17 Q. The east tower?
- 18 A. Yes.
- 19 Q. And in relation to the Town of Kershaw, which side of
- 20 the prison is the east tower on?
- 21 A. The Kershaw side.
- 22 Q. Tell us what vantage point that photograph is taken
- 23 first of all.
- 24 A. That's taken from the treeline just about center of
- 25 the --

LESLIE JOE SCHNETTLER

1 Q. When you say center, center of the side of the prison?

2 A. Yes.

3 Q. You can make marks on that screen. And I'm going to
4 ask you first of all, is Highway 601 shown in that picture
5 anywhere?

6 A. No.

7 Q. From that picture, do you know where Highway 601 is
8 generally?

9 A. Yes.

10 Q. And what part of that picture would you have to move
11 through to get to Highway 601? Where is 601?

12 A. 601 would be from the tower --

13 Q. Use your finger.

14 A. From the tower here, that way.

15 Q. And where is the road that goes out to 601? Is that --

16 A. It's right next to the tower.

17 Q. All right. Is it a straight road or is it not a
18 straight road?

19 A. It's not a straight road.

20 Q. And where is the prison parking lot?

21 A. Right behind the tower from this vantage point.

22 Q. Again, generally speaking, mark where the parking lot
23 is.

24 A. It would be part of that and part of that.

25 Q. Now, are there actually some automobiles shown in that

LESLIE JOE SCHNETTLER

- 1 picture?
- 2 A. Yeah, it looks like it. There's an automobile there.
- 3 Q. Show us where the automobiles are. Can you see any
- 4 cars in that picture?
- 5 A. It looks like cars over here.
- 6 Q. Are you marking it with your finger?
- 7 A. Yeah, I did.
- 8 Q. I'm going to show you a couple of pictures. State's
- 9 Exhibit Number 2. Do you recognize what's shown in that
- 10 picture?
- 11 A. Yes, I do. That picture was taken from the tower.
- 12 Q. From the east tower?
- 13 A. Yes.
- 14 Q. Now, you said something about a perimeter road. Is
- 15 that perimeter road shown in that picture?
- 16 A. Yes, it is.
- 17 Q. And where is the perimeter road? Show us with your
- 18 finger.
- 19 A. This is the perimeter road. The other road is for
- 20 deliveries.
- 21 Q. Well, show us the other road then.
- 22 A. The other road here is for deliveries to the back gate,
- 23 it does not go all the way around.
- 24 Q. Does the perimeter road go all the way around the
- 25 prison?

LESLIE JOE SCHNETTLER

- 1 A. Yes, it does.
- 2 Q. Are there fences shown in that photograph?
- 3 A. Yes, you've got three fences.
- 4 Q. Show us fence number one starting on the outer section.
- 5 A. Yes. This is one, that's two, then there's a fence
- 6 here, three, by the rec. field.
- 7 Q. Now, why are there two fences closest to the perimeter
- 8 road? Why two fences? Better than one?
- 9 A. More security.
- 10 Q. Razor wire on top of both?
- 11 A. Razor wire on top of the inner one, razor wire all the
- 12 way from the ground to the top on the outer.
- 13 Q. What is the area between the two fences?
- 14 A. Approximately 14 feet.
- 15 Q. And what is it, just space?
- 16 A. Yeah, just space, gravel.
- 17 Q. Say it again. Gravel?
- 18 A. Yeah, it's just gravel.
- 19 Q. Now, how many dorms are there at KCI?
- 20 A. Six.
- 21 Q. Is one of them called the Oak Unit?
- 22 A. Yes. Oak Unit is the first dorm on this picture here.
- 23 Q. What is a rec. area in relation to these units, dorm
- 24 units?
- 25 A. Each dorm unit has its own private rec. area for

LESLIE JOE SCHNETTLER

- 1 security reasons, it goes in between the two wings.
- 2 Q. Okay. And how is the rec. area defined?
- 3 A. By a fence with grayed ribbon over the top.
- 4 Q. And is that the third fence on the right of the picture
- 5 that you drew your finger on?
- 6 A. Yes.
- 7 Q. Okay. What is the lighting -- well, I'm going to
- 8 get -- let's get back in to some detail about that morning.
- 9 Did you observe anything unusual in the tower toward the end
- 10 of your shift that morning? Not what, but just yes or no at
- 11 this point.
- 12 A. Yes.
- 13 Q. About what time was it that you saw something?
- 14 A. About 5:45.
- 15 Q. What time -- I mean, what was the lighting -- natural
- 16 lighting conditions when you saw what you saw?
- 17 A. The sun had started to come up but hadn't broke the
- 18 horizon yet.
- 19 Q. Was there any natural light from the impending sunrise?
- 20 A. Yes.
- 21 Q. Is there any artificial lighting that was operable at
- 22 the time you saw what you saw?
- 23 A. Yes, there is. We have perimeter lighting which is
- 24 the --
- 25 Q. Use your finger.

LESLIE JOE SCHNETTLER

1 A. The light polls that were approximately 40 yards all of
2 the way down the side, here and here there's ten cluster
3 lights that illuminated even farther.

4 Q. Now, you said here and here, I missed that. Let me
5 clear the annotations and you show us again where the
6 cluster lightings are.

7 A. There's ten cluster lights. There's one there and
8 there's one right along the edge here.

9 Q. And you're talking about on the back side and on the
10 front side or both on the back side?

11 A. They're positioned strategically to give you the most
12 light around the buildings.

13 Q. All right. But the mark you put on the very far right
14 of that picture, is that intending to be on the front side
15 of the prison or on the back side of the prison? That's my
16 question.

17 A. It's probably right in the middle, there's another
18 one --

19 Q. It's inside the fence.

20 A. Yeah. They are all inside the fence.

21 Q. When you say cluster lighting, what were you talking
22 about? Something like football field lights?

23 A. Yeah. Six big lights, I don't know what the wattage is
24 on them or anything, but they're very bright.

25 Q. When it's dark outside say at 2:00 in the morning, how

LESLIE JOE SCHNETTLER

1 good is the lighting out there, the artificial lighting, how
2 good is it?

3 A. The artificial lighting is real good. You could see I
4 don't want to say buildings, but you could see people
5 walking all over the area in that picture with no problem.

6 Q. All right. This was your second tour in the tower
7 during your shift?

8 A. Yes.

9 Q. And how long about had you been in the tower?

10 A. About 45 minutes. You do two hours.

11 Q. And what is your job when you're in the tower, what are
12 you supposed to be doing?

13 A. Watching for escape attempts and any unreasonable
14 movement.

15 Q. Okay.

16 A. Extra cars that aren't supposed to be down there or
17 anything like that.

18 Q. And what are you trained to do if you see something
19 that you think is not normal?

20 A. To get as much information as possible.

21 Q. Okay. If you see something that is not normal other
22 than getting as much information as possible, what are you
23 supposed to do about it?

24 A. Call somebody and notify them.

25 Q. Do you have a radio on you when you are in the tower?

1 A. Yes, I do.

2 Q. Lapel radio?

3 A. Yes.

4 Q. Is there a telephone in the tower?

5 A. Yes, there is.

6 Q. Any other mode of communication in the tower?

7 A. No.

8 Q. All right.. Did you see something during your second
9 tour of tower?

10 A. Yes, I did.

11 Q. And about what time was it again?

12 A. 5:45.

13 Q. What did you see?

14 A. I saw a man run from the treeline to the edge of the
15 perimeter fence, throw several packages and then run back.

16 Q. All right. Now, I'm going to break it down. What dorm
17 did this event occur closest to?

18 A. Oak.

19 Q. Were there any people in the Oak -- other than that man
20 that you're going to tell us about in a minute, when this
21 was going on did you see any other people anywhere outside
22 of the prison?

23 A. No, I did not.

24 Q. When this event occurred, did you see any other people
25 inside the fence at the prison?

LESLIE JOE SCHNETTLER

- 1 A. No, I didn't.
- 2 Q. Were there any inmates out for rec. at a quarter until
3 five or six in the morning?
- 4 A. No.
- 5 Q. When you saw what you saw, were there any other
6 correctional officers out there at the time?
- 7 A. No.
- 8 Q. Okay. Describe the man. Well, let me backup. Did
9 you -- when you saw the man, what did you do?
- 10 A. When I saw the man I announced over the radio that, as
11 I put it at that time, I had a runner.
- 12 Q. A runner?
- 13 A. Yeah. Just to -- an intruder, and I called for and
14 they announced first responders back-up Oak rec. field.
- 15 Q. All right. First responders are what in the prison,
16 it's not necessarily medical care, is it?
- 17 A. No. It's any immediate help for you.
- 18 Q. Okay. Is there a crew that's designated first
19 responders?
- 20 A. Every night there is two people that are designated as
21 first responders.
- 22 Q. All right. Now, did you over the radio communicate
23 anything other than a runner? Did you communicate what you
24 had seen him do?
- 25 A. Yeah. Every time he grabbed a package and threw it

LESLIE JOE SCHNETTLER

1 over I announced, "He's throwing another one, he's throwing
2 another one, he's throwing another one."

3 Q. All right. Now, did you at some point describe to
4 others the person that you saw doing what you're describing?

5 A. I did over the phone. They called me to find out what
6 was going on over the phone and I told them that I had a man
7 throwing packages over and I just kept saying as much as I
8 could.

9 Q. Okay. Well for us, for them, describe this man that
10 you saw throwing stuff over the fence.

11 A. I described him as a white male, long jean shorts and a
12 dark shirt.

13 Q. Anything that struck you about the appearance of this
14 man?

15 A. When he turned to walk away or run away I saw his legs,
16 his leg was different in color, unusual.

17 Q. In what manner?

18 A. It seemed shiny to me.

19 Q. Smooth shiny or --

20 A. Very smooth.

21 Q. Anything else that you noticed about this man?

22 A. That was the one thing that stuck in my mind.

23 Q. Do you recall giving any height or weight description?

24 A. I said he was about six foot tall. I didn't give a
25 weight description.

LESLIE JOE SCHNETTLER

1 Q. That's fine. Now, the picture in State's Exhibit
2 Number 2 on the screen. Let me just ask you this first, is
3 that a picture of you looking -- of course, that's not a
4 picture of this man doing some kind of realtime picture, is
5 it?

6 A. No.

7 Q. Is that a picture of your view down the fence lines in
8 the direction where you saw this man?

9 A. Yes.

10 Q. Okay. Now, show the jury -- is that picture taken from
11 the tower?

12 A. Yes.

13 Q. Show the jury with your finger about where the man is,
14 about where the man was when you saw him.

15 A. Yeah. The man ran from there to about there.

16 Q. Okay. Now, when he ran to there, where is there?

17 A. There is the treeline.

18 Q. Okay. But where he ended up, what is he on?

19 A. He's on the perimeter road at this point.

20 Q. And if you're standing on the perimeter road on the far
21 right edge of the perimeter road from this view, how close
22 it the first fence? Can you reach out and touch it?

23 A. 14 feet. Or from the perimeter road where he was
24 throwing, about six or eight feet.

25 Q. Now, when he got to the perimeter road, what did he do?

LESLIE JOE SCHNETTLER

1 A. He started throwing packages over to the rec. field in
2 Oak.

3 Q. Did you see where he was getting the packages?

4 A. He was just bending down, picking them up.

5 Q. Did you see how they got somewhere down that he needed
6 to pick them up? That's I guess my question.

7 A. He carried them -- he dropped them and started throwing
8 them.

9 Q. And do you know how many times you saw him throw
10 something?

11 A. At least six.

12 Q. Did you holler out to him?

13 A. No, I didn't.

14 Q. I hate to ask this, y'all got weapons in the tower?

15 A. Yes, we do.

16 Q. Did you pull a rifle out the window and take a crack at
17 him or anything?

18 A. No.

19 Q. Do y'all do that? As far as somebody throwing -- I'm
20 not going to ask that, forget that.

21 A. According to policy we are ordered to shoot inmates
22 trying to escape, but civilians coming in we're not.

23 Q. Did you do anything yourself to alert this person that
24 "I see what you are doing?"

25 A. No.

LESLIE JOE SCHNETTLER

1 Q. Is there a spotlight in the tower that you wheel around
2 and lay on him like in Hogan's Heros or anything like that?

3 A. No. My announcement over the radio was to the rover to
4 get out there as fast as possible, which he had just driven
5 by the tower so he had to turn around and come back.

6 Q. Did the man get caught on the prison grounds?

7 A. No, he did not.

8 Q. What did he do when he got throwing?

9 A. Ran right back to the treeline where -- on the picture
10 there.

11 Q. About how long from the time you first saw him come out
12 of the treeline until you saw him finish throwing and
13 disappear back into the treeline, how long did all that
14 take?

15 A. Maybe 30 seconds.

16 Q. Could you see his -- could you see his face?

17 A. He was facing me but I did not look at his face. I got
18 a little excited, that's the first time I ever saw anyone
19 come and do that.

20 Q. Okay. Could you tell where the stuff he was throwing
21 was landing, could you see where stuff was ending up?

22 A. I could not see that. From this view the wall comes
23 and covers a lot of the --

24 Q. Okay. From the tower could you tell whether your
25 request for first responders was successful or not?

LESLIE JOE SCHNETTLER

1 A. Yes. I had at least two officers in that area very
2 soon after.

3 Q. Did you stay in the tower or come down out of the tower
4 immediately after you saw what you saw?

5 A. I stayed in the tower until I was relieved.

6 Q. First of all, what correctional officer relieved you?

7 A. Sergeant Lippe.

8 Q. Did you get up with somebody else from KCI when you got
9 relieved?

10 A. Sergeant Hunt.

11 Q. What was Sergeant Hunt's job at KCI then?

12 A. He's the contraband officer.

13 Q. Did you and Sergeant Hunt go somewhere?

14 A. Yes. We went down the road. We were notified that the
15 police had the suspect on the side of the road in the
16 custody.

17 Q. And where did you go?

18 A. We went down to the side of the road to ID him.

19 Q. Was there a police car there?

20 A. There was two.

21 Q. Do you know what agency those cars were from?

22 A. Lancaster County Sheriff.

23 Q. How did you and Hunt get down there?

24 A. His car.

25 Q. Correctional department truck?

LESLIE JOE SCHNETTLER

1 A. No.

2 Q. His personal vehicle.

3 A. Personal vehicle.

4 Q. When you got down there -- how long after you saw the
5 man run from the woods to the perimeter road and run back to
6 the woods, how long after that did you go to where Lancaster
7 County had somebody in custody?

8 A. Probably just under a half hour.

9 Q. What was the -- had the sun come up?

10 A. Yes.

11 Q. How was the natural light at that point?

12 A. Very good.

13 Q. When you first got to where the deputies were, where
14 was the suspect?

15 MR. STEEN: Objection. I renew my previous objection
16 to suppress the in-court statement.

17 THE COURT: All right. The objection is overruled and
18 preserved for the record.

19 Q. Where was the suspect when you first got to where the
20 deputies were?

21 A. In the car, in one of the deputy's cars.

22 Q. Did you see him inside the car to be able to determine
23 if you recognize him?

24 A. Yes.

25 Q. Did he ever move from in the car to somewhere else, in

LESLIE JOE SCHNETTLER

1 your presence?

2 A. Yes. I asked the deputies to pull him out and stand
3 him up so I could see his legs.

4 Q. Did they do that?

5 A. Yes, they did.

6 Q. You and me, I'm going to move to where you say I need
7 to move but I'm going to start coming towards you and you
8 tell me when I got to the closest point that you and this
9 person were.

10 A. About there.

11 Q. Okay. Were you in a car or in Hunt's truck or were you
12 out of Hunt's truck?

13 A. We were out standing, talking to the officers.

14 Q. And where was the suspect when you -- was he standing
15 erect?

16 A. Yes.

17 Q. Do you remember if he was handcuffed?

18 A. Yes. He was handcuffed at that time.

19 Q. Did you recognize the person that was brought out of
20 the back of the deputy's car.

21 A. Yes.

22 Q. And who was the person that was brought out of deputy's
23 car? Who was he in relation --

24 A. The same person that I saw throw packages over the
25 fence.

LESLIE JOE SCHNETTLER

- 1 Q. How certain are you of that?
- 2 A. 100 percent.
- 3 Q. What about what you're looking at out on 601 of this
- 4 person makes you say that's the guy?
- 5 A. His legs looked the same as the guy that -- and his
- 6 clothes and his skin color.
- 7 Q. I'm going to show you State's Exhibits -- do you
- 8 recognize State's 5?
- 9 A. Yes.
- 10 Q. And what is State's 5?
- 11 A. It's the shirt he was wearing at the time.
- 12 Q. Are you sure that that's the shirt?
- 13 A. Yes.
- 14 Q. And State's 6, do you recognize that?
- 15 A. Yes.
- 16 Q. What is that?
- 17 A. It's the long shorts that he was wearing at the time.
- 18 Q. Are you sure about that?
- 19 A. Yes.
- 20 Q. Today do you see the person that threw the stuff over
- 21 the fence?
- 22 A. Yes, I do.
- 23 Q. Where is he sitting and what is he wearing?
- 24 A. He's wearing a light gray shirt buttoned up to the neck
- 25 sitting in between the two men at the other table.

1 MR. BARFIELD: Raise your hand, Mr. Wyatt.

2 Q. Is that the person?

3 A. Yes, it is.

4 Q. How sure are you of that?

5 A. 100 percent.

6 Q. What county is Kershaw Correctional Institution in?

7 A. Lancaster County.

8 MR. BARFIELD: Thank you, sir. Answer anything

9 Mr. Steen has.

10 THE COURT: Yes, sir?

11 MR. STEEN: Thank you, Your Honor. Thank you, Officer.

12 CROSS EXAMINATION

13 BY MR. STEEN:

14 Q. And you say you were trained to identify those who
15 attempt to breach the prison wall --

16 A. Yes.

17 Q. -- to get as much information as possible?

18 A. Yes.

19 Q. You described the individual at that time as a white
20 male wearing a dark shirt with long shorts and shiny legs,
21 correct?

22 A. Yes.

23 Q. What build did the person have that you saw outside of
24 the perimeter?

25 A. Medium build.

LESLIE JOE SCHNETTLER

- 1 Q. Was he wearing any head cover, hat or anything?
- 2 A. Not that I saw.
- 3 Q. And what length was his hair?
- 4 A. What?
- 5 Q. What length was his hair?
- 6 A. From my vantage point it was short.
- 7 Q. What color was his hair?
- 8 A. At that point I couldn't tell you.
- 9 Q. Did he have anything on his face covering it up?
- 10 A. No, not that I saw.
- 11 Q. Did he have any facial hair?
- 12 A. Not that I saw.
- 13 Q. Did he have any other distinguishable facial features?
- 14 A. Not that I saw.
- 15 Q. Was the shirt long sleeved or short sleeved?
- 16 A. Short sleeved.
- 17 Q. Did the shirt have any markings on it?
- 18 A. Not that I saw from that point.
- 19 Q. Was the individual wearing any gloves?
- 20 A. Not that I saw from that point.
- 21 Q. Did you notice any markings on the individual's legs or
- 22 arms?
- 23 A. No, I did not.
- 24 Q. Did you see what type of shoes the person was wearing?
- 25 A. All I could see was dark shoes.

LESLIE JOE SCHNETTLER

1 Q. And when you met up with Mr. Wyatt outside the prison
2 on Highway 601, did he appear winded or exhausted or
3 anything?

4 A. No, he did not.

5 MR. STEEN: One moment, Your Honor.

6 (Break in proceedings.)

7 Q. You stated in the pictures that are over there the
8 light polls are about 40 yards apart?

9 A. Yes.

10 Q. And where would you say the person at the perimeter
11 were with regards to the light polls?

12 A. Two light polls down.

13 Q. How many light polls down?

14 A. Two, maybe a little bit farther than two light polls.

15 MR. STEEN: No further questions. Thank you, officer.

16 MR. BARFIELD: No redirect.

17 THE COURT: All right, sir, you may step down. Any
18 objection to this witness being excused?

19 MR. BARFIELD: None from the State.

20 MR. STEEN: None from the defense.

21 THE COURT: You are free to leave.

22 The witness, BENJAMIN EUGENE DAVIS, was first
23 duly sworn and testified as follows, on:

24 DIRECT EXAMINATION

25 BY MR. BARFIELD:

BENJAMIN EUGENE DAVIS

- 1 Q. Tell us your name, please, sir.
- 2 A. Benjamin Eugene Davis.
- 3 Q. And Mr. Davis, by whom are you employed?
- 4 A. South Carolina Department of Corrections.
- 5 Q. How long have you been employed by the SCDC?
- 6 A. Ten years, seven months.
- 7 Q. Where are you currently working for SCDC?
- 8 A. Shift lieutenant?
- 9 Q. At what facility?
- 10 A. For Kershaw.
- 11 Q. How long have you been at Kershaw?
- 12 A. Ten years, seven months.
- 13 Q. You are currently a shift lieutenant; is that right?
- 14 A. Yes.
- 15 Q. Were you employed and working at KCI on Friday morning,
- 16 July 12th of 2013?
- 17 A. Yes, sir.
- 18 Q. What was your rank and what was your job down there
- 19 then?
- 20 A. I was a shift sergeant.
- 21 Q. Were you working day shift or night shift -- when these
- 22 events occurred that you're going to tell us about, were you
- 23 working day shift or night shift?
- 24 A. Night shift.
- 25 Q. Okay. What time was night shift supposed to be over

BENJAMIN EUGENE DAVIS

1 there?

2 A. 7:00 a.m.

3 Q. And generally speaking on that particular shift toward
4 the end of the shift, what were you doing? Where were you
5 and what were you doing before this event occurred or got
6 brought to your attention?

7 A. In the cafeteria feeding.

8 Q. Okay. Feeding inmates?

9 A. Yes.

10 Q. Was it breakfast time?

11 A. Yes.

12 Q. And did you become aware that something was going on
13 that needed your attention?

14 A. Yes, when they activated first responders.

15 Q. Were you designated a first responder?

16 A. Yes.

17 Q. Is everybody who is a correctional a first responder?

18 A. No.

19 Q. And as a first responder, what are you supposed to do?

20 A. Assess the situation and then take control and
21 deactivate.

22 Q. Assess, control and deactivate?

23 A. Yes.

24 Q. Do first responders respond to stuff that happened
25 outside and inside?

BENJAMIN EUGENE DAVIS

- 1 A. Yes.
- 2 Q. Do they respond to things that involve inmates and
3 non-inmates?
- 4 A. Yes.
- 5 Q. What was the nature of the -- how do first responders
6 get activated? Radio, intercom, or what? .
- 7 A. A radio, and then it's announced again over the PA.
- 8 Q. And what was the nature of the call that first
9 responders were being sent to? .
- 10 A. A throw-over behind Oak Unit.
- 11 Q. How far is the cafeteria from behind Oak Unit?
- 12 A. About 200 yards.
- 13 Q. Did you go?
- 14 A. Yes.
- 15 Q. Did you have to go somewhere to gear up before you went
16 or did you just go like you are?
- 17 A. No, we go as we are.
- 18 Q. First of all, did you see anybody throw anything over
19 the fence?
- 20 A. No.
- 21 Q. Did you see anybody inside or outside the prison
22 facility that shouldn't have been there?
- 23 A. No, I'm in the cafeteria.
- 24 Q. Did you ever see the person who got arrested for this?
- 25 A. No.

BENJAMIN EUGENE DAVIS

1 Q. Did you go to the Oak rec. area?

2 A. Yes.

3 Q. How big is the Oak rec. area?

4 A. It's the same length as the dorm itself, it's just not
5 as wide.

6 Q. Is it as big as this courtroom?

7 A. It's as wide as this courtroom but a little bit longer.

8 Q. Not as big as a football field?

9 A. No.

10 Q. Is there -- is it just an area or is there equipment,
11 exercise equipment, sporting items or anything out?

12 A. There's a basketball goal and workout bench.

13 Q. Are there weights?

14 A. No. They have to use their own body weight, it's just
15 pull-up bars.

16 Q. Eventually who all ended up in the Oak area that you
17 recall?

18 A. Myself, Lieutenant Hunter and Sergeant Rennick.

19 Q. Were there ever any inmates out there when you were
20 there?

21 A. No.

22 Q. Did you see anything in the Oak rec. area that drew
23 your attention?

24 A. Just the packages.

25 Q. What do you mean the packages? First of all, how many

BENJAMIN EUGENE DAVIS

- 1 packages?
- 2 A. I can't remember the exact number, it was a lot. But
- 3 they were wrapped up in tape and sealed up and they were
- 4 just all strowed out across the rec. field.
- 5 Q. Were they all in the Oak rec. field?
- 6 A. Yes.
- 7 Q. Did y'all look outside the Oak rec. fence between there
- 8 and the perimeter fences to see if there was anything in
- 9 their area?
- 10 A. Yes. That's how we entered into the rec. field,
- 11 because the unit was coming back from eating so we had to go
- 12 on the inner perimeter to access the gate to the rec. field
- 13 so the inmates couldn't get to it.
- 14 Q. Did y'all find anything on prison property outside of
- 15 the Oak rec. field?
- 16 A. Not that I'm aware of.
- 17 Q. Describe the packages. I'm going to show you some
- 18 pictures in a minute, but describe these packages. What was
- 19 the shape of these packages?
- 20 A. Like oval shape, oblong.
- 21 Q. How big? Use your hands to show us how big.
- 22 A. They were bigger than --
- 23 Q. Well, use your hands that way --
- 24 A. They were probably about that big around.
- 25 Q. And what was the outer surface of those packages?

BENJAMIN EUGENE DAVIS

- 1 A. Tape.
- 2 Q. What colored tape?
- 3 A. I believe black.
- 4 Q. Did they all appear to be wrapped in the same type of
- 5 tape?
- 6 A. Yes.
- 7 Q. I'll show you a picture, State's Exhibit Number 7. And
- 8 look on your screen there. Can you see that okay?
- 9 A. Yes.
- 10 Q. Do you recognize what's shown in those pictures?
- 11 A. Yes.
- 12 Q. What is that?
- 13 A. That's the contraband that was thrown over.
- 14 Q. Now, is that what the packages looked like when you
- 15 first saw them?
- 16 A. Yes.
- 17 Q. Now, when you saw these packages in the Oak rec. field,
- 18 what did you do with them? Did you touch them?
- 19 A. Yes. I gathered them up.
- 20 Q. Gathered them up.
- 21 A. Yes.
- 22 Q. Just in your arms or did you put them in a bag or did
- 23 you --
- 24 A. I put them in my cargo pockets.
- 25 Q. And what did you do with them after you put them in

BENJAMIN EUGENE DAVIS

- 1 your cargo pockets?
- 2 A. I went straight to the shift office.
- 3 Q. Did you ever open them up?
- 4 A. No.
- 5 Q. At any time after you got to the shift office did you
- 6 ever open them up?
- 7 A. No.
- 8 Q. Do you even know what was in them other than what
- 9 somebody might have told you?
- 10 A. No, it's against policy.
- 11 Q. Where is the shift office?
- 12 A. In the A building. It's up front where no inmates have
- 13 access.
- 14 Q. And what is the shift office?
- 15 A. It's the office for the shift supervisors to have all
- 16 of their paperwork, computers, stuff to carry out business.
- 17 Q. And who's in charge of the shift office?
- 18 A. That night Lieutenant Phelps.
- 19 Q. What did you do when you got to the shift office?
- 20 A. I laid them on her desk and waited for her to return.
- 21 Q. And did she show up?
- 22 A. Yes.
- 23 Q. Between you picking them up and getting to the shift
- 24 office, did anybody else monkey around with them?
- 25 A. No.

BENJAMIN EUGENE DAVIS

1 Q. From you laying them on her desk and her arriving did
2 anybody monkey around with them?

3 A. No.

4 Q. When she got there what did you do?

5 A. I just told her, "Here is the contraband we received,"
6 and I went back to the cafeteria.

7 Q. Have you got any further involvement in this case after
8 that point?

9 A. No.

10 Q. Now, I'm going to show you a bag full of stuff. Just
11 dig around in there and tell me if you know what's in that
12 bag. There's some black things in that bag, let me ask you
13 that question. Do you know what the black stuff is in that
14 bag?

15 A. There's some tape, it looks like duct tape.

16 Q. Okay. And specifically do you know what duct tape? I
17 mean, do you know --

18 A. That's a black wrapper.

19 Q. Does it appear to be the same type stuff that you saw
20 around those packages?

21 A. Yes.

22 MR. BARFIELD: I would ask to mark this whole bag and
23 its contents for identification to be State's Number 10.

24 THE COURT: All right. So for ID purposes?

25 MR. BARFIELD: Thank you, sir. Answer anything

PAMELA JOHNSON PHELPS

1 A. Did I hear it?

2 Q. Yes, ma'am, through the radio.

3 A. Oh, yes.

4 Q. What description did you hear?

5 A. To alert there was someone out there.

6 Q. Yes, ma'am. But was there a description given of the
7 runner over the radio?

8 A. Oh, no. No, sir.

9 Q. And are you aware if any fingerprints were lifted from
10 the packages?

11 A. No.

12 MR. STEEN: No further questions. Thank you,
13 Lieutenant.

14 MR. BARFIELD: Nothing further, ask that she be
15 excused:

16 THE COURT: All right. Any objection to her being
17 excused?

18 MR. STEEN: Without objection.

19 THE COURT: All right. You're free to leave. Thank
20 you.

21 MR. BARFIELD: Chris Hunt.

22 The witness, CHRISTOPHER HUNT, was first duly
23 sworn and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. BARFIELD:

CHRISTOPHER HUNT

- 1 Q. Tell us your name, please, sir.
- 2 A. Chris Hunt.
- 3 Q. Mr. Hunt, by whom are you employed?
- 4 A. SCDC.
- 5 Q. How long have you been with SCDC?
- 6 A. Approximately three and a half years.
- 7 Q. What facility are you assigned to?
- 8 A. Kershaw.
- 9 Q. How long have you been at Kershaw?
- 10 A. Three and a half years approximately.
- 11 Q. What was your job at KCI on 7/12 of '13?
- 12 A. Corporal in contraband.
- 13 Q. And when you say corporal in contraband, what does that
- 14 mean?
- 15 A. I was above an officer as a corporal, a supervisor in
- 16 the contraband office.
- 17 Q. And what function is a contraband officer at KCI?
- 18 A. We try to control any kind of contraband coming
- 19 inside -- from the outside inside or any contraband inside
- 20 the institution.
- 21 Q. Now, who decides what's contraband?
- 22 A. SCDC.
- 23 Q. Are there written policies about what can and can't be
- 24 in prison?
- 25 A. Yes, sir.

CHRISTOPHER HUNT

1 Q. Are illegal drugs considered contraband, meaning
2 illicit drugs like marijuana and crack and powdered cocaine?

3 A. Correct.

4 Q. Are legal drugs, meaning prescription drugs that
5 somebody might get from a doctor at a pharmacy, can they be
6 contraband?

7 A. If it's not prescribed to the inmate, yes.

8 Q. Are weapons contraband?

9 A. Yes, sir.

10 Q. Is cigarettes contraband?

11 A. Yes, sir.

12 Q. All tobacco products, are they contraband?

13 A. Yes, sir.

14 Q. Are cellphones contraband?

15 A. Yes, sir.

16 Q. Are chargers contraband?

17 A. Yes, sir.

18 Q. Were you scheduled to work on July 12th of 2013?

19 A. Yes, sir.

20 Q. Did you go to work?

21 A. Yes, sir.

22 Q. Before you got to work, were you aware that anything
23 had happened at KCI?

24 A. No, sir.

25 Q. When you got to work, did you become aware that

CHRISTOPHER HUNT

1 something had happened at KCI?

2 A. Yes, sir.

3 Q. How soon after you got to work or close to work did you
4 realize something was going on?

5 A. When I pulled in the parking lot.

6 Q. What did you find out had occurred generally speaking,
7 not the detail, but what was the event?

8 A. There was a Lancaster County Sheriff's Department car
9 in the parking lot and Sergeant Lippe -- I knew something
10 was probably going on and Sergeant Lippe come to me and said
11 that she had seen somebody walking down the road.

12 Q. And after you saw -- after you talked to Lippe and saw
13 the deputy in the parking lot, did you find out exactly what
14 supposedly had happened?

15 A. Yes. Someone had thrown packages over the fence.

16 Q. Now, let me ask you some general things about the
17 prison. First of all let me ask you this: As contraband
18 officer, are you interested in gathering evidence to
19 determine where it came from or who might have brought it?

20 A. Yes.

21 Q. Is there video recording equipment in the towers at
22 KCI?

23 A. No.

24 Q. Is there any videotape or any still pictures of this
25 even that you're going to tell us about in progress?

CHRISTOPHER HUNT

1 A. No.

2 Q. I'm going to show you -- did you -- as a result of that
3 event, did you take some pictures?

4 A. Yes.

5 Q. I'm going to show you some pictures. State's Exhibit
6 Number 1, look on your screen there and I hope it's not
7 glared too badly. Did you take that picture?

8 A. I did.

9 Q. And what's that showing us a picture of?

10 A. That is a showing a picture of the tower and --

11 Q. Which tower?

12 A. The east tower.

13 Q. Okay.

14 A. And the tree right where the suspect run from.

15 Q. Okay. That would be looking back to the tower from
16 where this person was coming out of the wood line?

17 A. Yes.

18 Q. I'm going to show you State's Exhibit 2. Did you take
19 can -- you see that? Is that okay?

20 A. Yes.

21 Q. Did you take that picture?

22 A. Yes.

23 Q. What is that a picture of?

24 A. That's a picture of the Oak Unit showing the rec. field
25 from the back side.

1 Q. Let me show you State's Number 2. Did you take that
2 picture?

3 A. Yes.

4 Q. What's that a picture of?

5 A. That's a picture of the Oak Unit, just a wider version
6 of it.

7 Q. And does that picture show a wood line?

8 A. It does.

9 Q. And does it include the general area where you
10 understand this person ran from the woods?

11 A. Correct.

12 Q. All right. And with your finger you can make a mark on
13 that picture. Show us generally speaking where you
14 understood that to be based on information in your
15 investigation.

16 A. (Witness complies.)

17 Q. When you got there -- well, when you found out there
18 had been perhaps a contraband incident, what did you do?

19 A. At that point after talking to Lippe and the sheriff's
20 department I walked to the front gate and they had given me
21 the information that Schnettler had seen the person coming
22 and throwing the packages and running back in. And I had
23 somebody to -- I can't recall who I talked to, but I had
24 them come and relieve the east tower for Officer Schnettler.

25 Q. Before we go on let me ask you a couple of things. Are

CHRISTOPHER HUNT

1 you telling us you basically got to the front door of the
2 prison and didn't go any further inside, you backed out and
3 did something else?

4 A. That's correct.

5 Q. Did you ever -- do you know whether the contraband had
6 been cleared from the Oak rec. field? Let me ask you a
7 different question. Did you ever go to the Oak rec. field?

8 A. No.

9 Q. Did you ever see the contraband on the ground in the
10 Oak rec. field?

11 A. No.

12 Q. Did you ever seize any contraband from the Oak rec.
13 field?

14 A. No.

15 Q. You were at the front gate, you go in and you find out
16 what's going on. What did you do next?

17 A. I had called, I don't recall who I talked to, but I had
18 someone come and relieve Schnettler. After he was relieved
19 we proceeded to drive up the road and Lancaster County had a
20 gentleman in the car and we pulled behind them.

21 Q. You and who drove down the road?

22 A. Me and Officer Schnettler.

23 Q. What road were you on?

24 A. 601.

25 Q. What direction from the prison were you headed?

CHRISTOPHER HUNT

1 A. Towards Kershaw.

2 Q. Did you see one or more Lancaster County sheriff's
3 deputy's car somewhere along the roadway?

4 A. Yes.

5 Q. Did you stop?

6 A. Yes.

7 Q. Did you see anybody in custody there?

8 A. Yes.

9 Q. Now, had you seen this person anywhere on the prison
10 grounds yourself?

11 A. No.

12 Q. Was there any reason for you to be ID'ing this person?

13 A. No, I wasn't ID'ing.

14 Q. Okay. Did you observe the person and Schnettler there
15 on the side of the road with the sheriff's deputy?

16 A. I did, I was right beside Schnettler.

17 Q. Where was the person?

18 A. He was in the back seat of the patrol car when I
19 arrived.

20 Q. Did he ever move from the back seat of the patrol car?

21 A. Yes. They got him out of the back and brought him
22 around to the front of the car.

23 Q. Was he handcuffed?

24 A. He was.

25 Q. Behind him?

CHRISTOPHER HUNT

- 1 A. Behind the back.
- 2 Q. Do you see today in the courtroom the guy that was
3 handcuffed behind his back outside the car on 601 that
4 morning?
- 5 A. Yes, sir.
- 6 Q. Where is he sitting and what is he wearing?
- 7 A. He's right here in it looks like a gray shirt.
- 8 Q. It that the fellow that you saw get out of the back of
9 the patrol car?
- 10 A. It is.
- 11 Q. You didn't see him do anything that day though; is that
12 correct?
- 13 A. No, I did not.
- 14 Q. After that -- well, after that what did you do? After
15 you and Schnettler were out there on the side of the road
16 with the deputy and Mr. Wyatt, what did y'all do?
- 17 A. We turned around and proceeded back to the institution.
- 18 Q. All right. When you got back to the institution, what
19 was your objective? What were you going to do from that
20 point on concerning this matter?
- 21 A. I directed Officer Schnettler to go to the shift office
22 to the supervisors to make sure he completed the proper
23 paperwork, and I went to the shift office and got the
24 contraband.
- 25 Q. I'm going to show you another picture. Well, let me --

- 1 well, let me ask you this first. You got the contraband.
- 2 Where was it when you got?
- 3 A. On the table in the shift office.
- 4 Q. Was it being watched over by somebody?
- 5 A. I think Sergeant Davis was in there and Lieutenant
- 6 Phelps was over the institution at that time.
- 7 Q. Okay. When you saw the contraband, did it appear to
- 8 have been disturbed in any fashion? Well, let me back up.
- 9 Describe the contraband, the packages that you saw.
- 10 A. It was in black like electrical tape.
- 11 Q. Using your hands, show us the general size and shape of
- 12 the packages.
- 13 A. About that long and about that big around, each one.
- 14 Q. I'm going to show you State's Exhibit Number 7. Do you
- 15 recognize that?
- 16 A. Yes, sir.
- 17 Q. Who took that picture?
- 18 A. I did.
- 19 Q. Where was that picture actually taken?
- 20 A. In the contraband office.
- 21 Q. Not the shift office, but the contraband office?
- 22 A. That's correct.
- 23 Q. And what's shown in that picture?
- 24 A. Eight packages.
- 25 Q. Are those the eight packages that you retrieved from

CHRISTOPHER HUNT

1 the shift office?

2 A. That's correct.

3 Q. When you put your hands on them the first time, is that
4 the condition they were in?

5 A. Yes.

6 Q. Had they been opened up or tampered with in any way
7 that you could tell?

8 A. No. No one would have that.

9 Q. Now, I'm going to jump way ahead. At some point did
10 you open them up?

11 A. I did.

12 Q. I'm going to hand you State's Exhibit Number 10 for
13 identification and ask you if you can identify the contents
14 of that grocery bag?

15 A. Yes.

16 Q. What is in that grocery bag generally speaking?

17 A. It's the baggies and black electrical tape that the
18 package was formed with.

19 Q. Is that part of State's Exhibit Number 7 that I showed
20 you a minute ago?

21 A. It is. It's the outside of those packages.

22 Q. And there appears to be a bunch of zip lock baggies in
23 there.. Where were they when you opened stuff up?

24 A. They were inside wrapped up..

25 Q. Did they have stuff in them?

CHRISTOPHER HUNT

1 A. Uh-huh, that I recall.

2 MR. BARFIELD: Your Honor, at this time I'm going to
3 offer State's Number 10 as an exhibit rather than simply for
4 identification purposes.

5 MR. STEEN: Without objection.

6 THE COURT: All right. So that's State's Exhibit
7 Number 10. It will be entered without objection?

8 MR. STEEN: Yes, sir.

9 (The grocery bag with items was received as
10 State's 10.)

11 Q. At what point that morning from going -- from getting
12 them at the shift office and taking them to -- well, let me
13 back up. Contraband office. Is there one contraband office
14 at KCI?

15 A. Yes.

16 Q. Is there one contraband officer per shift?

17 A. At that time I think there was two per shift.

18 Q. Is the contraband office a secure office?

19 A. Yes. The only key would be with the contraband officer
20 and the warden.

21 Q. Is there a safe or some locking device inside the
22 contraband office?

23 A. Yes. There's a safe room inside the contraband office.

24 Q. Now, from shift office to contraband office, how long
25 after -- how long did that occur after you had been down on

CHRISTOPHER HUNT

1 the side of the road with Schnettler to see the deputies?

2 A. Approximately 20 or 25 minutes, something like that.

3 Q. Now, when did you start working with these eight
4 packages that were wrapped in duct tape? That morning or
5 some other time later on?

6 A. Immediately after we took the photos.

7 Q. Did you open up the eight packages shown in State's
8 Exhibit Number 7?

9 A. Yes.

10 Q. I'm going to show you another picture. Let me do this
11 first. I'll show you State's Exhibit Number 4, we're going
12 back outside for a minute. Did you take that picture?

13 A. I did.

14 Q. What's that a picture of?

15 A. That's a picture of the Oak Unit.

16 Q. And from what vantage point generally speaking?

17 A. That is from the wood line looking to the area of the
18 unit.

19 Q. Now, I'm going to show you State's Exhibit Number 8.
20 Did you take that picture?

21 A. I did.

22 Q. Don't tell me what the items are, but generally
23 speaking what does that picture show?

24 A. It shows what was contained inside the packages.

25 Q. And where was that picture taken?

- 1 A. Same table in the contraband office.
- 2 Q. We're not going to talk about the illicit drugs right
- 3 now but I want to ask you about a couple of other things.
- 4 A. Okay.
- 5 Q. How many packages were there in the area that I'm
- 6 circling with my finger?
- 7 A. It looks like 15.
- 8 Q. What was that stuff?
- 9 A. That was tobacco.
- 10 Q. Tobacco?
- 11 A. Yes.
- 12 Q. Just straight tobacco.
- 13 A. Yes.
- 14 Q. Nothing laced in there, just smoking tobacco?
- 15 A. I didn't see anything lacing in there, it was just
- 16 tobacco.
- 17 Q. Again, other than illicit drugs and other than tobacco,
- 18 what else was in those packages?
- 19 A. Cellphones.
- 20 Q. How many cellphones?
- 21 A. It looks like nine phones.
- 22 Q. Was anything else in there?
- 23 A. Chargers, cellphone chargers.
- 24 Q. How many cellphone chargers? Can you see from that
- 25 picture?

CHRISTOPHER HUNT

- 1 A. It looks like six or seven.
- 2 Q. There seems to be a circle around two things where I am
- 3 pointing my pen.
- 4 A. Correct.
- 5 Q. Generally speaking, what are those two items? Not
- 6 scientifically, but generally speaking what are those two
- 7 items?
- 8 A. The two items that was inside the package.
- 9 Q. And what did they appear to you to be, I guess?
- 10 A. A green leafy substance to be marijuana.
- 11 Q. Suspected to be marijuana?
- 12 A. Yes.
- 13 Q. Did you do any examination of that stuff at all, of
- 14 those two items yourself?
- 15 A. Yes.
- 16 Q. And how do you -- are you trained to do what you're
- 17 fixin' to tell us you did?
- 18 A. Yes.
- 19 Q. First of all, what is that you did with those two
- 20 items, what you described as maybe being marijuana?
- 21 A. I performed a nik test for THC.
- 22 Q. How do you spell nik?
- 23 A. Nik.
- 24 Q. And what does nik stand for, is it an acronym or do you
- 25 know?

- 1 A. No.
- 2 Q. What is a nik test? How do you do a nik test?
- 3 A. You place whatever the product is, I place the green
- 4 leafy substance inside the package, and then you break each
- 5 capsule on the bottom of the nik test.
- 6 Q. Is it a chemical test of some sort?
- 7 A. It is.
- 8 Q. Does it involve liquid?
- 9 A. It does.
- 10 Q. Exposure of the green leafy stuff to some liquid?
- 11 A. It does.
- 12 Q. And what are you looking for to make some conclusion
- 13 one way or the other?
- 14 A. You're looking for different colors.
- 15 Q. Are you trained to perform a nik test?
- 16 A. I was trained.
- 17 Q. How did you get trained to do a nik test?
- 18 A. Through the agency.
- 19 Q. Did you do a nik test?
- 20 A. I did.
- 21 Q. Did you get some result from the nik test?
- 22 A. We did.
- 23 Q. And what was the result from the nik test?
- 24 A. It was positive for THC.
- 25 Q. And what is THC?

CHRISTOPHER HUNT

- 1 A. It's a form of marijuana.
- 2 Q. Did you do any testing on any of the other stuff?
- 3 A. No.
- 4 Q. Now, I'm going to ask you about a couple of other
- 5 items. Using my pen again -- well, let me ask you about
- 6 this one first. What did that look like?
- 7 A. It was some pills.
- 8 Q. Okay. Did you do any testing on it?
- 9 A. No, I'm not qualified for that.
- 10 Q. There's another circle around a couple of items right
- 11 there. Generally describe those two items.
- 12 A. One looked like crack cocaine and one looked like
- 13 powder cocaine..
- 14 Q. Did you do any testing on that?
- 15 A. No.
- 16 Q. When you got through your examination of those items on
- 17 July 12th of 2013, what did you do with them?
- 18 A. After I got finished?
- 19 Q. When you got done whatever you needed to do with them
- 20 that day, photograph them and doing the things that you just
- 21 described to us, what did you do with that stuff?
- 22 A. We placed it in evidence bags, did a chain of custody
- 23 where it come from, and then placed it inside the safe until
- 24 an investigator could come and bag it up.
- 25 Q. Was it locked up from that point on?

CHRISTOPHER HUNT

1 A. Yes.

2 Q. Did it move from your safe to somebody else later on?

3 A. To investigator.

4 Q. This lady I'm standing behind right here?

5 A. Investigator Brockenberry, yes, sir.

6 Q. At this point I'm not going to open this stuff up, but
7 take that envelope and just look at it for a minute and tell
8 me if you can identify what that is.

9 A. This is the evidence that I got from Brockenberry.

10 Q. Did it come back to KCI at some point after somebody
11 else had been doing some work with it?

12 A. Yes, sir.

13 Q. Is this the same stuff in different packaging that you
14 had locked up in the contraband office on July 12th of 2013?

15 A. Yes, sir.

16 Q. Now, between the time that you laid your hands on --
17 well, let me back up. Between the time you laid your hands
18 on these packages still wrapped up until you got through
19 doing the examination of them that you described you did
20 that day, did anybody else mess with it?

21 A. No.

22 Q. From the time you got through with these things, did
23 anybody else mess with it?

24 A. No.

25 Q. Who is Ruby Brockenberry?

CHRISTOPHER HUNT

- 1 A. An investigator for SCDC.
- 2 Q. And from the time that you messed with this stuff until
- 3 she picked them up from you, did she pick them up directly
- 4 from you?
- 5 A. Yes.
- 6 Q. And where did you have to get them from to get them
- 7 from her?
- 8 A. The safe in the contraband office.
- 9 Q. Had anybody messed with them up to that point?
- 10 A. No.
- 11 Q. I'm going to show you one more picture of State's
- 12 Exhibit Number 9. Do you recognize that picture?
- 13 A. Yes, sir.
- 14 Q. Did you take it?
- 15 A. I did.
- 16 Q. What is that stuff down there?
- 17 A. On the bottom?
- 18 Q. Yeah.
- 19 A. Cellphones.
- 20 Q. And what are those two things?
- 21 A. Marijuana.
- 22 Q. And what are -- what is that thing?
- 23 A. That's the pills.
- 24 Q. What is those two things?
- 25 A. Cocaine.

CHRISTOPHER HUNT

1 Q. What appeared to be cocaine to you?

2 A. Yeah.

3 MR. BARFIELD: Thank you, sir. Answer anything

4 Mr. Steen has.

5 CROSS EXAMINATION

6 BY MR. STEEN:

7 Q. Thank you, Corporal. When Officer Schnettler contacted
8 you by phone, what description of the runner did he give you
9 at that point?

10 A. I didn't -- he didn't contact me by phone.

11 Q. He didn't contact you to get the description?

12 A. No, sir.

13 Q. When you arrived with Officer Schnettler to meet with
14 the Lancaster County sheriff's deputy, did you take any
15 personal property of Mr. Wyatt?

16 A. No.

17 Q. Did you not see a phone with him at that time?

18 A. I did see a phone.

19 Q. And did you look at that phone any at that time?

20 A. Lancaster County took the phone out of his hand.

21 Q. He had the phone in his hands?

22 A. Yes.

23 Q. Mr. Wyatt did?

24 A. Yes.

25 Q. The Lancaster County deputy took a phone from him at

CHRISTOPHER HUNT

1 that point..

2 A. That's correct.

3 Q. You were talking about cameras earlier. Are there any
4 cameras outside of Kershaw Correctional?

5 A. Not outside, no.

6 Q. So none face outside the prison.

7 A. Yes. There is some inside the prison that faces out.

8 Q. But at this particular location there was just not a
9 camera that faced out?

10 A. Correct.

11 Q. And are you aware of any fingerprints lifted or
12 attempted to being lifted off the package?

13 A. No.

14 Q. One moment. Corporal, so you state you did not use
15 Mr. Wyatt's phone to contact anyone?

16 A. No.

17 MR. STEEN: Thank you.

18 THE COURT: All right. Any other questions from the
19 State?

20 MR. BARFIELD: None from this witness. Ask that he
21 hang around for a few minutes, I just want to make sure I'm
22 clear about everything.

23 THE COURT: All right. Sir, you can step down. All
24 right. Ladies and gentlemen of the jury, at this time we
25 have been going probably close to about an hour and 45.

RUBY BROCKENBERRY

1 minutes and I know I promised you all a break every hour,
2 hour and a half, so we will take a break. We will take our
3 morning break at this time, well take about 10 or 15
4 minutes. All right. Thank you.

5 (The jury left the courtroom and a break was
6 taken.)

7 (The Jury returned to the courtroom.)

8 THE COURT: Ladies and gentlemen of the jury, we will
9 continue with the State's case, and I will ask Solicitor
10 Barfield to call his next witness.

11 MR. BARFIELD: I call Ruby Brockenberry.

12 The witness, RUBY BROCKENBERRY, was first duly
13 sworn and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BARFIELD:

16 Q. Tell us your name, please, ma'am.

17 A. My name is Ruby Brockenberry.

18 Q. And spell your last name -- well, he's got it on my
19 witness list; I don't think you need to spell it. Ms.
20 Brockenberry, by whom are you employed right now?

21 A. I'm employed with the South Carolina Department of
22 Corrections.

23 Q. What do you do for SCDC?

24 A. My job is internal affairs. I also work investigations
25 for South Carolina Department of Corrections.

RUBY BROCKENBERRY

1 Q. Are you a Certified Law Enforcement Officer Class One,
2 or whatever the highest classification is in the State of
3 South Carolina?

4 A. Yes. I am certified through the South Carolina
5 Criminal Justice Academy.

6 Q. How long have you been a certified sworn police
7 officer?

8 A. Approximately 18 years.

9 Q. How long have you been with SCDC?

10 A. I've been with SCDC approximately two years.

11 Q. Were you an investigator for the South Carolina
12 Department of Corrections on July 12th of 2013?

13 A. Yes, I was.

14 Q. Did the area that you cover for investigations include
15 Kershaw Correctional Institution back then?

16 A. Yes, it did.

17 Q. Were you present at the institution when the events
18 that we're all here about occurred?

19 A. I was not present at the time the event occurred at
20 Kershaw Institution.

21 Q. Did you respond to KCI some time later that day?

22 A. I did.

23 Q. Did you at any time see anybody throw contraband over
24 the fence in relation to this case?

25 A. I did not see them.

RUBY BROCKENBERRY

1 Q. Did you at any time ever see -- well, did you see the
2 person ultimately charged in this case at some point that
3 day?

4 A. Not that day. At a later date I did see the individual
5 charged.

6 Q. Okay. Generally speaking, what did you do to
7 investigate this matter once you responded to KCI on 7/12 of
8 '13.

9 A. What I did initially, I got with the initial officer,
10 and that officer would be the one who started this process
11 into the investigation, the initial officer would be Officer
12 Schnettler. I got a report from each and every officer
13 involved in the case. I also received written documentation
14 from the other officers, I questioned those officers. I
15 actually had an opportunity to see the evidence itself.
16 Later on after all the paperwork was done, the report was
17 done by the different officers I received the -- let me go
18 back for a moment. Once I received the documentation and
19 actually went over what had occurred, I then went to the
20 detention center at a later date and I also got with --

21 Q. Hang on, let me ask you this, I want to cut some things
22 off real quick. Did you obtain an arrest warrant for Mr.
23 Wyatt?

24 A. I did obtain an arrest warrant.

25 Q. And did you serve that on him at the detention center?

RUBY BROCKENBERRY

1 A. I served the arrest warrant at the Lancaster County
2 Detention Center.

3 Q. The fellow at the table with the gray shirt with the
4 collar buttoned up to his neck, would that be Mr. Wyatt you
5 were referring to?

6 A. Yes.

7 Q. Let's go back then to part of the investigation. Did
8 you process any evidence yourself?

9 A. I did not process any of the evidence.

10 Q. Were you aware that evidence had been collected by
11 Corporal Hunt at KCI?

12 A. Yes. I was aware that evidence was collected by
13 Corporal Hunt, the fact that he stated to me that there was
14 evidence and showed me a picture of the evidence as well.

15 Q. Now, on the day that you went down there, on 7/12 of
16 '13, did you eyeball the evidence at some point that day?

17 A. Yes, I did.

18 Q. Was that after Corporal Hunt had opened up the packages
19 and you could see what was what?

20 A. Yes.

21 Q. Let me ask you this, I guess. I'm going to show you
22 State's Exhibit Number 8. Do you recognize what's shown in
23 that photo?

24 A. Yes, I do.

25 Q. Did you see this stuff laid out like it's laid out in

RUBY BROCKENBERRY

1 this picture that day?

2 A. It wasn't laid out as it is right here, but it was in a
3 bag of some sort in the evidence room.

4 Q. Did you talk to everybody you felt like you needed to
5 talk to?

6 A. Yes, I did.

7 Q. Some time subsequent to July 12th of 2013, did you take
8 possession of some of the items of evidence that Corporal
9 Hunt had locked up in the evidence safe in the contraband
10 office?

11 A. Yes, I did.

12 Q. Okay. And what was the stuff -- not from a clearly
13 analyzed standpoint but generally speaking, what was the
14 stuff that you took possession of, what was it suspected to
15 be, I guess?

16 A. It was expected to be marijuana, crack cocaine,
17 powdered cocaine, and also some pills that were -- that was
18 not identified.

19 Q. And where did you get those items?

20 A. I got those items from Corporal Hunt at the Kershaw
21 Correctional Institution there in the contraband office.

22 Q. And when did that occur?

23 A. In the month of August of 2013.

24 Q. When you took possession of those items, did they
25 appear to have been tampered with?

RUBY BROCKENBERRY

- 1 A. No. It didn't appear to be tampered with at all.
- 2 Q. Okay. Were they sealed up and secured in some fashion?
- 3 A. They were.
- 4 Q. How were they sealed up and secured, do you remember?
- 5 A. They were sealed up in bags, kind of like zip lock
- 6 bags?
- 7 Q. Were they zip lock bags that you could just pop open or
- 8 were they sealed?
- 9 A. It was not sealed, like zip lock bags you can pop open.
- 10 Q. Did you manipulate them in any fashion?
- 11 A. No, I did not.
- 12 Q. Where did you go with those items?
- 13 A. I had taken those items to the Sumter County Sheriff's
- 14 Office and met with Joe Powell.
- 15 Q. Who is he? Well, first of all, for what purpose?
- 16 A. For analysis.
- 17 Q. Why Sumter County Sheriff's Office?
- 18 A. Well, because we could get the items back quickly as
- 19 far as identification purpose.
- 20 Q. Do they have a lab at the Sumter County Sheriff's
- 21 Office.
- 22 A. They do have a lab at the Sumter County Sheriff's
- 23 Office.
- 24 Q. Why Joe Powell?
- 25 A. I've known Joe from previous working at other agencies

RUBY BROCKENBERRY

1 so I knew him fairly well.

2 Q. Is he a forensic chemist?

3 A. He is.

4 Q. Now, I'm going to hand you an item and we're fixin' to
5 open it up. But before I open it up, can you identify what
6 that item is generally?

7 A. These are items that I received from Joe Powell at the
8 Sumter County Sheriff's Department.

9 Q. Are they the same items that you took to him at some
10 point, perhaps packaged differently?

11 A. Yes. Packaged differently but the same items.

12 Q. Now again, from the time you took them from Corporal
13 Hunt at KCI in August, did you take them to Joe Powell the
14 same day?

15 A. Not the same day.

16 Q. Where did you keep them between when you got them from
17 Hunt and delivering them to Powell?

18 A. Well, I kept them in the trunk of my car and then the
19 following -- not the following day -- yeah, the following
20 day I had taken them to Joe Powell.

21 Q. Were they locked in the trunk of your car?

22 A. They were locked in the trunk of my car.

23 Q. Do you know whether any tampering -- did anybody get
24 into the trunk of your car between when you locked them in
25 there and when you took them to Joe Powell?

RUBY BROCKENBERRY

1 A. No.

2 Q. How do you know that?

3 A. Because I had the key to my car. I also have the
4 device that unlocks it itself. I'm the only person that has
5 a key and device for my unit.

6 Q. When you opened the trunk of your car I presume at the
7 Sumter County Sheriff's Office to get the stuff out and give
8 it to Joe Powell, what condition was the stuff in?

9 A. It was in the same condition as it was when I picked it
10 up from Corporal Hunt at the Kershaw Detention Center.

11 Q. Any tampering?

12 A. No tampering.

13 Q. And did you turn it over to Joe Powell?

14 A. I did.

15 Q. Now, at some point after Joe Powell got done with it,
16 did you come back into possession of it?

17 A. Yes, I did.

18 Q. And is that the condition it was in when you picked it
19 back up?

20 A. Yes, it was.

21 Q. When you picked it back up, what did you do with it?

22 A. I then transported it back to Kershaw Institution and
23 gave it to Corporal Hunt.

24 Q. Okay.

25 MR. BARFIELD: Thank you, ma'am. Answer anything

RUBY BROCKENBERRY

1 Mr. Steen has.

2 CROSS EXAMINATION

3 BY MR. STEEN:

4 Q. Investigator, are there cameras on the inside perimeter
5 facing the outside perimeter at the Kershaw Correctional
6 Institution?

7 A. I don't know the exact location of the cameras but I
8 know that there are cameras at the Kershaw Correctional
9 Institution.

10 Q. As part of your investigation, did you attempt to view
11 the footage on those cameras?

12 A. At that particular time -- one thing is about the
13 camera at the Kershaw Institution and all institutions
14 pretty much, it is where when there's an alarm that goes off
15 on that particular perimeter, then the camera is locked in
16 if someone will start recording. They're not all set up
17 that way but there's some that will start recording
18 immediately when there's an alarm, so that would be no.

19 Q. In the packages there were cellphones, correct?

20 A. That's correct.

21 Q. Were those cellphones searched for any identifiable
22 features that you could place those cellphones to belong to?

23 A. They were not searched by me.

24 Q. And as part of your investigation did you attempt to
25 take any fingerprints off of the packages or the items

RUBY BROCKENBERRY

1 inside of the packages?

2 A. No fingerprints were taken.

3 Q. Did you have the ability to take the fingerprints?

4 A. Not personally myself. I mean, I could have taken them
5 to SLED or may have taken them to some other area to have
6 them lifted or whatever but there was none taken.

7 Q. And was a description of the runner ever given to you?

8 A. Written in the documentation that I first received from
9 the initial officer, Mr. Schnettler, yes, he did tell me it
10 was a white male. I don't know what else was written in but
11 I remember him saying it was a white male.

12 MR. STEEN: One second, Investigator.

13 (Break in proceedings.)

14 MR. STEEN: No further questions, thank you, ma'am.

15 MR. BARFIELD: Nothing further for Ms. Brockenberry.

16 THE COURT: All right. Ma'am, you may step down.

17 The witness, JOSEPH POWELL, was first duly
18 sworn and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BARFIELD:

21 Q. Tell us your name, please, sir.

22 A. My name is Joseph D. Powell, P-o-w-e-l-l.

23 Q. Mr. Powell, by whom are you employed?

24 A. I am currently employed at the Sumter County Sheriff's
25 Office as the forensic chemist.

JOSEPH POWELL

1 Q. How long have you been a forensic chemist?

2 A. I've been a forensic chemist my entire life, about 32
3 years. I worked at the Sumter County Sheriff's Office about
4 three years.

5 Q. Where did you work before the Sumter County Sheriff's
6 Office?

7 A. I worked at the State Law Enforcement Division commonly
8 known as SLED.

9 Q. How long did you work at SLED?

10 A. Twenty-seven years.

11 Q. Were you classified as a forensic chemist for SLED for
12 the entire 27 years?

13 A. Yes, sir, I was.

14 Q. And did you work in the lab at SLED during those entire
15 27 years?

16 A. Yes, sir.

17 Q. And generally speaking -- well, are your duties with
18 the -- are you a forensic chemist with the Sumter County
19 Sheriff's Office now?

20 A. Yes, sir, I am.

21 Q. And generally speaking, did your duties -- or were your
22 duties for SLED and are your duties for the Sumter County
23 Sheriff's Office essentially the same?

24 A. Yes, sir. Originally when I came on at SLED I started
25 working in the drug department where I was responsible for

JOSEPH POWELL

1 the analysis of drugs from various counties around the
2 state. I went and testified on those cases up until I moved
3 into the trace evidence department, which was about ten
4 years after.

5 Q. Okay. What does a forensic chemist do generally?

6 A. A forensic chemist is a general title meaning that
7 someone has a degree in chemistry first of all, I have a
8 Bachelor of Science Degree in Chemistry. It also means that
9 you have gone through special training to be able to analyze
10 to be able to come in court and testify about various drugs
11 that may have been used by individuals. I have gone through
12 several schools which I learned how to be able to analyze
13 and look at various types of drugs, which may be illegal or
14 legal but only restricted use. And so these two together,
15 both the degree in chemistry as well as the training makes
16 me a forensic chemist.

17 Q. Now, as a forensic chemist did you have to get some
18 certification -- well, let me back up. How come you're not
19 working for SLED anymore?

20 A. I retired. After 27 years I felt it would be a good
21 time to go ahead and retire and I retired out. My wife
22 thought it was a good idea that I might go back to work so
23 she suggested and I took her up on the favor so I started
24 working at Sumter County.

25 Q. When you were at SLED did you have to have some

JOSEPH POWELL

1 certification as a forensic chemist and specifically dealing
2 with drug identification?

3 A. Once you've dealt with the initial training there was
4 no further certification. But your initial training would
5 be where you worked under another chemist who would sit down
6 here and make sure that you knew how to run the
7 instrumentation to be able to come to court to testify, all
8 of these things were tested, and then once that is completed
9 you are turned loose and given a case load to work.

10 Q. Were you -- at some point did you reach that point at
11 SLED, I guess?

12 A. Yes, sir. I reached that point where I had my own case
13 load. I was responsible for between 700 and 900 cases per
14 year. I went about testifying and testified in both
15 federal, state, local and magistrate level over 300 times in
16 the area of drug analysis.

17 Q. Let me ask you a question about that, that was one of
18 my coming up questions. But when you testified in those
19 courts that you described, were you offered as an expert
20 witness in forensic chemistry and drug analysis and
21 identification?

22 A. Yes, sir.

23 Q. Were you ever denied qualification as an expert by any
24 judge in any court in those fields?

25 A. No, sir. I have never been denied being a forensic

JOSEPH POWELL

1 chemist.

2 Q. Have you continued to testify since you have been
3 employed by the Sumter County Sheriff's Office in forensic
4 chemistry and drug analysis and identification?

5 A. Yes, sir, I have.

6 MR. BARFIELD: Your Honor, at this time I would offer
7 Mr. Powell as an expert in forensic chemistry specifically
8 related to drug analysis and identification.

9 MR. STEEN: Without objection.

10 THE COURT: You said drug analysis and identification?

11 MR. BARFIELD: Yes, ma'am.

12 THE COURT: Any objection?

13 MR. BARFIELD: Without objection, Your Honor.

14 THE COURT: And I didn't ask you if you had any
15 questions that you wanted to ask him. All right. Ladies
16 and gentlemen of the jury, normally a person cannot give
17 opinion testimony. Normally when a person testifies they
18 must testify as to what they either saw, heard or sensed by
19 smell or something of that nature. However there is an
20 exception when someone is qualified because of education or
21 experience. They are permitted to give their opinion in
22 certain areas if the Court qualifies them that way. This
23 witness will be qualified in the area of forensic chemistry,
24 specifically drug analysis and of drug identification, to
25 give opinion testimony in that area. To give opinion

JOSEPH POWELL

1 testimony in that area does not mean that you must accept
2 the opinion, but it is evidence for you to use in any way
3 you see fit and give the weight and credibility you believe
4 is appropriate to the testimony. Thank you. Yes, sir, you
5 may continue.

6 BY MR. BARFIELD:

7 Q. Mr. Powell, I'm going to hand you a package and ask you
8 if you can identify it.

9 A. Yes, sir. This package is a heat-sealed envelope which
10 contains within it several paper bags which contains within
11 those plastic bags which contained various items that I
12 analyzed in this case. It bares my initials and the date
13 that I sealed it.

14 Q. Now, in its present form who sealed it up in its
15 present form?

16 A. I did.

17 Q. And once you sealed it up, did it leave your hands and
18 go to somebody else?

19 A. Yes, sir.

20 Q. Whose hands did it go up to after it left you?

21 A. I turned it over to Ruby Brockenberry on August the
22 24th.

23 Q. Of 2013?

24 A. I said August, I apologize, it will be September 24th.

25 And --

JOSEPH POWELL

1 Q. Of 2013?

2 A. 2013, yes, sir. And I turned over to her, and it looks
3 in the same condition as to when I turned it over to her.

4 Q. Now, where did you come to be in possession of the
5 items in that sealed pouch?

6 A. She had brought it to me, and it would be on
7 August 21st she brought it to me for analysis. I analyzed
8 it and I think let her know it was ready to be picked up if
9 she came back to pick it up.

10 Q. Now, we've got to break that open. Have you got a
11 knife in your pocket?

12 A. No, sir, I do not.

13 Q. I do. You just take them out and you look at
14 everything you need to look at and then I'll ask you some
15 more questions about that.

16 (Break in proceedings.)

17 Q. Have you looked at it?

18 A. Yes, sir. The first paper bag that I opened contains
19 within it items one, two and three that I analyzed, it also
20 bares my initials on the paper bag. And in the second paper
21 bag contains item four that I analyzed, also bares my
22 initials.

23 Q. All right. Now, I'm jumping way ahead, but do you
24 ultimately generate a report indicating your findings from
25 the analysis?

1 A. Yes, sir, I do.

2 Q. And do you assign numbers to items that are presented
3 to you for examination and analysis?

4 A. Yes, sir, I do.

5 Q. Are you the one who initiates the numbering process?

6 A. Yes, sir.

7 Q. All right. Item one was generally described -- not the
8 results of the analysis at this point, but item one was
9 generally described as what by you when you numbered them?

10 A. Item one was described as a bag containing off white
11 material.

12 Q. Okay. And item -- and when you say bag, describe the
13 kind of bags we're talking about.

14 A. Inside these small manila envelopes --

15 Q. Who introduced the small manila envelopes into this
16 process?

17 A. They were actually in these paper bags when I received
18 it. So Ms. Brockenberry, when she brought all of this to
19 me, this was already in these paper bags.

20 Q. And were they in those bags and were those individual
21 bags sealed up in some way?

22 A. Yes, sir, they were.

23 Q. Okay.

24 A. And inside there is plastic bags which I opened up and
25 analyzed for the contents.

JOSEPH POWELL

1 Q. Plastic bags consistent with zip lock bags maybe?

2 A. Well, they're both zip lock as well as just regular
3 bags which was tied in a knot.

4 Q. We're talking about item one. Well -- and generally
5 what did you describe item two as?

6 A. Item two I described also as a plastic bag containing a
7 white powder. The difference between item one and item two
8 was one was in a solid form, the other one, item two, was in
9 a powdered one.

10 Q. Now, without doing any analysis, did you have some idea
11 in your mind about what maybe you were going to be testing
12 items one and two for?

13 A. Yes, sir, I did.

14 Q. And what were you going to be testing them for?

15 A. The forms I saw items one and item two is very
16 consistent with item one being crack cocaine and item two
17 being a powdered cocaine.

18 Q. Crack cocaine is the rock form that you're speaking of?

19 A. Yes, sir. It's just where you take the powdered form,
20 you add a little baking soda to it, it will sit down here
21 and change the -- it strips off something called HCL off the
22 molecule and you have what is called crack.

23 Q. Okay. Is there one testing model for crack and powder
24 or do you do different testing models for those two
25 substances?

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1 A. We actually do a different model. When it comes to the
2 crack we use a difference solid because we know that the
3 powdered cocaine will not go into the solid so it's a way of
4 verifying that it is crack cocaine. And then when it comes
5 to the powdered form we use a different model, we would be
6 able to convert it into a form that we can analyze.

7 Q. Now, generally what is the -- describe in laymen's
8 terms the testing process for suspected crack cocaine, item
9 one we're talking about.

10 A. What I initially do is a chemical test, and what I'm
11 looking for is a chemical we use, I take and spot a little
12 bit -- or scrape a little bit of sample into a spot dish. I
13 then hit it with a chemical which will -- if it is going to
14 be a powder form it turns blue, if it is the crack form it
15 will not. Then there's a second chemical I add to it, which
16 if it is the crack form it will then turn blue. And I ran
17 it in this case and it did exactly as predicted, it did not
18 react to the first chemical, the second chemical it formed a
19 blue color.

20 Q. Do you do any further testing on it?

21 A. Yes, sir. I then take the sample and I run it on an
22 instrument to be able to look at the molecular structure.
23 This is a fingerprint technique. No other chemical can have
24 this fingerprint. I run it and determine that it is
25 cocaine, it will show cocaine either whether it's crack or

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1 whether it's the powder. But since I've already determined
2 that it is crack based upon the way that it goes into the
3 solution I can call it a crack cocaine.

4 Q. And what is the instrument you run that thing on?

5 A. The instrument, the initials are going to be GC mass
6 spec. Its purpose is to be able to take a sample, separate
7 all of the various components that are in a sample and then
8 analyze its molecular structure.

9 Q. And did you run the testing on your item one which you
10 said was off white material?

11 A. Yes, sir, I did.

12 Q. And let me hold item one in the little manila envelope?

13 A. Item one and two.

14 Q. Are they in the same?

15 A. The same envelope, yes, right here.

16 Q. Is there some numbering on here that says which one is
17 one and which one is two?

18 A. Yes, sir.

19 Q. We'll just hold off introducing anything until we talk
20 about item two first. And let me ask you this: The writing
21 on the outside of that envelope, is that what was on it when
22 it came to you?

23 A. Yes, sir.

24 Q. Okay. Which might or might not be completely accurate?

25 A. Well, the writing that's on there is going to be what's

1 called a gross weight. Procedurally speaking we ask people
2 to do what's called a gross weight where they measure both
3 the packaging as well as the contents and determine what its
4 weight is going to be. Obviously the weight that I will
5 come up with will be less because I take the contents out of
6 the packaging and then weigh just the contents.

7 Q. Now, did you test what you labeled as item one and
8 described as off-white material?

9 A. Yes, sir, I did.

10 Q. And did you reach a conclusion based on your training
11 and experience and expertise as to what the substance was
12 that you labeled item one?

13 A. I did.

14 Q. What was it?

15 A. It was crack cocaine, and I found that it was
16 4.58 grams of crack cocaine.

17 Q. 4.58 grams?

18 A. Yes, sir.

19 Q. And that's not with any packaging or anything?

20 A. That is the actual weight of the crack cocaine.

21 Q. All right. Now, did you test item two which you
22 described as white powder?

23 A. Yes, sir, I did.

24 Q. What is the testing process for the suspected powder
25 cocaine?

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1 A. Again, I ran the chemical test. It ran -- it spotted
2 blue with the first chemical, I then ran it on my GS mass
3 spec.

4 Q. The same instrument?

5 A. Same instrument, and determined that it was cocaine and
6 reported the results.

7 Q. All right. And again, based upon your training and
8 experience and expertise, what was item two?

9 A. Item two was cocaine and it was 3.21 grams.

10 Q. And are both items one and two contained in this little
11 manila envelope?

12 A. They are.

13 Q. And is there some labeling -- is there anything that
14 don't need to stay in there?

15 A. They can come out -- the plastic bag should be labeled
16 one and two, so I can take it out.

17 Q. Just confirm that they are labeled one and two
18 consistent with your lab item numbers first.

19 A. This is item two, and this is item one.

20 Q. Now, let me ask you this: These are neat little zip
21 lock bags. Did you introduce these into the mix or are
22 these the bags they were in when they came to you?

23 A. No, sir. They were originally in two of these
24 containers here. I provided those containers because
25 they're zip locked so there would not be any loss or be able

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1 to mix around with anything.

2 Q. If you will, stuff the original plastic bags in the
3 bottom and the items one and two back in the manila
4 envelope.

5 MR. BARFIELD: And Your Honor, at this time -- well, I
6 will let Mr. Steen see it.

7 (Break in proceedings.)

8 MR. BARFIELD: I would offer this envelope, which
9 contains Sumter County Sheriff's Office lab item numbers one
10 and two as the next State's Exhibit.

11 THE COURT: All right. Any objection?

12 MR. STEEN: Without objection, Your Honor.

13 THE COURT: All right. State's 11 will be entered
14 without objection.

15 (The cocaine was received as State's 11.)

16 Q. What did you call -- what was generally the description
17 of your item four in this case?

18 A. Item four was going to be a paper bag containing green
19 plant material. I opened it up and I found within it green
20 plant material. I ran -- the analysis for the green plant
21 material is a little bit different.

22 Q. Tell us how you do that.

23 A. What I do with this is I first do a microscopic test.
24 I must determine if it has certain physical features which
25 are consistent with marijuana. I looked under the

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1 microscope and this material does have the same physical
2 characteristics as marijuana. I then ran a test on it using
3 chemicals which are uniquely designed to react only for the
4 active ingredient THC, I ran that, it was positive and so
5 this is marijuana. I then when I completed my test
6 introduce it into the zip lock bag and then place it back
7 into the paper bag.

8 Q. Now again, based on your training and expertise, did
9 you conclude what your item four was?

10 A. Item four is going to be marijuana and it's going to be
11 47.5 grams.

12 Q. And let me ask you this, how many grams in an ounce?

13 A. There are 28 grams to an ounce.

14 Q. And this has got item four on it somewhere, or does it?

15 A. It is inside the bag which has item four.

16 MR. BARFIELD: I would offer what's been identified as
17 the marijuana as State's Exhibit 12, I believe.

18 THE COURT: Any objection?

19 MR. STEEN: Without objection, Your Honor.

20 THE COURT: All right. It will be entered without
21 objection.

22 (The marijuana was received as State's 12.)

23 Q. Did you have another item that you were asked to take a
24 look at, or another group of items?

25 A. Yes, sir, item three.

1 Q. And item three generally was described by you as what?

2 A. It would be an envelope which contains within it 21

3 pills. There are two types of pills in there. I opened it

4 up and analyzed both types.

5 Q. And what did you find the pills to be? Well we're not

6 going to get into a lot of detail about that, but what did

7 you find them to be.

8 A. Well, I found one of the pills to be -- it's a vitamin

9 B pill is what it was. And the other is a chemical called

10 CPP, it is a non-controlled material. It does have effects

11 which will -- very similar to other types of hallucinogenics

12 but it is not controlled under state law.

13 Q. All right. And vitamin B is not -- is either one of

14 them a controlled substance, the vitamin B or the CPC (sic)

15 whatever you described it was?

16 A. No, sir. Neither one of them are controlled at all.

17 Q. Are either one of them prescription drugs?

18 A. No, sir.

19 Q. Are both of them something you can buy over the

20 counter?

21 A. Either one may possess these without any fear of being

22 arrested.

23 Q. Nothing illegal about them at all.

24 A. Nothing illegal at all.

25 Q. Did you prepare a report which contains your findings?

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1 A. Yes, sir, I did.

2 Q. And do you have the original with you here today?

3 A. I do.

4 Q. And does your report indicate what we would commonly
5 refer, I guess, as a chain of custody or a log-in sheet
6 indicating that you got them and who you got them from and
7 when?

8 A. Yes, sir, it comes in three sheets. The first sheet
9 will indicate the items being submitted, it also indicates
10 the county and other just pertinent data, the subject's
11 name. The second sheet will indicate what was submitted as
12 far as the items and the results of the analysis, as well as
13 a partial chain showing who I received the evidence from.
14 And then the last sheet is just a matter of information for
15 a matter of legal issue that we add to it for information
16 purposes.

17 Q. Your background so that you can be qualified as an
18 expert essentially?

19 A. Yes, sir.

20 Q. Is this a copy of the three pages that you referred to
21 as being the originals in your hand?

22 A. Yes, sir, it is.

23 MR. BARFIELD: Your Honor, at this time I would offer
24 the report as State's Number 13.

25 THE COURT: Any objection?

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1 MR. STEEN: Without objection, Your Honor.

2 THE COURT: It will be entered without objection as
3 State's 13.

4 (The report was entered as State's 13.)

5 MR. BARFIELD: Thank you, sir. Answer anything
6 Mr. Steen has.

7 MR. STEEN: No questions. Thank you.

8 THE COURT: All right, sir. You may step down.

9 MR. BARFIELD: I would ask that Mr. Powell be excused
10 to go back to Sumter County.

11 THE COURT: Any objection to him being excused?

12 MR. STEEN: I'm sorry, Your Honor, I apologize.

13 THE COURT: Any objection to him being excused?

14 MR. STEEN: No, Your Honor.

15 THE COURT: You are free to leave, sir.

16 MR. BARFIELD: Your Honor, that's the case for the
17 State of South Carolina. The State rests.

18 THE COURT: All right. Ladies and gentlemen of the
19 jury, at this time I'm going to send you all out for a short
20 break. There's some matters of law that I need to take up
21 outside of your presence and I will send you all out for a
22 break and have you back in shortly. Thank you.

23 (The jury left the courtroom.)

24 THE COURT: All right. Anything from the State, any
25 motions from the defense?

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1 THE COURT: And I usually don't limit lawyers on
2 closing unless I think they were going to be long-winded but
3 I have not gotten that indication from you all.

4 (The jury returned to the courtroom.)

5 THE COURT: All right. Ladies and gentlemen of the
6 jury, I hope that you had a good lunch. At this time we are
7 ready for closing arguments. You will first hear from the
8 solicitor on behalf of the State and then you will hear from
9 Mr. Steen on behalf of the defense. Yes, sir?

10 MR. BARFIELD: If the Court please? Mr. Steen, ladies
11 and gentlemen. Sometimes we're slow to get started but once
12 we get rolling we roll pretty good. And we kind of went
13 through this thing I would submit fairly expeditiously this
14 morning but not leaving anything out and telling you what
15 you needed to know about this case. I want to just chat
16 with you for a few minutes, I'm not going to be up here for
17 45 minutes or an hour, just a few minutes to tell you some
18 things that the State contends you should focus on and think
19 hard about. And, of course, I am -- it goes without saying
20 that I'm going to conclude my remarks by asking you to find
21 Mr. Wyatt guilty of these offenses. That's Shawn Lee Wyatt
22 over there, look at him. He's a pretty distinctive looking
23 fellow, pretty distinctive looking fellow. This black
24 shirt, State's Exhibit Number 5, maybe not really unusual
25 but a pretty easily rememberable shirt over a short period

1 of time from when Lippe saw him on the road to when she saw
2 him in the parking lot at the prison. Same thing with the
3 britches. Not necessarily terribly distinctive but she
4 described them I think as gray long shorts. Not something
5 that -- it doesn't have a bulls-eye on the front of it or
6 back of it or anything, but something easily rememberable by
7 both Lippe and Schnettler over a fairly short period of time
8 from when they initially saw Mr. Wyatt wearing these clothes
9 to when they identified him out there on the ground near
10 Kershaw Correctional Institution. But before we get into
11 that, let's talk about the charges just for a few minutes.
12 It should be clear to you that somebody committed the four
13 charges that have been leveled against Mr. Wyatt, and let's
14 talk about them. Of course, the obvious issue is is Mr.
15 Wyatt the one who did it, and we're going to get into that
16 in just a little bit. But let's talk about the charges.
17 The first charge is contraband, which is the statutory
18 offense that says it's illegal to furnish or attempt to
19 furnish inmates under the authority and jurisdiction of the
20 South Carolina Department of Corrections with contraband.
21 And you heard Sergeant Hunt testify about contraband, SCDC
22 says what contraband is. Some obvious things would be
23 contraband, some maybe not so obvious things are also
24 contraband. But in this case the contraband that Mr. Wyatt
25 is accused of furnishing or attempting to furnish an inmate

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1 is the illegal stuff, the crack cocaine, the powdered
2 cocaine and the marijuana. Now, there was other stuff in
3 those packages which are also contraband but he's not being
4 tried for the cellphones and the chargers, he's not being
5 tried for the pills because they're not illegal drugs, he's
6 not being tried for the tobacco. But think about the whole
7 concept of contraband. You've got a prison, you've got a
8 statewide prison system with separate prisons scattered all
9 over the state and you've got -- we didn't put up any
10 evidence about how many inmates are at the Kershaw
11 Correctional Institution, but you can guess there are a
12 whole bunch of inmates there and they're being punished for
13 committing crimes. And the folks in the department of
14 corrections want to maintain order and maintain discipline
15 within the prison and that's why you have rules against
16 having contraband, even legal items under other
17 circumstances you don't want inside prisons. You don't want
18 cellphones so inmates can communicate with each other inside
19 or with people on the outside, you don't want charges so
20 that they can keep those phones charged up. You don't want
21 tobacco or anything that's got any value because that gives
22 inmates the ability to barter and to trade, and when you get
23 commerce going on inside a prison in a black market so to
24 speak problems can arise and develop from that. And you
25 certainly don't want dope in the hands of inmates inside

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1 prisons anywhere. That's why we have those rules. Now,
2 again, the contraband in this case that Mr. Wyatt is accused
3 of providing is the illegal drugs, the crack cocaine, the
4 powder cocaine and the marijuana. And I submit to you that
5 it's clear that the person who did this violated the statute
6 by tossing packages containing those items from perimeter
7 road over three fences into the Oak rec. yard at the Kershaw
8 Correctional Institution. He didn't provide it to an inmate
9 because you heard testimony no inmates got out into the Oak
10 rec. yard. Nobody with stripes on his pants who was an
11 inmate went out there and got ahold of any of this stuff
12 because they found out about it before that could happen.
13 But the statute also says attempt to provide inmates with
14 contraband. And clearly tossing that stuff over the fence
15 by Mr. Wyatt was an attempt to get that stuff to the inside
16 to get it into the hands of inmates. And there might be a
17 back story to this case that we don't know, who it was
18 inside or anything, but we don't know that. But I submit to
19 you he wasn't throwing it over the fence to get it to the
20 guards, he wasn't throwing it over the fence to get it to
21 the wardens or the maintenance people, he was throwing it
22 over the fence to give it to some unknown inmate or inmates
23 inside that institution. All right. What are the other
24 charges that have been brought against Mr. Wyatt? The three
25 drug charges, they're all possessions with intent to

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1 distribute for three different drugs. Possession with
2 intent to distribute crack cocaine and powdered cocaine,
3 which are actually in this envelope and you'll -- I guess
4 you'll have them back there in the jury room. Please, don't
5 open it. But this is dope, this powder cocaine and crack
6 cocaine and marijuana. Possession with intent to
7 distribute, let's break it down. Possession means -- there
8 are two kinds of possession, I'm not going to get into the
9 second kind much because it's not really involved in this
10 case, but possession can be actual possession or
11 constructive possession. Actual possession means -- and
12 possession also does not necessarily mean ownership, you can
13 possess something that you don't own. Possession means that
14 you have it and you have the ability to exercise dominion
15 and control over it. Actual possession is like what I'm
16 doing right now. I'm actually possessing this bag of
17 marijuana because it's in my hand, I clearly have dominion
18 and control over this marijuana. I don't, though, actually
19 have to have it in my hand to be in possession of it. If
20 I'm at my house at my kitchen table and there's this bag of
21 marijuana sitting on the lazy Susan in the middle of my
22 table and I could reach out and grab it, even if I don't
23 have it in my hand I can exercise dominion and control of it
24 so I'm in constructive possession of it. But in this case
25 there's no allegation that Mr. Wyatt was constructively in

1 possession of these items of drugs, we allege that he was in
2 actual possession of them. We allege that he had them on
3 him, that he ran from the woods to the perimeter road, that
4 he set them down so that he could pick them up one at a time
5 and chunk them, and every step in that process until they
6 left his hand as he chunked them over the fence he was in
7 actual possession of those items. So that's the possession
8 part of possession with intent to distribute. What's the
9 intent to distribute part of those three drug charges? It
10 can arise in several different ways. It can arise from all
11 of the facts and circumstances of the case, and it can also
12 arise from the amount of the substance, from the amount of
13 the drug. If you have something in your hand and you pass
14 it to someone else that's distribution. If you have it for
15 the purpose of passing it to someone else, that's possession
16 with intent to distribute. In this case we know that Mr.
17 Wyatt intended to distribute the substances, and actually he
18 did distribute the substances, they just didn't get into the
19 hands of any inmates. When he starts chunking each of those
20 eight packages over the fence he's distributing it, there's
21 just nobody over there that's catching it. So we know by
22 his act of throwing it over the fence he intended to
23 distribute it, he intended for somebody other than himself
24 to take possession of those items. He wasn't going to throw
25 them over the fence and then go knock on the front door and

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1 say, "Can I come in? I lost something on your prison
2 ground, can I get it back?" It never was intended to be his
3 after he chunked it. He intended for somebody inside to
4 have it, and that's the intent to distribute from his actual
5 conduct out there on the perimeter road. How else can the
6 State prove intent to distribute an illegal drug? By
7 weight, by quantity. Sometimes the law says that somebody
8 has so much of a drug that it's way beyond what anybody
9 would expect him to use for his personal consumption and
10 therefore there is an inference that he had so much of it
11 because he intended to distribute it to somebody else, and
12 that's what we have in this case as to each of these drugs.
13 The law says as to marijuana that if you have more than
14 28 grams, which is one ounce, if you have more than 28 grams
15 of marijuana it can be inferred that you intended to
16 distribute it. And in this case we had more than 28 grams
17 of marijuana, we had 46.5 grams of marijuana which is just a
18 little shy of twice the level in which an inference can
19 arise at which you intended to distribute it. 28 grams is a
20 ounce, we had 47 grams and a half which is just shy of two
21 ounces. You can also decide somebody intended to distribute
22 something by the number of packages that something is stored
23 in. And in this case I believe there's evidence, I think
24 the pictures show there was actually two bags of that
25 marijuana. The idea is if it's all yours you're going to

1 keep it all in one Tupperware container, if you're intending
2 to get rid of it you're going to package it separately so
3 that it can be partialled (sic) out among other folks. And
4 in this case there were two bags of marijuana which
5 altogether totaled almost twice the limit at which you can
6 infer Mr. Wyatt intended to distribute it. Same thing with
7 the crack cocaine. The law says that if you possess more
8 than one ounce of more than one gram of crack cocaine an
9 inference can arise that you intended to distribute it. And
10 in this case we had clearly a lot more than one gram of
11 crack cocaine, we had 4.58 grams. Now, you'll look at it,
12 and it's not a whole bunch but it doesn't take a whole bunch
13 under our drug laws to be at the level of that inference of
14 intent to distribute. But in this case, again, on the crack
15 cocaine, not one gram but 4.58 grams, that's a lot. The
16 idea is that that's enough for several people to partake of
17 once it gets to its intended recipient. Same thing with the
18 powdered cocaine. The law says an inference can arise at
19 more than one gram that you intend to distribute that powder
20 cocaine. And in this case we had not one but 3.21 grams of
21 powder cocaine. Again, when you look at it in this envelope
22 it might not be a whole lot in the palm of your hand but
23 it's a lot more than that one gram which that inference can
24 arise, and it's certainly enough to be partialled out among
25 people inside the institution if it gets into the hands of

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1 the people that it was intended to be received by. So I
2 tell you it should be clear to you that these offenses as
3 charged are what legally occurred in this case. The
4 furnishing or attempting to furnish contraband and the
5 possession with intent to distribute each of these drugs,
6 the crack cocaine, the powdered cocaine and the marijuana.
7 Now, the issue clearly is who did it? Did Shawn Lee Wyatt
8 do it? And I submit to you there is tons of evidence by
9 which you can find that Shawn Lee Wyatt is the guy who did
10 it. And let me say that first, you heard testimony from
11 Brenda Lippe and Joe Schnettler. They saw Mr. Wyatt on the
12 grounds of the prison or near the prison and they saw him
13 again not to very long after that and they identified him.
14 They both said -- well, Lippe said, "I saw a guy walking on
15 the highway and within an hour or so I saw the same guy get
16 out of the back of the deputy's car in the parking lot of
17 the prison and it's the same guy. She said, "That guy that
18 they brought to the prison in the police car is the guy I
19 saw walking on the road." And she went the next step and
20 she looked over here at Mr. Wyatt and she said that that guy
21 sitting over there, Shawn Lee Wyatt, is the guy that I saw
22 walking on the road and getting out of the police car, it's
23 the same guy, and she said, "I'm 100 percent sure." Joe
24 Schnettler, the same thing. He says, "I saw a guy come out
25 of the woods and throw stuff over the fence, and within an

1 hour or so," he said, "I think about thirty minutes or so, I
2 saw that same guy get out of the police car down 601 going
3 down Kershaw a little piece from the prison, and the guy I
4 saw throw the stuff is the same guy I saw get out of the
5 back of that police car." He also came in here and went the
6 next step and said the guy sitting over there, Shawn Lee
7 Wyatt, is the guy that he saw both times throwing the stuff
8 and getting out of the back of the police car out there on
9 601. So we have what's called out-of-court identification
10 by Lippe and Schnettler, and we have in-court identification
11 by Lippe and Schnettler. Now, I'm going to talk about those
12 identifications for a moment in a moment. But I submit to
13 you -- and the Judge is going to give you some instruction
14 on the law about identification and how you determine
15 whether you believe somebody has made a correct and proper
16 identification, but I submit to you in this case even if
17 Lippe and Schnettler had not said that's the guy, there's
18 still evidence, circumstantial evidence by which you can
19 find Shawn Lee Wyatt guilty of being the guy. Even if they
20 could not come into the courtroom today and point to him and
21 say that's the guy, or even if they had not been able to do
22 that out there on the road on 601 or in the parking lot at
23 the prison after Mr. Wyatt was taken into custody, there's
24 still evidence, circumstantial evidence by which you can
25 find Mr. Wyatt guilty of these offenses. And the judge is

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1 going to give you some instructions about direct evidence
2 and circumstantial evidence, and this case has both. Direct
3 evidence is evidence from a witness who says in court on the
4 witness stand I saw this or I heard this. Using his or hear
5 own senses that witness made observations and comes to court
6 and tells you about those observations. And that's the
7 testimony of Lippe describing a man she saw walking on the
8 road, and the testimony of Schnettler describing the man he
9 saw run from the woods. But you also have circumstantial
10 evidence which is just as good as direct evidence.
11 Circumstantial evidence is proof of facts that when taken
12 together prove another fact. And it's kind of hard to
13 illustrate, but it's not a direct observation of something
14 but it's testimony of collateral matters that when you put
15 it all together point to Mr. Wyatt as being the guy who
16 threw this stuff over the fence. Now, let's talk about
17 identifications for a minute. What kind of stuff do you
18 need to look at to determine whether you think the witness
19 is correct in the identification? And I will tell you this,
20 it is what it is. We don't stretch the facts, we give you
21 the facts as they are. And let's talk about Schnettler
22 first, I guess. Schnettler is doing his job, he is a
23 correctional officer, he is working the night shift, they
24 rotate positions at the facility every two hours while he's
25 on this shift. So he spends a couple of hours here and a

1 couple of hours there and by the time it is all over with
2 he's back to the same places again. And he told you that on
3 this particular shift, which is the night of January 11th
4 into the morning of July 11th or July 13th he has actually
5 done two tours in the tower. Now, the tower is off the
6 ground, and the tower looks down the perimeter road and the
7 fence line parallel to the woods on one side of the prison,
8 and we didn't offer testimony about this, but the pictures
9 will make you realize that also looks down the front side of
10 the prison. And the idea is somebody is in the tower to see
11 if anybody is trying to get out, to see if anybody is trying
12 to get in, to see if anybody is just loitering around on
13 prison property outside there that isn't supposed to be
14 there. And he tells you that he's trained to do a couple of
15 things when he sees something, to observe and gather
16 information and to report. And he told you, not trying to
17 hide this either, this is the first time he'd ever seen
18 anything like that from the tower and he got a little bit
19 excited about it. But excitement can make you pay better
20 attention sometimes than boredom for example. So I submit
21 to you that the fact that he is seeing a throw-over for the
22 first time makes him pay attention and get as much detail
23 about what he can see as possible. Now, he's at a
24 disadvantage because this guy didn't walk right up to the
25 foot of the tower. It ain't like he's deer hunting and he

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1 gets lucky and this big old buck just walks right up on the
2 foot of the tower, this happens a good number of yards down
3 perimeter road. He sees what he sees from the distance that
4 it is from him and he gets the best detail that he can get,
5 but he's looking for details because that's what he's
6 supposed to be doing. He sees somebody doing something
7 that's clearly illegal and the whole idea is, "We need to
8 stop this in its tracks and we need to catch the guy who did
9 it so I'd better pay attention to who this guy is and what
10 he looks like so we might be able to catch up with him." So
11 he is paying attention and he's getting as much detail as he
12 can get from that standpoint. Now, he's looking at him from
13 80 yards or so and he's not going to be able to see what
14 color his eyes are and he's not going to be able to see if
15 he has much facial hair or not, but he notices what he can
16 notice about him. Again, what does he notice? He says a
17 white male. He's wrong because Wyatt is not a white male,
18 but he is an awfully light black male. And from 80 yards is
19 it unreasonable for Schnettler to have said that's a white
20 guy, not a black guy? No, it's not. You've got Mr. Wyatt
21 in the courtroom, you determine what you need to determine
22 about that. But he calls him a white male. He says he's
23 medium build, he says he is about six feet tall, and more
24 importantly he describes clothing. And again, nothing
25 really distinctive about a black shirt and long denim

1 shorts, but easy to remember a black shirt and long denim
2 shorts, and easy to see a guy wearing that same black shirt
3 and those long denim shorts within an hour. -- or within
4 thirty minutes or so and be able to say that's the same
5 clothes and be sure about that, and that's what Schnettler
6 did. He described him, again, short hair, short hair, and
7 he described shiny legs, which is consistent with all Mr.
8 Wyatt's complexion. What's the lighting out there when he
9 sees this? This happens at the crack of dawn, and there's
10 probably a reason that it happens at the crack of dawn. You
11 wouldn't expect Mr. Wyatt to walk up to the fence next to
12 the Oak rec. area at high noon and start chunking stuff over
13 the fence. You would expect him to try to do this under
14 cover of darkness or some degree of darkness, but it was
15 getting light and he kind of maybe waited a little bit too
16 late. Maybe he got twisted up in the woods trying to figure
17 out where he was going. Maybe he had a ride. That's
18 another kind of puzzle I guess you're asking. Well, how did
19 Wyatt get there? Did he drive? We never found a car. You
20 heard testimony no car, no bicycle, no vehicles that are
21 associated with Wyatt, nobody else ever associated with
22 Wyatt. We don't know the story, but you can almost infer
23 that somebody -- that either he parked a car somewhere and
24 hid it or that somebody drove him there and was riding
25 around until he could get picked back up. But he ain't

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1 going to do that in broad daylight, he's going to do it when
2 he can be concealed to some degree. It just got a little
3 bit too late that day and he kind of ran out of luck. But
4 there is also lots of artificial lighting. You've got -- I
5 think Schnettler said every two polls, and you can see it in
6 the picture here, there are lights along the perimeter fence
7 every 40 yards or so and there is this two banks of lights
8 inside the prison he described like stadium lights. It's
9 like broad daylight out there. The fact that it was getting
10 light or maybe not completely light I submit to you is
11 irrelevant in this case. There was plenty of lights for
12 Schnettler what he described for you that he saw. And I
13 submit to you that Schnettler described Wyatt pretty
14 accurately. Light skinned -- or a white male, as light
15 skinned as he is, that's consistent. The clothing is
16 consistent with what we know Mr. Wyatt had on when he got
17 stopped by Chuck Kirkley with the sheriff's office, it's an
18 accurate description. You also consider how certain
19 Schnettler was when he said Wyatt is the guy. When he said
20 Wyatt is the guy when he was taken out of the police car in
21 901 (sic) and he said Wyatt is the guy when he's sitting in
22 the courtroom. And there was absolutely no doubt in
23 Schnettler's mind that he was absolutely 100 percent sure
24 that he had the right guy. You take all of those things
25 into consideration when you determine whether Schnettler

1 correctly accurately identified Wyatt, and I submit to you
2 that he did. Now, the same thing with Brenda Lippe. She
3 didn't see Wyatt doing anything illegal, but she saw him
4 walking on the roadway near the prison, which is consistent
5 with where Wyatt was picked up by Chuck Kirkley. And she
6 described him as a light skinned black male. Well, that's
7 on point. She described him wearing a black shirt and gray
8 shorts, or maybe she said charcoal on the witness stand.
9 But again, very easy to remember a dark shirt and long denim
10 shorts or charcoal shorts or gray shorts based on seeing
11 somebody walking on the highway coming closer to you.
12 Medium build and a real neat haircut, not much hair at all,
13 real neat hair. No dreads, no long hair, no wild hair, real
14 neat configuration on the top of his head. It's a pretty
15 accurate description of the man that got picked up by Chuck
16 Kirkley and the man who sits in the courtroom today, Shawn
17 Lee Wyatt. What was her opportunity to observe Mr. Wyatt as
18 she rode by him? Well, she didn't see him doing anything
19 illegal, but she sees a guy walking on 601 at the crack of
20 dawn. I run in the mornings and there aren't that many
21 people out in the early morning hours, there's some but
22 there's not a whole lot of traffic. And this is out in the
23 middle of nowhere, east of Kershaw in the country between
24 town and a prison, closer to a prison than closer to the
25 Town of Kershaw. Although she didn't see that Wyatt was

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1 doing anything illegal, certainly he's going to draw her
2 attention as she is approaching the prison and she sees this
3 guy walking facing her on the other side of the road. And
4 it's a straight road and it's getting daylight and she's got
5 running lights on the front of the car, but she's able to
6 see through the natural lights, she doesn't have to have her
7 headlights facing him to be able to see him. She gave you
8 that description of this guy she saw walking. How close did
9 she get to him? Well, she's in the right-hand lane going
10 toward the prison and there's the width of another lane of
11 travel going toward town between her and the side of the
12 road, and then there's the side of the road and there's
13 Shawn Lee Wyatt walking on the side of the road. So she's
14 within feet of him at her closest point as she passes by him
15 and she's looking at him, she told you she was looking at
16 him and she's paying attention to him and trying to get as
17 much information about him as she can, not because she
18 thinks he's done anything wrong, but because he drew her
19 attention to him. And that's natural for us to look at
20 folks when they're in circumstances that seem odd or
21 unusual. And it was odd or unusual to the point that as
22 soon as she pulls into the prison parking lot she tells
23 Chris Hunt -- before she knows that there's been a
24 throw-over she tells Chris Hunt, "I just saw this guy
25 walking on the road right back down the road here." And

1 then she finds out there's been a throw-over and it all
2 starts coming together, maybe that's the guy. So she had a
3 good opportunity to observe it. It didn't last that long,
4 but she's paying attention, and her description of him was
5 accurate, and her certainty when they brought Wyatt back to
6 the prison parking lot within an hour she said. The time
7 between the initial confrontation and the identification is
8 important. If she had seen him walking on July 12th of 2013
9 and they had not identified Wyatt until three or four weeks
10 later and then taken her to him, I would say yeah, you need
11 to be real skeptical about whether her identification of him
12 two or three weeks later would be accurate. But this wasn't
13 two or three weeks later and it wasn't with Schnettler
14 either. With Schnettler it was within 30 minutes, with
15 Lippe it was within about an hour. She goes -- she doesn't
16 go, she stays in the tower, they bring him to the parking
17 lot, they get him out of the car, she's some yards from him
18 looking down on him and she says in broad daylight, yeah,
19 that's the same guy I saw walking. And the guy she's
20 identifying is Shawn Lee Wyatt who Chuck Kirkley picked up
21 just a few yards from Tom Gregory Road which is just east --
22 just west of the entrance to the prison which is where all
23 of this happened. So I submit to you that her
24 identification of Wyatt when he's taken out of the patrol
25 car in the prison parking lot is an accurate identification.

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1 She told you, "I'm 100 percent sure when I looked out of
2 that tower and saw that man get out of that police car and
3 said "that's the man I saw walking' I'm 100 percent sure I'm
4 correct." And she also in this courtroom looked over at
5 that table and pointed to Shawn Lee Wyatt who raised his
6 hand to be identified and she said, "I'm absolutely certain
7 that's the same guy that I saw walking on the road and the
8 same guy I saw in the parking lot." She's certain and
9 that's a factor for you to consider. There's no doubt. She
10 didn't say, "I'm pretty sure, it looks like him, facial
11 features are kind of, body shape is kind of," no. She said,
12 "It's him, I'm certain it's him." All right. What if you
13 conclude that -- not that Lippe and Schnettler are wrong in
14 their identification, but what if you don't believe they
15 could be accurate based on their vantage points and the
16 circumstances of their identification? What if you had not
17 heard Schnettler and Lippe point to Shawn Wyatt and say that
18 he's the guy that we saw do these things, walking on the
19 road and throwing stuff over? I submit to you even if you
20 don't have that there's sufficient evidence, albeit some of
21 it's circumstantial, by which you can convict Shawn Lee
22 Wyatt of these four offenses. Let's look at it. We've got
23 the time, which is 6:00 or so in the morning. Now, it is
24 not illegal to be out and about at 6:00 in the morning,
25 again, if it is I would get arrested every other day in the

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1 Town of Kershaw. But it's unusual to be out on foot along
2 the highway without any bags, without any packages, without
3 anybody with you, without any car parked on the side of the
4 road that's out of gas or broken down, it's unusual. And
5 where did this happen? This was not in the Town of Kershaw
6 where as people get up and go out and walk for exercise and
7 run for exercise in the morning, this is in the boonies,
8 east of the Town of Kershaw out in the country near a
9 prison, real near a prison. Shawn Lee Wyatt gets stopped by
10 Chuck Kirkley and there is some conversation, because Chuck
11 Kirkley has gotten a description and Shawn Lee Wyatt matches
12 the description given by the folks at the prison, which
13 originated with Schnettler, that was good enough for Chuck
14 Kirkley to say this might be the guy. That is another
15 reason for you to believe that Schnettler is on point with
16 his identification of Wyatt, because what Kirkley had and
17 what Kirkley saw when he saw Wyatt matched up to the point
18 that Kirkley said, "I need to swing around and have a little
19 chat with this fellow to see if maybe he's the guy chunking
20 stuff over the fence. So they have a little conversation,
21 and the conversation kind of goes like this. "Where are you
22 coming from? Lancaster." Well, there's Lancaster, he's
23 pointing to Flat Creek. Now, Mr. Steen is going to tell you
24 that if you're familiar -- and you may be familiar with the
25 area and maybe you're not, but I'll tell you, Highway 903

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1 goes from Lancaster east and it ends up going through Flat
2 Creek and it ends up intersecting with Highway 601 some
3 several miles east of where the prison is. So yes, you can
4 leave Lancaster in a car or on foot or on a motorcycle or
5 whatever and go out 903 and end up at Kershaw Correctional
6 Institution but you're going kind of the long way around.
7 You're going way beyond the fork in the road out there at
8 Flat Creek, you're turning back and you're coming back
9 toward Kershaw for several miles before you get to the
10 prison. So I submit to you that Shawn Wyatt didn't know
11 where he was and he didn't have his bearings, and he said,
12 "I'm coming from Lancaster," which Kirkley knew to be that
13 way, but Wyatt pointed that way east toward Flat Creek.
14 "What have you been doing? Well, I was with my girlfriend
15 and we had an argument. "Well, who's your girlfriend?"
16 Didn't tell him anything about the girlfriend, where she
17 lived or anything, couldn't even give a name other than
18 honey. He's caught. He doesn't have anything on him
19 because he's gotten it gone, he chunked it over the fence.
20 But he knows what he's done and he knows how close he is to
21 the prison and he knows why he's being talked to he and
22 hadn't got a very good story and he can't make up a
23 girlfriend's name quick enough and all he can say is honey.
24 And what else? Where is Shawn Lee Wyatt from? Columbia,
25 South Carolina. Why in the world is Shawn Lee Wyatt walking

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1 on 601 right near Kershaw Correctional Institution at 6:00
2 in the morning not knowing where Lancaster is, not knowing
3 who a girlfriend is, not having any means of transportation,
4 any obvious means of transportation and he's from Columbia,
5 South Carolina. Precisely because somebody, I submit, drove
6 him down there and dumped him out and didn't get him picked
7 up before Chuck Kirkley got him picked up, but somebody
8 drove him down there and dumped out him for him to get rid
9 of that contraband and distribute it or attempt to
10 distribute it to inmates inside the prison of Kershaw
11 Correctional Institution. That's the only explanation that
12 makes any sense for why Shawn Lee Wyatt is out there walking
13 on the road when all of this goes down. He got stopped and
14 he got identified, he got charged and he's been indicted,
15 and I submit to you, ladies and gentlemen, that he's guilty
16 of all four of these offenses and I ask you to return
17 verdicts of guilty. Thank you very much.

18 THE COURT: Yes, sir, Mr. Steen?

19 MR. STEEN: Thank you, Your Honor. I'm going to
20 comment on one thing the solicitor said before I get into my
21 closing. The whole 903/601 situation. Last week I put in
22 my GPS from this location to drive there for trial prep. It
23 was six minutes shorter to take the 903 route than the 601
24 route. Either way Lancaster goes to Kershaw Correctional
25 Institute through Kershaw through Midway or the Flat Creek

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1 area it's called, but we'll move on. Like I said in my
2 opening, the only evidence that matters as of today is the
3 corrections officer. He's the only one who saw anything
4 take place. He is the State's only evidence. You heard a
5 lot about inferences and only explanations in the State's
6 closing because they don't have any other evidence. Mr.
7 Schnettler seems like a very nice guy and a good guard, but
8 last year on July 12th he made a mistake. It's not entirely
9 his fault, I mean, the solicitor, you know, went over all of
10 the circumstances. It was the end of a 12 hours shift, it's
11 a less than 30 second visual of the person at 5:45 a.m.
12 Schnettler said the sun had not broken the horizon yet. He
13 states it was about two and a half light polls away, stated
14 there was 40 yards between each light poll approximately 100
15 yards, that's a football field. The officer stated he got
16 excited, he admitted that that caused him to mess up the
17 identification. All of those going together does not make
18 his identification of Mr. Wyatt reliable. He failed to
19 notice the runner's hair color. He failed to notice that
20 the runner's face was covered or not. He failed to notice
21 whether the person had facial hair. He failed to notice
22 whether the shorts and shirt had any markings. He failed to
23 notice whether the individual had any markings on their arms
24 or shoulders. He failed to notice whether the person had
25 any gloves or shoes on. So a person trained to collect all

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1 of the evidence to determine the person who breached the
2 perimeter, he missed a lot of identifiable features more
3 than his clothing and race, true individual identifying
4 markings, he saw none of those on Mr. Wyatt. As I said,
5 that is the State's evidence. The victim in the case, the
6 South Carolina Department of Corrections, a state agency,
7 lots of stuff at their disposal. They had packages that
8 they said were thrown from the subject into the field, yet
9 nobody decides to fingerprint those. They're a law
10 enforcement agency but no one decides to fingerprint the
11 packages that someone saw get thrown over the fence.
12 There's cameras inside the prison facing outside, no camera
13 picked up this incident. Phones were located in the
14 packages. No one searched the phones for any identifiable
15 features and tries to trace those to anybody. The State
16 thought as soon as they identified Mr. Wyatt for walking
17 down 601, that was it, that's all they needed to do and they
18 stopped looking at point and now today that is the only
19 evidence they have. Now, why is Mr. Wyatt here today?
20 You've heard the State say a lot. You've got three
21 descriptions this week. Schnettler said it's a white male
22 wearing a dark shirt with long shorts. Lippe said it's a
23 light skinned black male wearing a black shirt with charcoal
24 shorts. Kirkley said it was a black male wearing a black
25 shirt with jean shorts. So that morning if you were a black

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1 male or a white male or a light skinned black male you met
2 the description that SCDC was offering and that's basically
3 anyone. Unfortunately Mr. Wyatt happened to be on 601 that
4 morning. He spoke with -- Officer Kirkley testified he
5 passed him, turned around and came back. Mr. Wyatt didn't
6 increase his walk, go hide in the woods, go hide behind a
7 tree, he continued what he was doing. A person that is
8 guilty does not do that, he stopped and had a full talk with
9 Deputy Kirkley and the State talked about it. He asked what
10 he was doing and he told him what he was doing up here, he
11 had a fight with his girlfriend and he was out there.
12 There's no reason not to believe him just because according
13 to the State he pointed the wrong way towards Lancaster.
14 I'm going to wrap it up right there. But this case does
15 depend on whether the State has made an identification of
16 Mr. Wyatt beyond a reasonable doubt. If the State has not
17 proven that Mr. Wyatt did this beyond a reasonable doubt
18 y'all cannot find him guilty here today. I firmly believe
19 that after you examine all the evidence and remember the
20 testimony presented you will have reasonable doubt as to the
21 accuracy of the identification. Mr. Wyatt was at the wrong
22 place at the wrong time, and today I hope y'all find him not
23 guilty because that's not against the law. Thank y'all.

24 THE COURT: All right. Ladies and gentlemen of the
25 jury, you have heard all of the evidence, the arguments of

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1 have served as jurors in civil cases where you were told
2 that it is only necessary to prove that a fact is more
3 likely true than not true, such as the greater weight of the
4 evidence or preponderance of the evidence. In a criminal
5 case the State's proof must be more powerful than that, it
6 must be beyond a reasonable doubt. Proof beyond a
7 reasonable doubt is proof that leaves you firmly convinced
8 of the defendant's guilt. There are very few things in this
9 world that we know with absolute certainty, and in criminal
10 cases the law does not require proof that overcomes every
11 possible doubt. If based on your consideration of the
12 evidence you are firmly convinced that the defendant is
13 guilty of the crimes charged, you must find the defendant
14 guilty. If on the other hand you think there is a real
15 possibility that the defendant is not guilty you must give
16 the defendant the benefit of the doubt and find him not
17 guilty. An issue in this case is the identification of the
18 defendant as the person who committed the crimes charged.
19 The State has the burden of proving identity beyond a
20 reasonable doubt. You must be satisfied beyond a reasonable
21 doubt of the accuracy of the identification of the defendant
22 before you may convict the defendant. Identification
23 testimony is an expression of belief or impression by a
24 witness. You must determine the accuracy of the
25 identification of the defendant. You must consider the

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1 believability of each identification witness in the same way
2 as any other witness. You may consider whether the witness
3 had an adequate opportunity to observe the offender at the
4 time of the offense. This will be affected by things like
5 how long or short a time was available, how far or close the
6 witness was, the lighting conditions, and whether the
7 witness had the chance to see another person in the past.
8 Are you satisfied that the identification made by the
9 witness subsequent to the offense was deprived of his own
10 recollection. You may take into account both the strength
11 of the identification and the circumstances under which the
12 identification was made. If the identification by the
13 witnesses may have been influenced by the circumstances
14 under which the defendant was presented to him for
15 identification you should scrutinize the identification with
16 great care. You may also consider the length of time that
17 last between the occurrence of the crime and the next
18 opportunity for the witness to see the defendant as a factor
19 bearing on the reliability of the identification. You may
20 take into account any occasions in which the witness failed
21 to make an identification of the defendant or made an
22 identification that was inconsistent with the identification
23 at trial. Finally you must consider the credibility of each
24 identification witness in the same way as any other witness,
25 consider whether he or she is truthful, and consider whether

1 he or she had the capacity and opportunity to make a
2 reliable observation on the matters covered in his
3 testimony. Once again I instruct you the burden of proof is
4 on the State and extends to every element of the crimes
5 charged, and this specifically includes the burden of
6 proving beyond a reasonable doubt that the identity of the
7 defendant as the person who committed the crime. If after
8 examining the testimony you have a reasonable doubt as to
9 the accuracy of the identification you must find the
10 defendant not guilty. The defendant is charged with
11 furnishing contraband. The State must prove beyond a
12 reasonable doubt that the defendant furnished or attempted
13 to furnish contraband. It is unlawful for any prisoner to
14 possess any matter declared to be contraband. Matters
15 considered contraband are determined by the director of the
16 department of corrections and published by the director in a
17 conspicuous place available to visitors and inmates at the
18 correctional institution. To prove furnishing or attempted
19 to furnish contraband, the State must prove beyond a
20 reasonable doubt that the defendant furnished or attempted
21 to furnish any prisoner with any manner declared by the
22 director to be contraband. Next we'll talk about the three
23 indictments for possession with the intent to distribute
24 cocaine base or crack, possession with the intent to
25 distribute cocaine, and possession with the intent to

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1 (The jury left the courtroom.)

2 THE COURT: Any objection or exceptions to the charge
3 by the State?

4 MR. BARFIELD: None, Your Honor.

5 THE COURT: From the defense?

6 MR. STEEN: None, Your Honor.

7 (The alternate juror was dismissed and the jury
8 began deliberations and returned with a
9 question.)

10 THE COURT: The jury has a question, I will mark this
11 as a Court's Exhibit. And their question is, "Please
12 provide clarification regarding direct versus circumstantial
13 evidence. What can be considered and what can't. So all I
14 can do is read the charge to them again. All right. Let's
15 bring them in.

16 (The jury returned to the courtroom.)

17 THE COURT: All right. Madam Forelady and ladies and
18 gentlemen of the jury, I received your question regarding
19 direct versus circumstantial evidence. I cannot answer the
20 question directly, but what I will do is re-read the jury
21 charge for you as to direct and circumstantial evidence.
22 All right. There are two types of evidence which are
23 generally presented during a trial; direct evidence and
24 circumstantial evidence. Direct evidence is the testimony
25 of a person who claims to have actual knowledge of a fact

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1 such as an eye witness. It is evidence which immediately
2 establishes the main fact to be proven. Circumstantial
3 evidence is proof of a chain of facts and circumstances
4 indicating the existence of a fact. It is evidence which
5 immediately establishes collateral facts from which the main
6 fact may be inferred. Circumstantial evidence is based on
7 inference and not on personal knowledge or observation. The
8 law makes absolutely no distinction between the weight or
9 value to be given to either direct or circumstantial
10 evidence, nor is a greater degree of certainty required of
11 circumstantial evidence than of direct evidence. You should
12 weigh all of the evidence in the case. After weighing all
13 of the evidence if you are not convinced of the guilt of the
14 defendant beyond a reasonable doubt you must find him not
15 guilty. That is the jury charge regarding circumstantial
16 and direct evidence. All right. I am going to send you all
17 back in the jury room to continue your deliberations. Thank
18 you.

19 (The jury left the courtroom.)

20 THE COURT: All right. We will wait.

21 (The jury resumed deliberations.)

22 THE COURT: They have another question. It says, "How
23 far in distance was the defendant from the contraband area
24 Oak dorm, when Lippe noticed him on the side of the road?"
25 Of course, I can't answer the question, all I can do is --

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1 and I don't even know, I can't remember now if she said it,
2 all I can do is say we can play her testimony back.

3 MR. BARFIELD: Would you tell me the question again? I
4 wasn't --

5 THE COURT: How far in distance was the defendant from
6 the contraband area, the Oak dorm, when Lippe noticed him on
7 the side of the road?

8 MR. BARFIELD: I don't understand the question.

9 THE COURT: I think what they're trying to figure out
10 is was he standing near the fence when she saw him, I think
11 that's what --

12 MR. BARFIELD: It almost sounds like they're saying
13 Lippe instead of Schnettler but maybe I'm misunderstanding.

14 THE COURT: No. I think they're trying to figure out
15 where he was when -- and I don't know, I'm just guessing.
16 Lippe is the lady that was driving the car when she said she
17 saw him coming in in the morning. I'm guessing she's --
18 they're trying to figure out where he was when she saw him
19 in relation to the --

20 MR. BARFIELD: Oh, the show-up ID that she did?

21 THE COURT: No. When she first saw him where was he in
22 relation to the Oak dorm area.

23 MR. BARFIELD: There ain't no way in the world -- he
24 was out on the highway. There's no way in the world we can
25 give them that information but I guess we could play her

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1 testimony.

2 THE COURT: I can tell them I can't answer that
3 question, all I can do is if they want to hear her testimony
4 again they can hear her testimony again. And then when she
5 brought this question she told Carol there was no way they
6 were going to reach a verdict today, which means I'll have
7 to give them an Allen charge. But they have not told us
8 that they are at an impasse but she told her when she gave
9 her the note there was no way they would reach a verdict
10 today.

11 MR. BARFIELD: She said today.

12 THE COURT: Yes, today.

13 MR. BARFIELD: To me that suggests that they just need
14 to talk some more.

15 THE COURT: Of course, I would have to give them an
16 Allen charge but I can't give them that until they tell me
17 that are at an impasse.

18 MR. BARFIELD: My position would be -- of course, I
19 don't know what's going to happen when they come out, but if
20 she said to you in the courtroom on the record we're not
21 going to reach a verdict today, that doesn't to me say
22 they're deadlocked, it just says it ain't going to happen
23 during regular business hours today, we need to come back
24 tomorrow.

25 THE COURT: Well, I'm guessing, she said it to Carol,

1 she didn't say it -- did she say it on behalf of the entire
2 jury?

3 THE CLERK: She said we would not be able to get a
4 verdict today and I assume she meant as a group.

5 THE COURT: But she didn't say that they were
6 deadlocked.

7 THE CLERK: She didn't say that.

8 THE COURT: All right. I can address the question and
9 send them back in but I think they have to tell me they're
10 deadlocked before I can read them the Allen charge.

11 MR. BARFIELD: I would ask you not to invite them to
12 tell you that they're deadlocked, just deal with the
13 question.

14 THE COURT: I'm just going to deal with the question
15 and we'll wait for them -- and I'll let them decide if they
16 want a portion of the transcript or if they want to just
17 continue deliberating. You can bring them in.

18 (The jury returned to the courtroom.)

19 THE COURT: All right. Ladies and gentlemen of the
20 jury, I have your question, which I have marked as Court's
21 Exhibit Number 2. I cannot answer the question for you, the
22 only thing that I can do is play testimony back. If you all
23 would like testimony played back I am going to -- because
24 the court reporter -- jurors and people often think that the
25 court reporter, he's there, he's taking down everything but

1 it is not actually transcribed in a transcribed manner for
2 you all to review at this time. So what we will have to do
3 is actually play the testimony back, the voice testimony
4 back so he'll have to find it. So what I will do is I will
5 send you all back to the jury room, if you all -- if there
6 is testimony that you want played back if you can just write
7 that, Madam Forelady, on a sheet as to which testimony you
8 wish to have played back and then send it back out and then
9 we will have him look it up and find it and we'll bring you
10 all back in to hear it. All right? All right. And then
11 also the clerk wants to know should she order you all -- the
12 reason she's asking is if we order dinner it normally takes
13 about 30 minutes or maybe 40 minutes to get here and she
14 wants to know if she should order you all something to eat.
15 You can -- you don't have to give me that answer now. Okay.

16 (The jury left the courtroom and sent a note.)

17 THE COURT: The note says, "We would like to hear
18 Lippe's testimony and Kirkley's testimony. We would also
19 like dinner ordered," is the note. So this will be Court's
20 Exhibit Number 3. They also needed to call their families
21 so she's letting them call right now and she's going to
22 order pizza for them. Once we get that done we'll bring
23 them in.

24 (The jury returned to the courtroom.)

25 THE COURT: And you all have asked for the testimony of

1 Officer Lippe and also Kirkley. So we are going to have the
2 court reporter play back their testimony and then we will
3 send you all back for deliberations.

4 (The testimony was played.)

5 THE COURT: All right. Ladies and gentlemen, I will
6 send you back in the jury room and you continue your
7 deliberations. I'm not sure if the food is here but it
8 should be here shortly. All right. Thank you.

9 (The jury left the courtroom and resumed
10 deliberations.)

11 THE COURT: I received a note from the jury, "I don't
12 foresee us making a decision in the next hour or so." So
13 I'll mark it and you can bring them on in.

14 (The jury returned to the courtroom.)

15 THE COURT: All right. Ladies and gentlemen of the
16 jury, I have received your note and apparently we were all
17 thinking the same thing because I was thinking that -- I
18 think I told them earlier if you all had not reached a
19 verdict around 8:00 or so we were going to bring you back in
20 the morning, so that is what we are going to do, but we are
21 going to start at 10:00 being that it's 8:00 tonight. You
22 are not to discuss this case with anyone now that the
23 deliberations have ended, you cannot start back until
24 tomorrow when you are back in the jury room. You cannot
25 discuss the case, you cannot do any independent research,

JURY VERDICT

1 you cannot do any independent research, you cannot do any
2 tweeting or social networking regarding this case. We will
3 see you all in the morning at 10:00 a.m. Thank you.

4 (Court recessed for the evening and resumed at
5 10:00 a.m., on July 16, 2014.)

6 (The jury went straight to the jury room and
7 resumed deliberations.)

8 THE COURT: Madam forelady, it's my understanding you
9 have reached a verdict?

10 THE JUROR: We have, Your Honor.

11 THE COURT: Can you hand that to the clerk? All right.
12 I'm going to ask the clerk to publish the verdict.

13 THE CLERK: State of South Carolina versus Shawn Lee
14 Wyatt. As to the indictment alleging furnishing contraband,
15 we, the jury, unanimously find the defendant guilty. As to
16 the indictment alleging possession with intent to distribute
17 cocaine base, we, the jury, unanimously find the defendant
18 guilty. As to the indictment alleging possession with
19 intent to distribute cocaine, we the jury unanimously find
20 the defendant guilty. As to the indictment alleging
21 possession with intent to distribute marijuana, we, the
22 jury, unanimously find the defendant guilty. Ladies and
23 gentlemen of the jury, if this is your verdict so say you
24 all by the raising of your right hand. Let the record
25 reflect all jurors have raised their right hand, Your Honor.

SENTENCING HEARING

1 THE JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Okay. Yes, ma'am.

5 THE COURT: All right.

6 (The jury was dismissed.)

7 THE COURT: All right. Yes, sir, Solicitor?

8 MR. BARFIELD: Your Honor, we are ready for sentencing.

9 I will hand up the sentence sheets. I did make an amendment
10 to -- well, first of all as to the drug offenses, two of
11 them, the crack cocaine and the powder cocaine, the State
12 contends are second offenses, the PWID marijuana would not
13 be a second offense because my understanding is marijuana
14 won't enhance marijuana and his prior offense was not a
15 marijuana. He does have a record, which I will tell you
16 about.

17 THE COURT: All right. Come on, Mr. Steen. All right.
18 Yes, sir, I will be glad to hear from you.

19 MR. BARFIELD: Your Honor, in 2001 he was convicted of
20 simple assault and battery and giving beer to a minor. In
21 2002 he was convicted of giving false information. In 2002
22 he was also convicted of public disorderly conduct. In 2002
23 he had his first general sessions convictions out of Easley
24 Police Department. He had six counts of financial
25 transaction card fraud, he got a suspended youthful offender

SENTENCING HEARING

1 sentence for them -- excuse me, actually ten counts of
2 financial card fraud. In 2003 he had a criminal domestic
3 violence first. Also in 2003 his youthful offender
4 probation was revoked and that youthful offender sentence
5 was activated. He apparently finished his youthful offender
6 sentence and came out on YOA parole, which was revoked in
7 2006. Then in 2007 he was convicted out of -- I'm not sure
8 what county, but was convicted of assault and battery of a
9 high and aggravated nature, grand larceny, and he got ten
10 years suspended to three years and three years of probation.
11 In 2011 out of the Lyman PD he was convicted of failure to
12 stop for a blue light, driving under suspension, disorderly
13 conduct and manufacturing methamphetamine. I've got
14 certified copies of the court documents from that
15 conviction. He apparently was before the court on 8/23 of
16 '11 on the charge of manufacturing methamphetamine and on
17 that he got a 18 month sentence. So this -- I contend that
18 the crack cocaine and the powder cocaine are second drug
19 offenses which put him in the five to 30, or five to 25 year
20 range, I can't recall which. I would also tell the Court
21 that -- and I can't provide the dates, perhaps Ms.
22 Brockenberry can, I probably could if I looked in my file,
23 he had been an inmate at Kershaw Correctional Institution
24 some time in the past as I understand it.

25 THE WITNESS: Yes, that would be correct.

SENTENCING HEARING

1 MR. BARFIELD: I don't know how soon before this event
2 occurred, and of course, from the testimony at the trial and
3 the investigation we don't know what his connection to
4 anybody inside the institution was to any degree of
5 certainty. I would simply further comment that this was not
6 one little bag of dope and marijuana that somebody tossed
7 over the fence. This was a lot of marijuana, a lot of crack
8 cocaine, a lot of powdered cocaine, a lot of smoking
9 tobacco, and probably more dangerously than anything else a
10 butt-load of cellphones and charges which are a nightmare
11 for the prison people to have circulating inside their
12 institutions. Based on the record, based on the nature of
13 his conduct in these offenses I would ask you to give him a
14 very substantial sentence.

15 THE COURT: All right. Yes, sir, Mr. Steen?

16 MR. STEEN: Thank you, Your Honor. I guess we are here
17 asking for the mercy of the Court. Like the solicitor says,
18 and he has provided documentation, this would be his second
19 offense on the cocaine base and the cocaine indictments. We
20 would ask the Judge to consider giving him the mandatory
21 minimum and running the contraband and PWID charge
22 concurrent. Mr. Wyatt, as you can see, he doesn't have any
23 family with him here today, he doesn't have any family
24 around here. Your Honor, we would just ask for your mercy.
25 Mr. Wyatt would like to address the Court.

SENTENCING HEARING

1 THE COURT: He would like to? All right. I will be
2 glad to hear from you.

3 THE DEFENDANT: From the very start of this I've felt
4 like I wasn't given a fair shot. My bond for the initial
5 contraband charge was --

6 MR. STEEN: One moment, Your Honor.

7 (Break in proceedings.)

8 MR. BARFIELD: I will have one other comment at the
9 appropriate time.

10 (Break in proceedings.)

11 THE DEFENDANT: Your Honor, I'm at the mercy of the
12 Court.

13 THE COURT: All right. Yes, sir? You had some more
14 comments? I'm sorry, Mr. Steen, do you have anything else
15 you want to --

16 MR. STEEN: Nothing further, Your Honor.

17 MR. BARFIELD: I'm going to discuss with you our plea
18 negotiations in this case, if you're of a mind that that's
19 not relevant to you I won't, but I would like for you to
20 know if you're willing to know .

21 THE COURT: That's fine.

22 MR. BARFIELD: He was initially charged just with the
23 contraband charge and based on the analysis of the
24 substances that were found in the packages I did direct
25 indictments for the drugs. From almost day one in this case

SENTENCING HEARING

1 we offered him a straight-up plea to possession or
2 contraband -- or attempting to furnish contraband and he has
3 turned that down. Certainly this was a triable case from
4 his perspective and I don't argue against that, but the jury
5 has spoken and I would submit that he deserves a very
6 substantial sentence.

7 THE COURT: How long has he been in jail?

8 MR. BARFIELD: He has been in jail since his arrest on
9 7/12 of '13, which is just over one year. He had a bond,
10 something a little over six figures, I don't know any
11 circumstances about why he did not make some effort to post
12 the bond or maybe could not have, certainly that's
13 believable. But he did have the holds from the other two
14 agencies and had he posted bond here he would have been
15 taken to one of those other two agencies.

16 THE COURT: He has a hold from what?

17 MR. BARFIELD: Swansea and Lexington County. I don't
18 know the details, but from talking to his lawyer and him
19 briefly yesterday or the day before he said it's petty
20 charges. I don't know.

21 MR. STEEN: From my looking on the public index one
22 they're public disorderly conducts.

23 THE COURT: All right. On indictments 2013-GS-29-1448,
24 1449 and 1450, sir, you will be sentenced to the state
25 department of corrections for ten years. On indictment

SENTENCING HEARING

1 2013-GS-29-1421 you will be sentenced to the state
2 department for a period of five years. All sentences will
3 run concurrent. You will be given credit for the 399 days
4 that you've served. Sir, do you understand your sentence?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right. Thank you.

7 (End of trial proceedings.)

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WITNESSES
Catoe- SCDC

ARREST WARRANT NUMBER/DOA
2013A2910100868 (DOA-7-12-13)

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: OCT 10 2013

VERDICT
TRUE BILL

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-29- 1448

The State of South Carolina
County of Lancaster

COURT OF GENERAL SESSIONS
OCTOBER TERM 2013

THE STATE
vs.
Shawn Lee Wyatt 1448-51

Indictment for Contraband

SC Code: §24-3-950
CDR Code: 0074
Class: Felony E

FILED
OFFICE OF CLERK
OF COURT
2013 OCT 10 PM 3:59
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

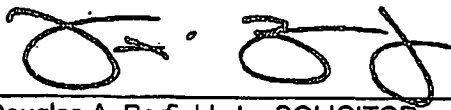
INDICTMENT

At a Court of General Sessions, convened on October 10, 2013, the Grand Jurors of Lancaster County present upon their oath:

CONTRABAND

That Shawn Lee Wyatt did in Lancaster County on or about July 12, 2013, furnish or attempt to furnish a prisoner under the jurisdiction of the South Carolina Department of Corrections with a matter declared by the director to be contraband, or, being a prisoner under the jurisdiction of the Department of Corrections, possess a matter declared to be contraband, to wit: cocaine base, cocaine, marijuana, and unknown pills, in violation of §24-3-950, *Code of Laws of South Carolina, (1976), as amended.*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

Catoe - SCDC

R. Brockmeyer

ARREST WARRANT NUMBER/DOA

Direct Indictment (DOA-7-12-13)

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: OCT 10 2013

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-29-1449

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

OCTOBER TERM 2013

THE STATE

vs.

Shawn Lee Wyatt 1448-51

Indictment for

Possession With Intent to Distribute
Cocaine Base

SC Code: § 44-53-375(B)

CDR Code: 3014

Class: Felony, D

FILED
OFFICE OF CLERK
OF COURT

2013 OCT 10 PM 3:59

CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on October 10, 2013, the Grand Jurors of Lancaster County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE

That Shawn Lee Wyatt did in Lancaster County on or about July 12, 2013, possess with intent to distribute, dispense, or deliver cocaine base in violation of Section 44-53-375(B), of the *Code of Laws of South Carolina*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

Catoe - SCDC

W. P. B...

ARREST WARRANT NUMBER/DOA

Direct Indictment (DOA-7-12-13)

ACTION OF GRAND JURY

Blinda L...
Foreperson of Grand Jury
Date: OCT 10 2013

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-29- 1450

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

OCTOBER TERM 2013

THE STATE

vs.

Shawn Lee Wyatt 1448-51

Indictment for

Possession With Intent to Distribute
Cocaine

SC Code: § 44-53-370(a)(1), (b)(1)

CDR Code: 0183

Class: Felony, D

FILED
OFFICE OF CLERK
OF COURT

2013 OCT 10 PM 3:59

CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

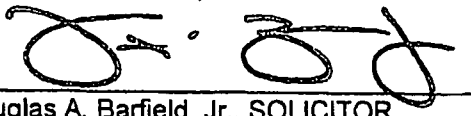
INDICTMENT

At a Court of General Sessions, convened on October 10, 2013, the Grand Jurors of Lancaster County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE

That Shawn Lee Wyatt did in Lancaster County on or about July 12, 2013, possess with intent to distribute, dispense, deliver or purchase cocaine, a controlled substance, in violation of Section 44-53-370(a)(1), (b)(1), of the *Code of Laws of South Carolina*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR

DOCKET NO. 2013-GS-29- 1451

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

OCTOBER TERM 2013

THE STATE

vs.

Shawn Lee Wyatt 1451-51

Indictment for

Possession With Intent to Distribute
Marijuana

SC Code: § 44-53-370(a)(1), (b)(2)

CDR Code: 0186

Class: Felony, F

WITNESSES

Catoe - SCDC

J. B. Baskin

ARREST WARRANT NUMBER/DOA

Direct Indictment (DOA-7-12-13)

ACTION OF GRAND JURY

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

FILED
OFFICE OF CLERK
OF COURT

2013 OCT 10 PM 3:59

CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on October 10, 2013, the Grand Jurors of Lancaster County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

That Shawn Lee Wyatt did in Lancaster County on or about July 12, 2013, possess with intent to distribute, dispense, or deliver marijuana, a controlled substance in violation of Section 44-53-370(a)(1), (b)(2), *Code of Laws of South Carolina, (1976), as amended.*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., 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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 29th, 2015



John H. Strom
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

DeAndrea G. Benjamin, Circuit Court Judge

ORIGINAL

RECEIVED

JUN 29 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

SHAWN LEE WYATT,

APPELLANT

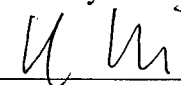
APPELLATE CASE NO. 2014-001556

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 29th day of June, 2015.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 29th day of June, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.