

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LAURENS COUNTY

Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DANIEL MARTINEZ HERRERA,

APPELLANT

APPELLATE CASE NO. 2014-001299

RECORD ON APPEAL

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1 in the indictment, accusations is in 2010, don't talk
2 about them. Very important, don't go on the internet,
3 don't tell anybody you are on the jury because some, I am
4 on jury duty. Somebody will Facebook friend you or
5 something another. You are not allowed to get on the
6 internet, Facebook, Twitter. I don't want y'all to say
7 anything about being on the jury on Facebook because
8 somebody unintentionally will say, oh, is that the case
9 about so and so and you can't answer that question. Don't
10 put it on Facebook, Myspace, Twitter, any of those media
11 sites. Don't talk to your spouse, no one. Blame it on
12 me. We will start at 9:30 sharp. Okay. You are excused
13 for the day.

14 (Whereupon, the jury was excused from open court to
15 start the case the next morning at 9:30 a.m.)

16 THE COURT: All right, you said you had some matters?

17 MS. MCNEILL: Yes, Your Honor. I am going to work my
18 indictment issue into also for my motion for a continuance
19 if that is okay.

20 THE COURT: All right.

21 MS. MCNEILL: On Thursday of last week I made a
22 motion for a continuance which Your Honor respectfully
23 denied my request. I am renewing that motion today for
24 Daniel Martinez Herrera who is charged with trafficking
25 marijuana, 10 pounds or more but less than 100 pounds

1 first offense. Judge, I am still maintaining that Mr.
2 Herrera never received any proper notice. A couple of
3 things I wanted to add to my argument that I did not add
4 on Thursday of last week. Your Honor, for the notice
5 requirement, he has to receive a notice of his right to be
6 present and that a warning was given that the trial would
7 proceed in absence under rule 16 of the criminal
8 procedures. Judge, in this case, I know that it was
9 determined that he had appeared for his initial docket
10 appearance which is why the State claims they never issued
11 a bench warrant in the first place for Mr. Herrera to be
12 picked up for failure to appear because he did appear for
13 those. Those were preset court term dates so he had
14 notice to be there and clearly he came to those court
15 terms. This is a 2010 trafficking marijuana case. He had
16 no notice. These court terms were not even set when he
17 was accused of these crimes back in 2010. So he had
18 notice of the terms in 2010, he appeared. He didn't have
19 any notice of terms that were going to proceed possibly in
20 his absence three years later. So we are and also, Your
21 Honor, as you know I have never met with Mr. Herrera.
22 This a case that I have inherited from Ms. Tara Schultz.
23 I have no indication that she has ever met with Mr.
24 Herrera although clearly she may have due to him showing
25 up for his initial docket appearance. Nonetheless, I

1 cannot sit here as an officer of this court and say if Mr.
2 Herrera speaks English, reads English, understands English
3 whatsoever. So while he may have been here, I know that I
4 personally have several clients who are Hispanic speaking
5 who do show up for their court terms that they have been
6 provided notice on but they don't know what is really
7 going on unless I go and talk to them in my broken Spanish
8 or bring in a translator. I don't know if that is the
9 case for Mr. Herrera or not at this point. Also, so that
10 is part one, what I wanted to say. Part two goes to the
11 indictment issue, Your Honor. In this case Mr. Herrera
12 was arrested, the incident date occurred on August 12th,
13 2010. It looks like he was picked up on that date and,
14 no, I am sorry. He was picked up on August 13th, 2010
15 which is when this warrant was issued. Your Honor, he was
16 indicted on October 8th, 2010 by the Grand Jury. I have
17 the Grand Jury's true bill signature on the indictment,
18 that I have picked up a copy of from the Solicitor's
19 office. Your Honor, in this indictment, he is indicted
20 under 44-53-0370, in trafficking marijuana. Your Honor,
21 it is my position that the language in the indictment is
22 extremely ambiguous. There is language from all parts
23 from that statute, from 44-53-370 and it is not clear
24 which section he is being indicted for. There is language
25 in the indictment for distribution and also for

1 possession. So it can be construed to be either
2 distribution or possession, we don't know which. We also
3 don't know which one the Grand Jury based their decision
4 to true bill this indictment in. So because of that we
5 need to give Mr. Herrera, the defendant in this case, the
6 benefit of the doubt and go for the less serious offense
7 of just possession. So, under (c) for possession, which
8 is 44-53-370(c), if we look at that then under (d) what he
9 could do is forfeit his bond and then the State, that is
10 all they are entitled to do, is to take that and they are
11 not entitled to try him in his absence. There is no
12 specificity about what he did so we need to assume the
13 least means possible. If Your Honor should find that the
14 language is not ambiguous, the language in the indictment
15 is not the same as it is in the arrest warrant, the
16 indictment was not served on the defendant, the arrest
17 warrant was. So, therefore because of the purpose of an
18 indictment is to place the defendant on notice for which
19 he should be tried, the indictment was never served on the
20 defendant and so therefore if Your Honor should find that
21 the language in the indictment is not ambiguous then you
22 should find that there is no notice for trial in absence
23 purposes since he was never placed on the language in the
24 indictment. But we are alleging that we do need to go to
25 the least restrictive means because the language is

1 ambiguous, it would be possession and then all the State
2 is entitled to do is take the bond and not try him in his
3 absence and be done with this case. Thank you.

4 THE COURT: Mr. Scott.

5 MR. SCOTT: Well, I don't know which one we will
6 address first. The warrant is for trafficking marijuana,
7 10 pounds or more. The indictment is clearly for
8 trafficking marijuana, 10 pounds or more. It tracts the
9 language of the statute where he could possess marijuana,
10 10 pounds or more and be guilty of trafficking. You can
11 distribute it, 10 pounds or more and be guilty of
12 trafficking. All of those are covered in the general
13 language of the indictment which is merely a notice
14 document, sufficient to put the defendant on notice for
15 what he is being tried for. In fact, the title of it is
16 trafficking marijuana. As far as the continuance, Your
17 Honor, we have been down this road before, before Judge
18 Hocker at the time. Ms. McNeill indicated she had some
19 possible leads to find her client. Here is where we are,
20 Judge, and we all heard at sidebar and the Public
21 Defender's feelings on Langford and how the Solicitor's
22 office should operate. What we would be doing, if we
23 merely went with the bench warrant would be rewarding
24 somebody for absconding. Truly without showing my cards
25 too much, I have a witness in this case who is elderly,

1 suffers from pulmonary disease. Let's say they do pick
2 Herrera up in four or five years down the line. I would
3 be precluded from trying the case potentially if I was
4 unable to produce this particular witness we have in this
5 case, Your Honor. Probably would be sending a message
6 that if you can hide from the Solicitor's office long
7 enough, get your bench warrant served, they are going to
8 drop the charge because they lose witnesses. Law
9 enforcement officers retire, any number of things could
10 happen. Had a continuance once, Your Honor. I think at
11 this time notice has been given. I have also inherited
12 this case. On the August 13th, 2010 arrest, bond set at
13 \$35,000.00 dollars. Of course, the law in State v.
14 Faurey, 2007 case, 374 SC 92 says that the bond form
15 provides sufficient notice that the defendant can be tried
16 in his absence. We do have that bond form signed by Mr.
17 Herrera. It appears to me he probably took off shortly
18 after he bonded out. September 20th I had a motion by the
19 bondsman to come off the bond. Indicted October 8th,
20 2010, trial notice, hand delivered, an email August 18th
21 of this year. Docket then published August 29th of this
22 year. And I am trying to recall, when Judge Hocker was
23 here he did grant the continuance and said that the case
24 should not be called before December 9th, 2013. So, here
25 we are on the docket again, December 16th and another

1 motion for a continuance, Your Honor. We would ask that
2 you allow us to go forward with this trial.

3 THE COURT: All right, regarding the continuance. I
4 think there was also another hearing from the bonding
5 company. And I believe Mr. Herrera was there at the
6 hearing. I was at that hearing, I don't remember that
7 specifically by my notes. But had he not been I would
8 have noted that on the order. Nevertheless, that would be
9 another time that Herrera was in court. I am going to
10 respectfully decline to continue the case. Now, regarding
11 the indictment. In reading the indictment as a whole,
12 trafficking is on the front face of the indictment of
13 trafficking marijuana. It is on the heading of the
14 indictment, inside part of the indictment. It is also
15 within the body of the indictment that he did unlawfully
16 and knowingly traffic in marijuana. And then all the
17 verbs that are included in the code section 370 are all
18 there. Trafficking does include possessing, buying and
19 selling. And the manufacturing is a threshold between 10
20 and 100 pounds. So, I think it is clear that he was
21 noticed to what to be prepared to defend or what he was
22 being accused of by the State of South Carolina in Laurens
23 County. So respectfully we will move forward as indicted
24 between 10 pounds to 100 pounds of trafficking charge.

25 MS. MCNEILL: Judge, I just want to clarify. You

1 said that distribute is on the indictment. It is not
2 where I see under subsection b, it is not listed.

3 THE COURT: It is not in there, I read it very
4 quickly. Did distribute, manufacturer, deliver, purchase
5 and, or bring into.

6 MS. MCNEILL: It is not listed in the statute, Your
7 Honor.

8 THE COURT: As I understand the trafficking code
9 section, it is generally a possession and it is an amount.
10 I haven't read that, I mean I have read that statute from
11 the front to back and back to front, it is five or six
12 pages long. I don't have it committed to memory. And if
13 distribute is not in there, you know, we will redact the
14 indictment. But I think clearly anyone reading this
15 indictment would be on notice that they are being accused
16 of trafficking marijuana because it is mentioned three
17 different times.

18 MS. MCNEILL: I understand, Your Honor. Just to add
19 to the record, it might be what the Grand Jury has, I know
20 that Assistant Solicitor Scott just said that, you know,
21 the indictment is a mere notice issue. But the Grand Jury
22 proceedings on the part of the indictment process and
23 clearly distribute is not in subsection (b) and that could
24 have been what they found. Thank you.

25 THE COURT: I think this is a probable cause

1 threshold for the indictment to be found, if the State
2 were to present testimony and it was a distribution then I
3 would certainly hear a different motion at the conclusion
4 of the State's case.

5 MS. MCNEILL: Thank you.

6 THE COURT: All right. What about the motion in
7 limine.

8 MS. MCNEILL: Judge, as far as that was concerned,
9 this is starting to become a standard motion that my
10 office makes for discovery issues that we have had in the
11 past. So this is an opportunity, I guess, for me to find
12 out if there is anything else.

13 MR. SCOTT: I have nothing, Your Honor. We have gone
14 over the discovery with Ms. McNeill. Of course, we
15 maintain our open file policy. Their office is next door
16 to ours. They are free to come over. They often do come
17 over. I have got nothing new. I have provided everything
18 in my file to her.

19 THE COURT: So if something comes up she is suppose
20 to have it. If she doesn't then we will deal with it as
21 it presents itself during the trial. Anything else?

22 MS. MCNEILL: No, sir.

23 THE COURT: All right. Y'all stand down.

24 MR. SCOTT: Your Honor, let me actually invite Ms.
25 McNeill over to review my file before she leaves the

1 courtroom.

2 MS. MCNEILL: Your Honor, I have reviewed Mr. Scott's
3 file and in previous cases not with Mr. Scott, discovery
4 has been discovered throughout the trial. And sometimes
5 it is known and sometimes it is not even known by the
6 Solicitor himself. So I just wanted to make sure that at
7 this point there is nothing that we, no new information
8 that would be necessary to have such a hearing.

9 MR. SCOTT: There is nothing that I know of that I
10 don't know of, Your Honor.

11 MS. MCNEILL: Thank you.

12 THE COURT: Very well. Y'all stand down and we will
13 see y'all in the morning on this case.

14 (Whereupon, the trial will resume the next morning at
15 9:30 a.m.)

16 December 17, 2013.

17 THE COURT: Are we ready?

18 MR. SCOTT: Yes, Your Honor.

19 MS. MCNEILL: Yes, sir.

20 THE COURT: Go get them, Mr. Bolt.

21 (Whereupon, the jury came into open court at
22 approximately 9:40 a.m.)

23 THE COURT: Ladies and gentlemen, we are ready to
24 start the trial and the way it works is this. The State
25 of South Carolina versus Daniel Herrera. As I told you

1 they get shorter. And I expect that these witnesses that
2 we are going to hear today will probably get resolved, if
3 we get late in the afternoon we will come back in the
4 morning and finish that up. We will do it that way. I
5 will not keep y'all hear late tonight if I can help that.
6 Now, as I told you, you cannot do any kind of independent
7 research, don't look anything up on the internet, on your
8 cell phone, Facebook, Twitter, any of those social media
9 sites. It has nothing to do with trying this case because
10 we have got no control over that or what people say or how
11 they are saying. The best evidence is live witnesses
12 testifying in the courtroom. With that being said, I
13 would like all of you to stand as a group and Ms.
14 Lancaster will place you under oath.

15 (Whereupon, the jury was sworn at approximately 9:50
16 a.m.)

17 THE COURT: I brought y'all some candy, I like candy
18 while I am listening. Y'all can enjoy that. I find out
19 most jurors go through chocolate quick and I have got more
20 in the back. All right, Mr. Scott.

21 MR. SCOTT: Thank you, Your Honor. Mr. Daniel is
22 going to do the opening statement in this case.

23 THE COURT: Mr. Daniel.

24 MR. DANIEL: Thank you, Your Honor, may it please the
25 Court.

1 THE COURT: Yes, sir.

2 MR. DANIEL: Ladies and gentlemen, one wrong number
3 can make all the difference in the world. To be a little
4 more specific. One wrong number can make all the
5 difference in the world because that is what happened in
6 Daniel Herrera's case, that is why you are here today.
7 But for the wrong number listed in the address Daniel
8 Herrera probably gotten away with shipping over 10 pounds
9 of marijuana in Laurens County back on August 12th of
10 2010. I am going to back up and try to give you an
11 overview of this case, some of the facts that the State
12 intends to prove from the evidence. August the 12th of
13 2010, a little over three years ago now Glenda Armstrong
14 arrives home one evening at her house at [REDACTED] McDowell
15 Street, just off of North Harper, Highway 221 here in
16 town. She arrives home one evening, the front door, the
17 front porch area she sees a package. It is a little bit
18 odd, kind of serious. But Glenda Armstrong hasn't ordered
19 anything, she doesn't know what the package is or what it
20 contains. So she examines the package and it was sent by
21 the U.S. Postal Service and on the outside of the package
22 Ms. Armstrong notices that maybe it is window blinds,
23 plantation style window blinds. And on the address label,
24 the name on the address is Yems Smith but it has Glenda
25 Armstrong's home address on it, [REDACTED] McDowell Street. So

1 it even raises more red flags because Glenda Armstrong
2 didn't order this, doesn't have her name on it but it has
3 got her home address on it. The return address where the
4 package came from was a Mcallen, Texas. Mcallen, Texas is
5 the Southern Border of the United States, U.S. Mexican
6 Border. Even more suspicious. Ms. Armstrong tried to
7 find out maybe from a neighbor of her's, maybe the package
8 was her's, delivered to her by mistake. So she contacts
9 her next door neighbor at [REDACTED] McDowell Street to find out
10 if the package belongs to a neighbor, it doesn't, she gets
11 confirmation. So at that point Ms. Armstrong decides to
12 open up the package. When she does that, inside she finds
13 six different individually wrapped plastic bags of what
14 looks like marijuana, a green leafy plant like substance,
15 the box is kind of heavy. At that point Ms. Armstrong
16 decides to call 911, report this. Officer Brandy Anderson
17 of the Laurens City Police Department dispatched out
18 there, she looks at the box, sees it. Yes, it looks like
19 marijuana so she takes it into evidence, she seizes the
20 package. But that doesn't end Glenda Armstrong's
21 involvement in this case because, you know, it is kind of
22 obvious that whoever that package was meant for is
23 probably going to be looking for it. That is over 10
24 pounds of marijuana. So they are going to be looking for
25 it. So a few hours later, after Glenda Armstrong

1 initially makes this report the Laurens PD, guess who
2 shows up looking for that package, Daniel Herrera. He
3 shows up asking the whereabouts of the package.
4 Unbeknownst to Daniel Herrera, he doesn't know the package
5 was already intercepted by Laurens Police Department.
6 Wisely enough Ms. Armstrong tells him that she returned
7 the package to the post office, that it didn't belong to
8 her so she wanted to send it back to the post office. So
9 that is going to be important. So fast forward a little
10 bit. Investigator, he was an investigator at the time
11 with the Laurens Police Department, Walter Bentley who is
12 sitting at the prosecution table right here, he becomes
13 involved and he wants to find out who this package was
14 meant for because pretty certain, Glenda Armstrong, it
15 wasn't her's, we know that. So he wants to get the postal
16 service involved to see who was going to pick up this
17 package. So the next day on August 13th Investigator
18 Bentley shows up at the post office with the package, kind
19 of gets the post office involved to see if they can do
20 what is called a controlled delivery, see who picks it up.
21 Guess who Walter Bentley sees in the parking lot already
22 waiting for the post office to open, Daniel Herrera.
23 Officer Bentley follows Daniel Herrera in the post office,
24 Daniel Herrera is in line waiting to talk to the clerk.
25 When he gets up to the counter he tells the clerk, hey,

1 there is a package that was sent to the wrong address. I
2 live at [REDACTED] McDowell Street and the package was sent to
3 [REDACTED] McDowell Street. So this is what Daniel Herrera is
4 telling the clerk. So it was sent to the wrong address, I
5 am here to pick it up, my neighbor told me she returned it
6 to the post office. The clerk goes back there, she
7 checks, comes back out and tells Daniel Herrera, we don't
8 have your package. At that point Officer Bentley is
9 hearing all of this, basically says, Daniel Herrera, hey,
10 I have got your package and that is when he is taken into
11 custody. Caught redhanded when attempting to pick up the
12 package. So how are we going to prove all of that.

13 MS. MCNEILL: Your Honor, I have a matter.

14 THE COURT: All right. I will let y'all step in the
15 jury room real quick. I have got a matter of law I need
16 to discuss with two lawyers. Step back and will have you
17 right back in here. Okay.

18 (Whereupon, the jury was excused from open court.)

19 THE COURT: All right, Ms. McNeill.

20 MS. MCNEILL: Thank you, Your Honor. Your Honor, in
21 Mr. Daniels opening statement he, yesterday I had a motion
22 that I argued in front of the Court saying that the
23 indictment was ambiguous in the language in the
24 indictment. The State survived that motion and now they
25 are going overly broad into their language that they are

1 saying to the jury in their opening statement saying,
2 attempt to possess, attempt to possess is not listed in
3 the indictment whatsoever. And, Your Honor, I will cite
4 Bailey versus the State where it says that, you know, the
5 indictment language, by instructing the jury on that
6 overbroad language was impermissible, and which is not
7 alleged in the indictment.

8 THE COURT: This is the comments that was said or the
9 Judge's instructions to the jury in the case.

10 MS. MCNEILL: This one was about comments that were
11 made during the trial and it is a PCR case, and then
12 subsequently the Judge instructed the jury on language
13 used by the State. And the Court found, the Supreme Court
14 found that that language was overly broad because it was
15 not alleged in the indictment. It was impermissible and
16 that was reversed and remanded.

17 THE COURT: All right. Mr. Daniel, keep your
18 comments to the facts you intend to prove.

19 MR. DANIEL: Your Honor, that is how he was arrested
20 at the post office and Walter Bentley is going to testify
21 to that fact, that he was attempting to pick up the
22 package the next day after it was initially seized at
23 Glenda Armstrong's house. Kind of put into context.

24 MS. MCNEILL: That language is not alleged in the
25 indictment.

1 THE COURT: All right. Restrict your arguments to
2 the facts you intend to prove. I think that is all the
3 cautionary instructions I can give you is that, if you do
4 that, the motion may be premature on opening argument, it
5 may be in the testimony, the same or similar issue. I
6 don't know, the facts may lay out that way, I don't know.
7 All right, go get them and bring them in.

8 MR. DANIEL: Your Honor, can I continue, am I
9 restricted in what I--

10 THE COURT: You have already, you have got him in
11 custody, continue your argument from there.

12 MR. DANIEL: Yes, sir.

13 (Whereupon, the jury came into open court at
14 approximately 10:03 a.m.)

15 THE COURT: All right, Mr. Daniel, you can continue.

16 MR. DANIEL: Thank you, Your Honor. Ladies and
17 gentlemen, I left off, we were discussing how Daniel
18 Herrera was at the post office attempting to pick up the
19 package, explaining to the clerk the situation of how the
20 package was incorrectly delivered to the wrong address.
21 Walter Bentley was the investigator at the Laurens Police
22 Department at the time, heard all of this and it was at
23 that point that Daniel Herrera was taken into custody.
24 Investigator Bentley searched Daniel Herrera's person
25 after he was taken into custody and what does he find in

1 Daniel, Herrera's shirt pocket, well he finds two slips of
2 paper, the name, Yems Smith and underneath that [REDACTED]
3 McDowell Street. And the address they have for Daniel
4 Herrera is [REDACTED] McDowell Street and Yems Smith as you
5 recall, was a name that I told you that was actually the
6 package was addressed to a Yems Smith. But the package
7 had [REDACTED] McDowell Street. So here you see that the package
8 ended up where it did. Whatever individual was on the
9 other end of that package, who sent the package, there was
10 a mixup. So you are going to hear testimony from Glenda
11 Armstrong about she arrived home to find that package, how
12 she initially opened it up, discovered looks like
13 marijuana, called the police, they seize it, Officer
14 Bentley gets the package, plans on doing it in a
15 controlled delivery the next day. He sees Daniel Herrera
16 and he makes the arrest. You will hear testimony about
17 that, you will hear how Daniel Herrera was Id'd, the
18 description that, Linda Armstrong gives a description of
19 what Daniel Herrera looked like that night he came back
20 looking for that package. That is how one of the ways
21 Officer Bentley was able to identify him. You are going
22 to hear testimony from the marijuana analyst, Jared
23 Hunnicutt from the Laurens PD, how he tested each of the
24 six bags down in that box, all of them tested positive of
25 being marijuana. This isn't oregano we are talking about.

1 Also he weighed each of the bags and a total weight was
2 over 10 pounds. And that is what trafficking is all
3 about. I am going to touch on the law a little bit, you
4 will get that later on at the conclusion in this case.
5 The statute of South Carolina, you are trying to bring in
6 10 pounds or more of marijuana into this State or you are
7 attempting to possess or pick up marijuana, 10 pounds or
8 more in this State, or you are aiding and abetting someone
9 who is trying to bring in marijuana into the State, you
10 are guilty of trafficking in marijuana. It has to be 10
11 pounds or more. You are going to hear testimony, that
12 yes, this was more than 10 pounds, 10 pounds or more, you
13 will hear that testimony. Now, the burden of proof is on
14 the State. That means the State has to prove Daniel
15 Herrera's guilt beyond a reasonable doubt. The State has
16 to leave you firmly convinced of Daniel Herrera's guilt.
17 We have to leave you firmly convinced that Daniel Herrera,
18 the individual reasonability for bringing in this
19 marijuana in Laurens County on August 12th of 2010, that
20 is what we are tasked to do. So we have to leave you
21 firmly convinced that, yes, he did that. You can have
22 doubt, beyond a reasonable doubt is not some
23 insurmountable hurdle we have to get over. There are a
24 few things that are one-hundred percent certain in this
25 world. A guilty verdict, you don't have to be one-hundred

1 percent certain, you have to be firmly convinced. So kind
2 of think of it this way. You woke up one morning, they
3 are calling for rain, eighty percent chance of rain,
4 ninety percent chance of rain. You see that on the
5 weather report. You get in your car and you drive to
6 work, you hear, once you get to work you hear what sounds
7 like rain drops hitting the building, you are at work.
8 Keep in mind, you haven't actually seen it raining
9 outside. Well, then a coworker comes in, a coworker is
10 wearing a raincoat. And they got water on it, they are
11 holding an umbrella. So why is that person wearing a
12 raincoat, why is that person wet. You are going to
13 conclude, yes, it was raining. You didn't actually go
14 outside and see it raining for yourself. Just like you
15 didn't see Daniel Herrera on August 12th try to pick up
16 this package or set the wheels in motion for the package
17 to be shipped here. You didn't actually see that. I
18 didn't see it, you didn't see it. But you know he did it
19 when you hear the evidence. You can only reach one
20 conclusion after you hear the evidence. Just like you can
21 only reach one conclusion, that yes, it was raining that
22 day, that is why your coworker was wearing a raincoat.
23 Now, Ms. McNeill may get up here and say, well, there
24 could be other reasons why that person got wet. It could
25 be a sprinkler outside. Well, that is doubt that a

1 sprinkler could be a reason why your coworker is wearing a
2 raincoat. Yes, that is doubt but is that reasonable. I
3 submit to you that is not reasonable. I submit to you, in
4 a scenario like I just gave you, on the raincoat, that is
5 firmly convinced it is raining. And here, the State
6 versus Daniel Herrera, you are going to find that he is
7 guilty of the offense of trafficking of marijuana after
8 you hear the evidence. It will all lead you to one
9 conclusion, he is guilty. On two separate days Daniel
10 Herrera is trying to pick up this package. Walter Bentley
11 hears Daniel Herrera tell the clerk about a packet was
12 incorrectly and improperly delivered to Glenda Armstrong
13 when it should have been delivered to Daniel Herrera who
14 lives next door at [REDACTED] McDowell Street. That is what you
15 are going to hear. Once again, my name is Taylor Daniel,
16 I am a Assistant Solicitor here in Laurens County. I am
17 going to be trying this case with Dale Scott, Deputy
18 Solicitor here. We actually work for David Stumbo,
19 elected Solicitor of the Eighth Circuit made up of Laurens
20 County, Greenwood, Abbeville and Newberry. And basically
21 we enforce the criminal laws of the State of South
22 Carolina, we represent victims and really the public at
23 large. The burden is on us, thank you for your attention.

24 THE COURT: Ms. McNeill.

25 MS. MCNEILL: Good morning. My name is Chelsea

1 McNeill, I am a lawyer at the Public Defender's office
2 here in Laurens County. My client is not here, he is
3 being tried in his absence and I hope that y'all will
4 uphold your duty as a juror in this case that you will not
5 hold that against him. The State is the one that is
6 asking for the jury trial in this case. So the State is
7 the one that asked y'all to be here today. It is so easy
8 for the government or police officers to accuse you of
9 doing something, it is so easy for the government or the
10 police officers to say, you are guilty of a crime, they
11 can point a finger and say they have this evidence and now
12 you are in a situation where you are facing a criminal
13 charge. And then when that happens you need somebody like
14 me to come in and defend you, to defend your rights, to
15 uphold the constitution. My job is to put the State to
16 the test, to make sure that they are doing their job
17 accurately, to make sure that they are not gambling on the
18 rights of the defendant. If they do that then where does
19 it stop. So just keep in mind that this is extremely easy
20 for the government and police officers to say you are
21 guilty of a crime. Now here you are to also make sure
22 that they do their job correctly, that they work for a
23 guilty conviction. The buck stops with you all, and it is
24 up to you guys to eventually determine the guilt or
25 innocence. The State is on trial today, just remember

1 that, the State is on trial today. And you guys, the buck
2 stops with you. Please keep an open mind to this trial
3 and I will speak to you at the end of this trial. Thank
4 you.

5 THE COURT: Call your first witness.

6 MR. SCOTT: Your Honor, the State calls Glenda
7 Armstrong.

8 GLENDA ARMSTRONG, being
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Scott:

12 Q Say your full name, if you don't mind.

13 A Glenda Diane Armstrong.

14 Q Ms. Armstrong, you are from Laurens County?

15 A I live in Laurens County but I am not from here.

16 Q Where are you from?

17 A Miami, Florida.

18 Q How long have you lived in Laurens?

19 A About 22 years.

20 Q [REDACTED] McDowell Street?

21 A Yes.

22 Q How far away is that from the court house?

23 A It is about maybe two and a half, three miles.

24 Q Just right off of Harper Street there?

25 A Yes.

1 Q Have you lived there for 22 years?

2 A Yes.

3 Q The house next to you, [REDACTED] McDowell Street, during
4 that 22 years how many neighbors have you had there. Is
5 that a rental home, [REDACTED]

6 A No, it is my home.

7 Q [REDACTED] McDowell Street?

8 A [REDACTED]

9 Q You live at [REDACTED] right?

10 A Yes.

11 Q [REDACTED] is next door to you?

12 A Yes.

13 Q Is that a rental home?

14 A I believe so.

15 Q August 12th of 2010 you were living at your current
16 home, [REDACTED] McDowell Street, is that right?

17 A Yes.

18 Q Did you have neighbors living at the home at [REDACTED]
19 McDowell Street?

20 A No.

21 Q You didn't have any neighbors living in the home next
22 to you?

23 A To the left of me, where the house was, that
24 neighbor, renting. It was all sorts of activity going on
25 all the time.

1 Q Did you have neighbors or not living there, there was
2 activity at the home next to you?

3 A Do what, sir?

4 Q You said there was activity going on at the home at
5 [REDACTED] McDowell?

6 A Yes.

7 Q Were people living there?

8 A Yes.

9 Q How many?

10 A About twelve people I think.

11 Q Back to that date, though, August 12, 2010. You were
12 living at the home of [REDACTED] McDowell Street, right?

13 A Yes.

14 Q Do you remember receiving a package that day?

15 A Yes.

16 Q Tell me how you found that package, where had you
17 been?

18 A It was on my side porch and I picked it up and looked
19 at it and just didn't register. So, it had Yems Smith's
20 name on it. And I went over there and got her and asked
21 her, did she, had she ordered anything from Texas. She
22 said, no. I said, it was funny so I opened it. And I
23 opened it just a little bit and I said, this is no
24 clothes. And so I took it back to my bedroom and I
25 thought for a while and I called the cops. I said, I have

1 something here at my house I think you better come see
2 about it. I got it through the mail and one of the ladies
3 on the line I was talking to, she said, well, yes ma'am,
4 we will be there in an hour or two. So they came and she
5 showed up about maybe an hour and a half later. And I
6 said, I opened it, it was sent to my address.

7 Q Okay. Had your address on it?

8 A Yes. And I said, I think this is what they call
9 marijuana. And she opened it up a little bit more, she
10 said, yes, I know.

11 Q Describe the box for me.

12 A Cardboard box, about this long and this wide.

13 Q Let me show you what has been marked as State's
14 exhibit number 1.

15 A That is what it looks like.

16 Q Do you recognize that?

17 A Yes.

18 Q Can you read the labels on that?

19 A Blinds, that is not easy reading it upside down.

20 Q I am sorry about that.

21 A Yes, that is the box.

22 Q This is the box?

23 A Yes.

24 Q Okay. This is the box that was on the side of your
25 house August 12th of 2010?

1 A Yes.

2 Q And you said, after you received it you cut it open?

3 A Yes.

4 Q Because it has got your address on it, but that is
5 not your name, is it?

6 A No.

7 Q You said you found something in it?

8 A It was, I thought it was funny because I don't
9 believe it was blinds, it looked like it had been packed
10 in a compressed air, made it real small.

11 Q Packages that were in here?

12 A Yes.

13 Q Like a vacuum seal kind of a deal?

14 A Yes. And when she came in, I invited her in the
15 house and everything. She looked at it and she says,
16 well, I am going to take it back to the station and see
17 what we are going to do. I said, I have already told them
18 that I sent it back to the post office.

19 Q Okay, hold on one second.

20 MR. SCOTT: Can I introduce State's 1 into evidence?

21 THE COURT: Any objection?

22 MS. MCNEILL: No, Your Honor.

23 THE COURT: The box is State's exhibit 1.

24 (Whereupon, State's Exhibit 1 was admitted into
25 evidence.)

1 Q Okay. Now, when you opened it up, I think you said
2 it appeared to be pot, is that what you said?

3 A Yes.

4 Q In a vacuumed sealed type bags?

5 A Yes.

6 Q I want to show you State's number 2, State's 2a,
7 State's 2b and State's 2c and State's 2d and State's 2d.
8 Do you recognize these?

9 A Not like that.

10 Q Well,--

11 A Like I said, like coffee vacuum.

12 MS. MCNEILL: Objection.

13 THE COURT: What is your objection.

14 MS. MCNEILL: She stated on the record that she just
15 slightly opened the box and looked inside. There is no
16 way she can testify this is how she found it.

17 THE COURT: I think that is consistent with her
18 answer. She said, not like that.

19 Q I think you said they just appeared vacuum sealed?

20 A Yes.

21 Q Can I hand you one of these?

22 A Yes.

23 Q You don't have to open it or anything. Just observe.

24 A It is compressed so small and it didn't come like
25 this, in those little vacuumed bags.

1 Q But you sent it off to the police department to be
2 tested, is that right?

3 A Yes. I just gave it to them.

4 Q But you opened it up, did you observe--

5 THE COURT: Don't lead.

6 Q What did you observe when you opened it, what did you
7 see?

8 A I saw packaging but like, opened a little bit to see
9 if we can smell it and I couldn't smell anything. And
10 that was it.

11 Q So the vacuumed sealed bags that you thought may have
12 been pot, you sent with the police officer back to the
13 station?

14 A Yes.

15 Q Anybody else at any time come to your house asking
16 about the box?

17 A Yes.

18 Q When was that?

19 A It was a Mexican guy and him and his lady friend, I
20 didn't let them come in the house, they was right out on
21 the back porch. And he tried to convince me to, that I
22 had the pot and I wasn't going to give it up. And I told
23 him, I said, go to the post office. Tell them there was a
24 mistake made and I told the police what I said about it.
25 That way you can catch him in the post office.

1 Q Let me make sure I am clear. The air-conditioner
2 just cut on right when you start talking.

3 A Yes.

4 Q And you have got to make sure you speak up into that
5 microphone because I am standing right here and I am
6 having trouble hearing you. You said it was a Mexican
7 man?

8 A Yes, he was about 25 or 26.

9 Q And what did he say about the box?

10 A It was a package from his friends, was sending
11 clothes for kids to go to school.

12 Q He told you it was clothes in the box?

13 A Yes.

14 Q What did you tell him you did with the box?

15 A I told him that I took it back to the post office.

16 Q But in fact you had sent it to the police department?

17 A Yes. I said just tell them there was a mistake and
18 that you want to pick up your package. I said, they will
19 have it.

20 Q Did you keep anything that was in that box?

21 A No.

22 Q Did you open the entire thing?

23 A No.

24 Q Did you send this box with the contents directly to
25 the police department when they came to your house?

1 A Yes.

2 Q Your testimony that you told the Mexican male, that
3 you thought was a Mexican male, that you had sent it to
4 the post office?

5 A Yes.

6 Q Did you ever hear from him again?

7 A No, not really.

8 Q Thank you. Please answer any questions that Ms.
9 McNeill has for you.

10 CROSS-EXAMINATION

11 By Ms. McNeill:

12 Q How are you doing, Ms. Armstrong?

13 A Okay.

14 Q Good. Just going to ask you a few questions. Do you
15 live at [REDACTED] McDowell Street, correct?

16 A Yes.

17 Q And this package right here was delivered to your
18 house?

19 A Yes.

20 Q And you said, at one point you said you had no
21 neighbors living at [REDACTED] McDowell Street but then at
22 another point you said that you did have neighbors. So is
23 it you did or you did not have neighbors there?

24 A Well, on the left, [REDACTED] there was some Mexican people
25 living there, I don't know how many but it was quite busy.

1 Q Quite busy?

2 A Yes, coming in and out all the time.

3 Q And at one point, I know you just stated that you
4 don't know how many people you had living there next to
5 you but at one point you told Mr. Scott that there was
6 about twelve people there, is that about right?

7 A I think so.

8 Q So about twelve Mexican people living at [REDACTED] McDowell
9 Street?

10 A Yes.

11 Q And you said there is always activity in and out?

12 A Yes.

13 Q Was there both men and women at [REDACTED] McDowell Street
14 within that twelve group of people?

15 A Somewhat.

16 Q So twelve men and women living over there. And this
17 is not how you got the package at your house, is it?

18 A Not like that.

19 Q Not like that. Okay. And you didn't recognize this
20 when he stacked all this marijuana in front of you, is
21 that correct? You said it didn't look like that.

22 A No, it was like a coffee box size.

23 Q A coffee box size. This is clearly not coffee box
24 size, right, none of this is?

25 A No.

1 Q Okay. And do you know who Nancy Hefner, (phonetic),
2 is who lived in Texas?

3 A No.

4 Q And do you know who Yems Smith is?

5 A Who.

6 Q Yems Smith?

7 A No.

8 Q Okay. So, Yems Smith could be one of those twelve
9 people at [REDACTED] McDowell Street, correct?

10 A Maybe.

11 Q Maybe, right. And any one of those twelve people
12 could have come over and picked up this package from you,
13 right?

14 A Yes.

15 Q Okay. And you said that this doesn't look like how
16 you found it and you couldn't smell anything when you
17 opened it, right?

18 A Right.

19 Q And you also stated that the Mexican guy that came
20 over with his lady friend to pick up this package, he was
21 about 25 years old, is that what you said?

22 A Yes, 25 or 26.

23 Q 25 or 26 years old, okay. And he stated it was
24 clothes in the box for his kids?

25 A Yes.

1 Q Thank you, no further questions.

2 THE COURT: Any redirect.

3 REDIRECT EXAMINATION

4 By Mr. Scott:

5 Q You don't know what happened to this marijuana after
6 you turned it over to the police department, do you?

7 A No.

8 Q Everything that was in this box you turned over to
9 the police department?

10 A Yes.

11 Q Thank you.

12 THE COURT: You may step down. We are going to take
13 a break.

14 (Whereupon, the jury was excused from open court for
15 a short break.)

16 THE COURT: Let's take a short break.

17 (Whereupon, a short break was taken.)

18 THE COURT: Are we ready to continue.

19 MR. SCOTT: Judge, I am going to ask Ms. McNeill, the
20 motion in limine does mention in the statements that there
21 is a, of course we have covered this with her, but there
22 is a spontaneous type non-custodial, non-interrogation
23 type statement. Essentially, Your Honor, what he said
24 was, oh shit, whenever he sees Walter Bentley at the post
25 office. Just out of an abundance of caution, if we need

1 to have a Jackson v. Denno for that, I don't know that we
2 would but Walter Bentley would testify to that. He is
3 probably three witnesses from that, two witnesses from
4 that. But like I said, it is a spontaneous type
5 non-custodial statement.

6 MS. MCNEILL: Your Honor, yesterday I requested to
7 have any hearing on any statements that were going to be
8 made. He had said that none were, that we didn't need to
9 have such a hearing so I am going to object to this.

10 MR. SCOTT: My understanding, I was asked if there
11 was anything that she hasn't been given that I expected to
12 get some time during the course of this trial. Of course,
13 I said there was nothing I knew of at this time that I
14 would be getting, I had everything. And this statement,
15 nothing we haven't spoken of before that she is well aware
16 of. If we need a Jackson v. Denno since it is probably
17 not anything that makes or breaks my case. I handed a
18 copy of that actual motion up today.

19 THE COURT: It only mentions any statement, written
20 statement or any alleged statement made by the defendant,
21 that is what it says.

22 MR. SCOTT: This is something we all have spoken of a
23 number of times before now.

24 THE COURT: What she said, if I remember correctly,
25 is have you told me everything y'all knew.

1 MR. SCOTT: Yes, sir.

2 THE COURT: And if you haven't--

3 MR. SCOTT: We have.

4 MS. MCNEILL: And, Your Honor, just for the record,
5 so the record is clear, I did provide a copy to the
6 Solicitor of that motion that I provided to Your Honor
7 yesterday.

8 THE COURT: All right, now what is your position on
9 this statement. Were you aware of it?

10 MS. MCNEILL: I was aware of it which is why I wanted
11 to have a Denno motion as my written motion clearly
12 states, he stated that it was not necessary because there
13 was no, you know, he physically took the position in court
14 that there was no statement that he was going to try to
15 move in yesterday which is why we did not proceed with any
16 such hearing. So I am going to object to it coming in.

17 MR. SCOTT: I recall was there anything that we
18 haven't turned over yet, and the term, anything up their
19 sleeve was spoken of. There is nothing that is being
20 produced now for the first time she hasn't known of. It
21 has been testified to, just in anticipation of it, Your
22 Honor.

23 THE COURT: Well, let's move on, I will address it
24 when we get there. Go get the jury. Two witnesses and
25 then him?

1 MR. SCOTT: Yes, sir.

2 (Whereupon, the jury came into open court at
3 approximately 10:48 a.m.)

4 THE COURT: Call your next witness.

5 MR. DANIEL: The State calls Brandy Anderson to the
6 stand.

7 BRANDY ANDERSON, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 By Mr. Daniel:

11 Q State your full name for the record.

12 A Brandy Anderson.

13 Q Ms. Anderson, where are you currently employed?

14 A Laurens City Police Department.

15 Q What are some of your duties with the Laurens Police
16 Department?

17 A An officer on patrol, Lieutenant, supervisor, respond
18 to calls and supervise a shift.

19 Q And how long have you been with Laurens Police
20 Department?

21 A 18 years.

22 Q Is that how long you have been in law enforcement?

23 A Yes, it is.

24 Q Were you employed in that same capacity with the
25 Laurens Police Department back on August 12th of 2010?

1 A Yes, I was.

2 Q On that date were you dispatched to a residence, [REDACTED]
3 McDowell Street?

4 A Yes, I was.

5 Q Is that in the city limits of Laurens, where exactly
6 is that?

7 A It is in the city limits of Laurens.

8 Q Any landmarks near that area?

9 A It is off of Harper Street, near Citgo gas station.

10 Q That is in Laurens County?

11 A Yes.

12 Q When you were dispatched out there was it morning,
13 afternoon, what time?

14 A It was about 6:00 p.m.

15 Q What was this call in reference to?

16 A The call was in reference to the resident of [REDACTED]
17 McDowell, they received a package on her front porch and
18 she believed that the package contained drugs inside of
19 it.

20 Q So you were dispatched out there to investigate this
21 complaint, I guess?

22 A Yes, I was.

23 Q And when you arrived at [REDACTED] McDowell Street, who did
24 you meet with?

25 A I met with the home owner, Glenda Armstrong.

1 Q Take us back, what did you observe or what happened
2 when you first got there?

3 A When I got there she met me on the porch and told me
4 that she had taken the package inside the home. She
5 allowed me to come inside her home and there was a large
6 box sitting on her table. I was able to look inside the
7 box because Ms. Armstrong opened the box, inside the box I
8 saw several large bags and looking at the bags, from
9 experience, I realized that it was marijuana inside the
10 bag from the smell.

11 Q So, this box, was it a typical kind of shipping box?

12 A It was a very long box, it had a label on the box,
13 stated that there was blinds inside the box.

14 Q I am going to hand you what has already been admitted
15 into evidence as State's number 1. Now, what is that?

16 A That is the box that I saw was at Ms. Armstrong's
17 home.

18 Q So you recognize that being the box at Ms.
19 Armstrong's home, August 12th?

20 A Yes.

21 Q Just take a look at the box, tell me what is kind on
22 the outside of the box, where does the package appear to
23 be from?

24 A The shipping label on the box is from Texas.

25 Q Is that the return address, is that what you mean?

1 A Yes.

2 Q And who is it addressed to?

3 A It is addressed to Nancy Hefner.

4 Q Who is the package addressed to, can you read that?

5 A It is addressed to a Yems Smith at [REDACTED] McDowell
6 Street, Laurens, 29360.

7 Q Now, you said the homeowner you spoke to at [REDACTED]
8 McDowell Street was a Glenda Armstrong?

9 A Yes.

10 Q What else is on this box?

11 A Two inch plantation blinds, white, 34" by 64". And
12 also it is stating that it is fragile.

13 Q So, on the outside of the package it appears to be
14 marked as plantation window blinds?

15 A Yes.

16 Q And did Glenda Armstrong report ordering any blinds?

17 A No, she did not.

18 Q Now, you said when you opened up and examined the
19 contents of the box you discovered what you believed to be
20 marijuana?

21 A Yes, I did.

22 Q And how is that packaged, the marijuana?

23 A They were in large plastic bags which you could
24 clearly see what was inside.

25 Q And had any of the bags been opened?

1 A Ms. Armstrong did open one of the bags to see what
2 was inside.

3 Q Let me hand you what has been marked for ID purposes
4 as State's 2, 2a, 2b, 2c, 2d, 2e. Do you recognize these?

5 A Yes, I do.

6 Q And what are they?

7 A These are the bags that were contained inside of the
8 box at Ms. Armstrong's home.

9 Q So this was the contents of what was inside that box?

10 A Yes, it is.

11 Q And you observed that at Glenda Armstrong's
12 residence?

13 A Ms. Armstrong's residence.

14 Q Okay. And in your knowledge and experience in law
15 enforcement have you seen such substances, I guess?

16 A Yes, I have.

17 Q And you believe it to be marijuana?

18 A Yes, I did.

19 Q Do these packages look a little different today than
20 what you observed in August of 2010?

21 A Yes.

22 Q What is different on how they are packaged in court
23 today?

24 A The outside packaging had to be tested for analysis
25 and the outside package, these are the packages that they

1 were placed in once they were tested.

2 Q And that is common to do that in order to test
3 substances, to take them out of their original packaging?

4 A Yes.

5 Q And put them into another package?

6 A Yes.

7 Q So that is why they look a little different today in
8 court?

9 A Yes.

10 Q Now, is that the extent of your involvement in this
11 case. Well, let me back up, I am sorry. Did you seize
12 this package?

13 A Yes, I did.

14 Q And when I saw, when I asked you, did you seize this
15 package, does that mean that you took it into evidence?

16 A Yes, I did.

17 Q And this again is approximately, what time you did
18 this, what time did you initially seize this?

19 A It was approximately 6:00 p.m. when I responded to
20 the call.

21 Q Okay. At that point did you leave or did you stay
22 further at the residence?

23 A No, I did not. Once I seized the package I contacted
24 Detective Riggott and requested that she meet me at the
25 Laurens City Police Department and I left Ms. McDowell's,

1 (sic), and went straight to the police department with the
2 package.

3 Q Were you concerned for Glenda Armstrong's safety for
4 any reason?

5 A Yes, I was.

6 Q And why would you be concerned for Ms. Armstrong's
7 safety?

8 A Because I knew that it was not her package and with
9 that large amount of marijuana inside of it that someone
10 would be looking for it. So, I instructed her that if
11 someone did come to her home to contact the police
12 department.

13 Q Now, Glenda Armstrong's house, did she have neighbors
14 on both sides?

15 A Yes, she does.

16 Q She does. So she does have neighbors on both sides
17 of her house, Ms. Armstrong?

18 A Yes, she does.

19 Q So basically your concern, summarizing what you said,
20 your concern was that whoever the package was meant for
21 would come to her house looking for it?

22 A Yes.

23 Q Did you provide Ms. Armstrong with any contact
24 information?

25 A The police department, call the police department.

1 Q Okay. So at that point, you left with the marijuana
2 and then you contacted--

3 MS. MCNEILL: Objection, leading.

4 THE COURT: Don't lead.

5 Q So, you seized the package, correct?

6 A Yes.

7 Q And then what did you do next?

8 A I seized the package and contacted Detective Riggott
9 and requested that she meet me at the Laurens City Police
10 Department and I left Ms. Riggott's, correction, Ms.
11 Armstrong's home and went straight to the police
12 department.

13 Q And you said Detective Riggott?

14 A Yes.

15 Q And was she in charge of investigations?

16 A Yes, she is one of the detectives.

17 Q And that is why you contacted her?

18 A Yes.

19 Q And you met Detective Riggott, where did you meet
20 her?

21 A At the Laurens City Police Department.

22 Q And what did you do then once you met her at the
23 police department?

24 A When I met her at the police department I gave the
25 package to her so that she could observe what I observed.

1 Q Did you weigh the bags of what you believed to be
2 marijuana?

3 A The Detective weighed the bags.

4 Q Do you recall what the approximate weight was at that
5 time?

6 A The approximate weight was between three and five
7 pounds.

8 Q Per bag or all together?

9 A Per bag.

10 Q So, all six of them would have weighed roughly, did
11 you get a accurate weight, a total weight?

12 A All six, I am not exactly sure because I didn't total
13 it up.

14 Q Is there anything significant about someone or this
15 large amount of marijuana, is that a significant amount of
16 weight of marijuana?

17 A Yes, it is.

18 Q Would that be considered trafficking amount?

19 A Yes.

20 Q Did you know that immediately upon looking at it?

21 A Yes, I did.

22 Q So, did Detective Riggott take custody of this
23 package?

24 A Yes, she did.

25 Q And obviously the marijuana was inside the package?

1 A Yes, it was.

2 Q Is that part of Detective or Leanne Riggott's duties,
3 to take custody of seized evidence?

4 A Yes.

5 Q Now, did you have any other contact with Glenda
6 Armstrong that day?

7 A Yes, I did.

8 Q After you had seized the package you still had
9 contact with Glenda Armstrong?

10 A Yes, I did.

11 Q How did that come about?

12 A We received another call through dispatch from Ms.
13 Armstrong telling them that two Hispanic male, Hispanic
14 female, showed up at her home inquiring about the package.

15 Q And so you went back out to Glenda Armstrong's home
16 in response to this?

17 A Yes, I did.

18 Q And what did you observe when you went back out
19 there, at Glenda Armstrong's house?

20 A When I got back to Ms. Armstrong's home the subjects
21 had already left. She told me that she instructed them
22 that the package had been returned to the post office and
23 she gave me a description of the people that came to her
24 home.

25 Q So, Ms. Armstrong, knowing that you had taken the

1 package, told the two individuals looking for it, you
2 said--

3 MS. MCNEILL: Objection, leading.

4 THE COURT: Don't lead.

5 Q So Glenda Armstrong was able to provide a description
6 of these two individuals?

7 A Yes, she was.

8 Q Who was looking for the package?

9 A Yes.

10 Q Did you inform Glenda Armstrong to tell whoever may
11 come looking for it to tell them--

12 MS. MCNEILL: Objection, leading.

13 THE COURT: I sustain the objection, rephrase your
14 question.

15 Q So you had a description of the two suspects?

16 A Yes.

17 Q Did you relay that description to other officers--

18 MS. MCNEILL: Objection, leading.

19 THE COURT: Rephrase your question.

20 Q So, the police department did have a description of
21 the individual who picked up the, or was looking for the
22 package?

23 A Yes.

24 Q And that, and you were able to, did you generate a
25 incident report?

1 A Yes, I did.

2 Q Were you able to put that information in your report?

3 A Yes, I did.

4 Q Do you know, was that the extent of your involvement
5 in this investigation?

6 A Yes, it was.

7 Q Do you know of any other officers involved in the
8 investigation at the Laurens Police Department in this
9 investigation?

10 A Detective Riggott was involved and at the time
11 Detective Bentley.

12 Q So the police department did have a description of
13 the suspect looking for the package?

14 A Yes.

15 THE COURT: Still leading.

16 Q No further questions.

17 THE COURT: Before we go forward, it is a few minutes
18 after 11:00 and I want to take a quick break. Step in the
19 jury room and don't discuss the case.

20 (Whereupon, the jury was excused from open court for
21 a break.)

22 THE COURT: We will take about five minutes.

23 (Whereupon, a short break was taken.)

24 THE COURT: Let's bring the jury in.

25 (Whereupon, the jury came into open court at

1 approximately 11:09 a.m.)

2 THE COURT: All right, Ms. McNeill.

3 CROSS-EXAMINATION

4 By Ms. McNeill:

5 Q Good morning, Ms. Anderson.

6 A Good morning.

7 Q How are you doing?

8 A Fine, how are you?

9 Q Good. So, you responded to Ms. Armstrong's address
10 once she contacted you, correct?

11 A Yes.

12 Q And she said she had this big package and she thought
13 it was marijuana, is that correct?

14 A Yes.

15 Q Now, I know you stated that this is a little
16 different than, this isn't exactly how you found the
17 marijuana, is that correct?

18 A That's correct.

19 Q But you stated in your opinion previously when Mr.
20 Daniel was asking you questions, that in your opinion
21 looking at this weed here, that would be trafficking,
22 correct?

23 A Correct.

24 Q And trafficking marijuana is how many pounds, do you
25 know?

1 A I can't remember right off.

2 Q So you stated that in your experience looking at this
3 amount of weed would be trafficking, correct?

4 A Yes ma'am, I did.

5 Q But you don't know how much trafficking actually is,
6 correct?

7 MR. DANIEL: Judge, that is a matter of law.

8 THE COURT: If she knows, she has experience, she has
9 experience. You can answer the question.

10 A I can't remember right off, I don't remember, recall
11 right now.

12 Q What if I were to tell you that I hid some of the
13 bags. Now does it look like trafficking to you?

14 A It appeared to be trafficking before you added the
15 bags.

16 Q It appeared to be trafficking before you added the
17 bags. Okay. So, if I take these two away, would it still
18 look like trafficking to you?

19 A Yes, ma'am.

20 Q Even though you have no idea how much trafficking
21 actually is, correct?

22 A I do not recall how much it is.

23 Q And you have been in the police department for 18
24 years, correct?

25 A That's correct.

1 Q And you also testified that you don't know how much
2 all of this weed weighs, is that correct?

3 A I did not weigh it myself.

4 Q You did not weigh it yourself. Okay. Did you ever,
5 since you were the responding officer did you ever do any
6 followup investigation about who these people on this
7 package were?

8 A It was turned over to the detective.

9 Q But you are the one that responded to the incident
10 location, is that correct?

11 A That's correct.

12 Q So if you responded and you stated to Mr. Daniel on
13 direct examination that you were concerned for Ms.
14 Armstrong's safety, weren't you?

15 A Yes, I was.

16 Q What did you do, what kind of actions did you take to
17 secure her safety?

18 A I went back out and spoke to her, I went back to her
19 home to make sure no one was there.

20 Q After she called you, right?

21 A After she called.

22 Q But what did you do to secure her safety before
23 leaving the residence with all of this marijuana that you
24 considered trafficking?

25 A What did I do before?

1 Q Yes, what did you before you left her house?

2 A I make sure she knew to call the police department if
3 someone showed up at her home.

4 Q So you gave her a number that she already knew
5 because she had already contacted it once before, correct?

6 A Yes.

7 Q You didn't do anything further, did you?

8 A At that time I did contact the detective so we could
9 try and find out who the people were.

10 Q But you did nothing to secure her safety, correct?

11 A I made sure she knew to contact us.

12 Q Right. We heard that. You made sure she had a
13 number?

14 A Yes.

15 Q So, did you go to the address on this house to try to
16 figure out if a Mr. Yems Smith was there?

17 A The address on the label is Ms. Armstrong's home.

18 Q Okay. But did you go next door to see if anybody
19 else resided there, Yems Smith. Did you do any sort of
20 investigation on Yems Smith?

21 A Not at that time.

22 Q You said not at that time, did you ever?

23 A No, I did not other than to turn it over to the
24 detective.

25 Q So you never researched Yems Smith?

1 A No, that is why I, we had detectives to do the
2 research.

3 COURT REPORTER: I cannot hear her.

4 Q Can you answer--

5 A Yes.

6 Q Yes, you did do research?

7 A No, I am sorry, I did not.

8 Q Then you stated that you went back out to Ms.
9 Armstrong's house after she contacted you?

10 A Yes.

11 Q And she stated that a couple of Hispanic people came
12 asking about the package, correct?

13 A That's correct.

14 Q Did you ask her any questions such as, do you have
15 Hispanic neighbors, do you know where these Hispanic
16 people are?

17 A No, she stated they drove off.

18 Q They drove off. Did you ask her if they provided a
19 name to her?

20 A No, I did not.

21 Q So she answered that they did not provide a name?

22 A Yes, she did. I asked her all of the pertinent
23 questions.

24 Q All, right. No further questions.

25 REDIRECT EXAMINATION

1 By Mr. Daniel:

2 Q Officer Anderson, who was the last person you saw
3 have custody of this package of marijuana?

4 A Detective Riggott.

5 Q And what was Detective Riggott's position at the
6 Laurens Police department?

7 A Investigator.

8 Q And are you an investigator?

9 A No, I am not.

10 Q But you respond to calls when dispatched, correct?

11 A That's correct.

12 Q And do you do anything further than to respond to
13 calls?

14 A No, I don't.

15 Q And is that what you did in this case?

16 A Yes, it is.

17 Q No further questions.

18 RECROSS-EXAMINATION

19 By Ms. McNeill:

20 Q Ma'am, would you consider yourself a public safety
21 officer?

22 A Yes.

23 Q And you look out for the safety of the public,
24 correct?

25 A Yes.

1 Q And you try to protect people from being victims of
2 crime, correct?

3 A Yes.

4 Q So, if somebody said, I am in trouble or you thought
5 that they were in trouble you would take proactive action
6 to secure their safety, correct?

7 A Yes.

8 Q Thank you.

9 THE COURT: You may step down. Call your next
10 witness.

11 MR. DANIEL: We call Leanne Riggott to the stand.

12 LEANNE RIGGOTT, being

13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 By Mr. Daniel:

16 Q State your full name?

17 A Leanne Marie Riggott.

18 Q And where are you employed?

19 A Laurens City Police Department.

20 Q And what is your position, rank at Laurens Police
21 Department?

22 A I am a Detective, Lieutenant.

23 Q How long have you worked for the Laurens Police
24 Department?

25 A 14 years.

1 Q Is that how long you have been in law enforcement?

2 A Yes.

3 Q And what are some of your duties as a detective?

4 A I investigate all types of crimes, anywhere from
5 larcenies to fraud, check forgery, murder, anything.

6 Q Cross the entire spectrum of criminal?

7 A Yes, sir.

8 Q So were you working with the Laurens Police
9 Department back on August 12th, August 13th of 2010?

10 A Yes sir, I was.

11 Q And so that is a little over three years ago now. On
12 that date were you contacted by Officer Brandy Anderson in
13 reference to a marijuana investigation?

14 A Yes sir, I was.

15 Q Did you meet with Officer Anderson?

16 A I did.

17 Q And this is on August 12th of 2010 you met with
18 Officer Anderson?

19 A Yes, sir.

20 Q And where did you meet Officer Anderson?

21 A I met with her at the Laurens City Police Department
22 or, it was the first police department when I started
23 working with Laurens PD at 250 West Laurens Street.

24 Q And did Officer Anderson hand over any physical
25 evidence as related to the marijuana investigation?

1 A Yes, sir. Well, she had a large box, I would say
2 approximately three feet long in the back seat of her
3 patrol vehicle. I looked at it and then at that point we
4 took it back over to my office.

5 Q And this box, what kind of box?

6 A It was a cardboard box contained a green leafy
7 substance just like this sitting here.

8 Q I am going to show you what has already been moved
9 into evidence, State's number 1, do you recognize this?

10 A Yes sir, I do.

11 Q And how do you recognize that?

12 A This is the same box that Lieutenant Anderson had, I
13 remember the blinds label on the side of the box.

14 Q Did this box contain blinds?

15 A No sir, it did not.

16 Q What did it contain?

17 A It contained multiple bags of green leafy substance.

18 Q How many, approximately how many bags were in this
19 box?

20 A Six, six bags.

21 Q Six individually wrapped bags?

22 A They were large bags, yes.

23 Q Plastic bags?

24 A Yes, sir.

25 MS. MCNEILL: Leading.

1 THE COURT: Rephrase your question.

2 Q What type of bags were they?

3 A Plastic.

4 Q And did you believe these bags to be marijuana?

5 A Yes sir, I did.

6 Q Okay. I want to hand you what has been marked for ID
7 purposes as State's 2, 2a, 2b, 2c, 2d and 2e. Take a look
8 at these. And do you recognize these six items?

9 A Yes sir, I do.

10 Q And how do you recognize these items?

11 A The type of plastic that they are in and size, the
12 same thing that I saw in the box that day.

13 Q In the box that Officer Anderson had?

14 A Yes, sir.

15 Q Are they in the same condition now as they were when
16 you first observed back in August 12th of 2010?

17 A Yes, sir.

18 Q Was the packaging the same or slightly different?

19 A Well, she has got this plastic over it that was put
20 on after it was tested.

21 Q So after it is tested they sealed it in another bag?

22 A Yes, sir.

23 Q So, did Officer Anderson, she seized this package
24 that contained what you believed to be marijuana. Who
25 took custody of it at that point, this package?

1 A I did.

2 Q And is that a typical role of an investigator to take

3 custody of evidence?

4 A Yes, sir.

5 Q And what did you do with this evidence at that point?

6 A At that time, because of the hour of the day, we

7 locked it up in the Detective's office until the following

8 morning where it could be placed into evidence.

9 Q Is that your office?

10 A Yes, sir.

11 Q So it was secured in your office?

12 A Yes, sir.

13 Q And locked?

14 A Yes, sir.

15 Q Who has keys to that office?

16 A Myself, Tony Lynch and Detective Bentley at that time

17 had a key.

18 Q So, three people including yourself had access to

19 that office?

20 A And I believe the Chief did at the time too.

21 Q Did you generate any kind of incident report

22 documenting this?

23 A I am just refreshing my memory on this. I myself did

24 not make any documentation of the incident report.

25 Q Who did?

1 A It was logged into evidence by Captain Stankus the
2 following morning.

3 Q So that, would it be Captain Stankus, the next
4 individual who handled this package?

5 A Yes, sir. I don't have a copy of the evidence log
6 right now with me.

7 Q Was Walter Bentley made aware of this?

8 A Yes sir, he was.

9 Q And he has access to the office?

10 A Yes, sir.

11 Q At that time?

12 A Yes, sir.

13 Q Would he have taken custody of this package at any
14 point, either that night, the next day.

15 MS. MCNEILL: Objection, leading.

16 THE COURT: Rephrase your question.

17 Q Were you aware if Office Bentley took custody of this
18 package?

19 A Yes sir, he did.

20 Q Did Office Bentley ever at any point take custody of
21 this package that you believed to be marijuana?

22 A He did the following morning. And I am refreshing my
23 memory. As I looked on here it is in the incident report
24 by Lieutenant Anderson that the contents was turned over
25 to myself and then the following morning was when

1 Detective Bentley took custody.

2 Q What date would have been the following morning?

3 A This incident was on the 12th, would have been the
4 13th.

5 Q August 13th of 2010 would have been when Detective
6 Bentley at the time would have taken the package?

7 A Yes, sir.

8 Q Was that the extent of your involvement of this
9 investigation?

10 A Yes sir, it was.

11 Q And did Detective Bentley, at that point was going to
12 become involved in the investigation?

13 A Yes, sir.

14 Q No further questions.

15 CROSS-EXAMINATION

16 By Ms. McNeill:

17 Q Hi, how are you?

18 A Fine, how are you.

19 Q Good. Ma'am, did you ever go out and respond to the
20 incident location?

21 A No ma'am, I did not.

22 Q Are you Brandy Anderson's superior?

23 A No, ma'am.

24 Q But you are a detective, correct?

25 A Yes, ma'am.

1 Q And you took possession of this package from Officer
2 Anderson, correct?

3 A Yes, just to secure it.

4 Q Just to secure it?

5 A Yes, ma'am.

6 Q Why did you not do an incident report?

7 A Lieutenant Anderson did the incident report.

8 Q Why did you not do one?

9 A I wasn't investigating the case.

10 Q You weren't investigating but you did take custody of
11 the entire evidence in this case, isn't that correct?

12 A Yes, ma'am.

13 Q So why would you not have your name on anything?

14 A It is in the incident report.

15 Q You did not do that?

16 A No ma'am, Lieutenant Anderson did.

17 Q But you are the one sitting here testifying, correct?

18 A Yes, ma'am.

19 Q And did you ask Officer Anderson how the complainant
20 was doing?

21 A Can you rephrase that, please. I don't understand
22 what you mean by--

23 Q The woman that called law enforcement in the first
24 place, Ms. Armstrong, did you ever do any sort of followup
25 investigation with Ms. Armstrong?

1 A No, I did not.

2 Q Did you ever do any sort of investigation on Yems
3 Smith who is the name on the package?

4 A No, I did not.

5 Q Or did you ever contact any law enforcement agent out
6 in Texas?

7 A No ma'am, I did not.

8 Q Did you ever do any research on Nancy Hefner?

9 A No, ma'am.

10 Q Thank you.

11 REDIRECT EXAMINATION

12 By Mr. Daniel:

13 Q Who was the lead investigator in this case?

14 A I believe Walter Bentley.

15 Q And not you?

16 A Not me.

17 Q No further questions.

18 MS. MCNEILL: Nothing further.

19 THE COURT: You may step down. Call your next
20 witness.

21 MR. SCOTT: The State calls Walter Bentley next, we
22 may have a brief matter of law to take up.

23 THE COURT: You want to do it now?

24 MR. SCOTT: Yes, sir.

25 THE COURT: All right, you are excused for a break

1 and don't begin discussing the case.

2 (Whereupon, the jury was excused from open court for
3 a break.)

4 THE COURT: What is your matter.

5 MR. SCOTT: This would be the statement we intend to
6 introduce that happens at the post office, just proffer
7 some testimony. Walter, if you will come on up.

8 WALTER BENTLEY, being
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Scott:

12 Q Investigator, how did you become to be involved in
13 this case we are here for today?

14 A I received information about the case on the 12th and
15 on the 13th when I came into work, we came in at 8:00
16 o'clock in the morning and we decided to attempt to make a
17 controlled delivery at the post office with the marijuana
18 that was attempted to be delivered on the day before.

19 Q The post office right up the hill here?

20 A The post office here in Laurens, yes sir.

21 Q You obviously heard Ms. Riggott testify that she
22 stored the box, how did you become in contact with the box
23 labeled State's exhibit number 1?

24 A We share a common office, myself and Detective Lynch
25 and Detective Riggott share the same office. When we came

1 in in the morning we discussed the case and I took
2 possession of the box to take it to the post office.

3 Q And approximately what time did you arrive at the
4 post office?

5 A I got there about 8:30 that morning.

6 Q What time does the post office open?

7 A 9:00 o'clock.

8 Q What did you observe when you got to the parking lot
9 of the post office?

10 A Immediately upon arriving at the post office I saw a
11 small car in the parking lot and looked over at a small
12 car and there was a Hispanic male in there with a purple
13 shirt on with a Senior Garcia's Restaurant logo on the
14 shirt.

15 Q And so you get there at 8:30, they open at 9:00?

16 A Yes, sir.

17 Q What was your intention, why were you getting there
18 so early?

19 A My intention was, is to take the package to the post
20 office, explain to the supervisor at the post office what
21 was going on, and what was called a controlled pickup. I
22 was going to sit in the post office while waiting on an
23 individual to pick it up and take him into custody at that
24 time. When I arrived and saw them, the male in the
25 parking lot that seemed to fit the description I had read

1 on the incident report that Ms. Anderson had completed, I
2 decided that going into the post office with the box in
3 front of him probably wasn't a good idea, that we would
4 probably have to wait and follow him into the post office,
5 if he went in.

6 Q Okay. So when the post office opened its doors what
7 happened?

8 A As soon as they unlocked the doors, the front door of
9 the post office stays unlocked but the area where the
10 clerks work and where you can pick up packages has a lock.
11 From the front window you can actually see when they open,
12 you can actually see when they go in and open that door.
13 When that door is unlocked and opened, Mr. Herrera, the
14 gentleman, Mr. Herrera got out of the car, went into the
15 post office, I was wearing plain clothes, I was an
16 investigator. I took my badge off and took my firearm off
17 and I put a small firearm into my pocket where it wouldn't
18 be visible and I followed Mr. Herrera into the post
19 office.

20 Q So, had a line formed at the post office at the
21 little desk there?

22 A It was just, the line was just Mr. Herrera and I was
23 directly behind him.

24 Q Okay.

25 A He went up to the window, he was asking, said that he

1 lived at [REDACTED] McDowell Street and he had a package coming
2 to him that was delivered, he felt like it was delivered
3 at [REDACTED] He had a conversation with the postal employee,
4 she went to the back presumably to look for the package.
5 She came back up and told Mr. Herrera that there was no
6 package there for that address or for any name. He asked
7 her to look again. At that time I identified myself to
8 him and I told him he was under arrest.

9 Q What did he say when you told him that?

10 A When I identified myself, actually my exact words to
11 him was, I have your package, you are under arrest. And
12 he said the words, excuse my language, oh shit, Senior.

13 Q Is that the extent of any statements he made to you
14 at that point?

15 A That's correct.

16 Q Was he in custody when he made that statement?

17 A No, he was not.

18 Q Did you interrogate him in any way to make those
19 statements?

20 A No.

21 Q Did you offer him any promise or reward to make a
22 statement?

23 A No.

24 Q Did you intimate him in any way?

25 A No.

1 Q This happened inside the post office?

2 A Yes, sir.

3 Q He was, by no means, in custody at this point?

4 A No.

5 Q This was your first contact with him?

6 A Correct.

7 Q Thank you.

8 MR. SCOTT: Your Honor, that's all.

9 THE COURT: Ms. McNeill.

10 CROSS-EXAMINATION

11 By Ms. McNeill:

12 Q When you walked up to him, you were standing behind
13 him and you said, I have your package, you are under
14 arrest?

15 A The first thing I said is I have your package. And
16 in the process of me telling him that he says the words,
17 oh shit, Senior. And I am in the process of also at that
18 time telling him he is under arrest. Mr. Herrera actually
19 knew me from the restaurant and actually recognized, I
20 felt like recognized me as a law enforcement officer at
21 that point.

22 Q So you are saying he recognized you as law
23 enforcement?

24 A I felt like he may have at that point, yes, because I
25 frequented a restaurant where he was a waiter while I was

1 on duty several times.

2 Q You said, I have your package, you are under arrest.

3 And he says, oh shit, Senior?

4 A I told him, I have your package. In the process of
5 telling him he is under arrest he is saying, oh shit,
6 Senior.

7 Q At what point did you read him his rights?

8 A I did not read him his rights until we got back to
9 the police department. I put, because of the people
10 coming into the post office and the scene that was being
11 created I felt like sitting there reading him his rights
12 in front of people as they are coming into the post office
13 wasn't the best idea. So, we took him into the vehicle
14 and got him away from the post office. Detective Lynch
15 sat with him in the vehicle while I explained to the post
16 office what was going on because they had no clue because
17 we weren't able to get in and explain to them what was
18 going on. And then we took him back to the office and I
19 read him his Miranda rights at that point and time.

20 Q Did you say, I have your package and you think he
21 immediately recognizes you as a police officer and you say
22 at the same time, you are under arrest as he is saying, oh
23 shit. Is that pretty much it.

24 A I tell him I have his package, he turns around and
25 looks at me. I am in the process of telling him he is

1 under arrest and he says the words, oh shit, Senior.

2 Q Thank you. No further questions.

3 THE COURT: That is your statement?

4 MR. SCOTT: That is it, Your Honor. Pretty clearly
5 just a spontaneous type statement, non-custodial,
6 non-interrogation type statement. We would just argue it
7 would be admissible and that would be the extent of the
8 testimony as far as that statement.

9 THE COURT: All right, Ms. McNeill.

10 MS. MCNEILL: Thank you, Your Honor, I am objecting
11 to the statement coming in based upon my previous
12 explanation for this objection. Also, custodial
13 interrogation entails questioning initiated by law
14 enforcement officers after a person has been taken into
15 custody or otherwise deprived of his or her freedom of
16 action in any significant way, citing Miranda.
17 Interrogation can be either expressed questioning or its
18 functional equivalent and includes words or actions on the
19 part of the police other than those normally attendant to
20 arrest in custody. The police should know reasonably or
21 likely to elicit an incriminating response. He testified
22 that he thinks that Mr. Herrera recognizes him as a law
23 enforcement officer. He says, I have your package, and I
24 can't tell, at one point, either simultaneously or
25 immediately upon says, you are under arrest. But, I have

1 your package should give rise to Officer Bentley
2 reasonably knowing that it is reasonably likely to elicit
3 an incriminating response. So, at that point, you know, I
4 have your package. Officer Bentley knows that it is an
5 incriminating package. He should know that that is likely
6 going to elicit some sort of incriminating response. He
7 hasn't read him his rights yet. So we do object to this
8 statement coming in as a violation.

9 THE COURT: I believe the statement is non-custodial
10 and non-; it is a response provided, it was not during
11 interrogation, it was not during custody. It was prior to
12 be taken into custody. So, I will allow it as it has been
13 presented here as in this hearing in-camera. I understand
14 your objection. We will stand down for a moment.

15 (Whereupon, a short break was taken.)

16 THE COURT: All right, go get them.

17 (Whereupon, the jury came into open court at
18 approximately 12:05 p.m.)

19 THE COURT: All right, Mr. Scott.

20 MR. SCOTT: The State calls Walter Bentley.

21 THE COURT: Mr. Bentley, come forward.

22 WALTER BENTLEY, being
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 By Mr. Scott:

1 Q Mr. Bentley, you currently work for the Solicitor's
2 office here in the Eighth Circuit?

3 A Yes, sir.

4 Q As an investigator?

5 A Correct.

6 Q August 12th of 2010, where were you working?

7 A I was employed by the Laurens Police Department.

8 Q What capacity were you working there for?

9 A I was an investigator or a detective there.

10 Q At that point how many years had you been working
11 with Laurens PD?

12 A At that point I had been at Laurens PD for 10 years.
13 Prior to my service there I served for the Laurens County
14 Sheriffs Office from 1996 to the year of 2000. In my time
15 there I was a road officer and then later an investigator.

16 Q So you have 14 years law enforcement experience,
17 roughly?

18 A Yes.

19 Q You said you worked as an investigator. What are the
20 duties of an investigator with the Laurens PD?

21 A At Laurens Police Department we have three
22 investigators, I was one of the three. We would
23 investigate cases anything from credit card fraud,
24 forgery, to narcotics investigations to burglaries and up
25 to homicides and criminal sexual conduct cases.

1 Q Do you recall an incident that occurred August 12th
2 of 2010 at [REDACTED] McDowell Street in Laurens?

3 A Yes, I do.

4 Q And tell me what were the allegations at the time?

5 A I received information that a package had been
6 shipped to that address. One of our shift Lieutenant's,
7 Ms. Anderson had went and retrieved that package and
8 returned that package over to Detective Riggott. And
9 myself and Detective Riggott and Detective Lynch made
10 plans to followup and investigate that in the morning due
11 to it was after hours and we couldn't get in the post
12 office because they were closed.

13 Q So, August 12th is when the call comes in regarding
14 the package?

15 A Correct.

16 Q Did you say you became involved the next day, August
17 13th?

18 A I learned of it on the 12th, on the 13th I became
19 directly involved.

20 Q And how did you become directly involved?

21 A That morning I took possession of the box and met
22 with Detective Lynch and we decided to do what we refer to
23 as a controlled pickup. What a controlled pickup is, is
24 where we go to a post office, we bring the item back in
25 and we wait for someone to attempt to pick it up for us to

1 place him under arrest.

2 Q Okay. Had you received any information at that time
3 regarding a description of a suspect?

4 A Yes, I had reviewed Lieutenant Anderson's report and
5 we knew about the incident, also knew about the
6 individuals coming back to the house to attempt to pick up
7 the package from Ms. Armstrong. And I knew that the
8 description was a Hispanic male and the description of
9 what he looked like from the incident report.

10 Q August 13th you go over there to the Laurens Police
11 Department and you retrieve a box from Leanne Riggott, is
12 that what you said?

13 A That's correct.

14 Q State's number 1, just the box, you recognize this?

15 A That is the box I retrieved on the 13th.

16 Q Just from memory, without me showing you the box,
17 what was the information on the labeling of the box?

18 A The return address was, I can't recall the name
19 without looking but it was a female's name and it was in
20 Mcallen, Texas which is a border town to the Mexican
21 border in Texas. And the shipping to address where the
22 package was to be sent to was a name, Yems, Y-E-M-S, Smith
23 and it had the address of [REDACTED] McDowell Street which is in
24 Laurens which is in the city limits of Laurens.

25 Q Who in fact lived at [REDACTED] McDowell Street?

1 A Ms. Armstrong lived at [REDACTED] McDowell Street.

2 Q Were you able to inspect the contents of the box
3 here, State's exhibit 1?

4 A Yes, I did look in the box.

5 Q And what did you observe in the box?

6 A There was six vacuum sealed packages that contained,
7 in my experience, marijuana.

8 Q Okay. And if I showed you again State's 2, 2a, 2b,
9 2c, 2d and 2e, are these consistent with what was in the
10 box when you retrieved it from Leanne Riggott?

11 A Yes, those are the packages. The only difference in
12 the package is, is that outer plastic bag has been added
13 to it. I also used to be a marijuana analyst so I kind of
14 know the process of doing the marijuana analysis. And
15 after you open that vacuum sealed bag, obviously the
16 vacuum seal releases and you have to do that to test a
17 sample. So you want to put it back in some other type bag
18 to keep from losing your product when you restore it. So
19 that would, with the exception of the bag on the outside,
20 it was in the same containers and the same condition.

21 Q While you mention it, did you have an opportunity to
22 analyze very many vacuum sealed packages while you were an
23 analyst?

24 A Some, it is not a very common thing but I did do
25 some, yes.

1 Q What happens when you cut into a vacuum sealed bag?

2 A The seal releases and air enters the package, you are
3 removing air from it, when you open it back up you are
4 introducing air back into it. So you often have an
5 expansion.

6 Q Like vacuum sealed coffee?

7 A Correct.

8 Q All right. Now, you take State's exhibit 1 and the
9 contents which are these six bags, 2, 2a, 2b, 2c, 2d and
10 2e and where did you proceed?

11 A We went to, myself and Detective Lynch went to
12 Laurens post office.

13 Q What time of day did you arrive there?

14 A I arrived to work that morning around 8:00 o'clock.
15 By the time we got the package ready and decided what we
16 were going to do it was about 8:30 when we arrived to the
17 Laurens post office.

18 Q And the post office opens up at 9:00?

19 A That's correct.

20 Q So you were there thirty minutes before opening?

21 A Yes.

22 Q And who did you observe in the parking lot?

23 A We pulled up, we were in an unmarked SUV which was
24 our issued vehicle by the police department. We pulled up
25 in our unmarked vehicle and I saw a small car in a parking

1 lot. I looked into the driver's compartment of the car
2 from my vehicle and I saw a Hispanic male in the car, he
3 had a purple polo shirt on with Senior Garcia's logo on
4 the shirt.

5 Q Did you recognize this individual?

6 A Not immediately, no I did not.

7 Q Did he fit the description of the person you were
8 looking for?

9 A From Lieutenant Anderson's report I had seen fit the
10 description.

11 Q You say he was a Hispanic male?

12 A He was a Hispanic male, yes.

13 Q Okay. What had your intention been when you were
14 driving to the post office, what were your plans?

15 A My plan was to do a controlled pickup which meant I
16 was going to take the box into the post office. I was
17 going to explain to the post office employees what had
18 happened and explain to them what we wanted to do. And
19 what we wanted to do was have it in there, the clerk would
20 have knowledge of what we were doing. I would be
21 stationed in the post office and when someone came to pick
22 it up I would be there to take him into custody. And the
23 post office would know what was going on. Unfortunately,
24 because of who I encountered in the parking lot, I didn't
25 feel like that was going to work.

1 Q You got there thirty minutes early but he was also
2 there thirty minutes early?

3 A Yes.

4 Q Tell me what happened when the post office opened?

5 A When the post office opened I observed the
6 individual, I later identified as Daniel Herrera, entered
7 the post office. I was in plain clothes, I didn't wear a
8 uniform at the time. I took my firearm and my badge off.
9 I put my badge in my pocket and followed Mr. Herrera into
10 the post office.

11 Q Anyone else in the post office as far as customers at
12 that time?

13 A At the time we were the only two customers at the
14 post office.

15 Q What did you observe Mr. Herrera do?

16 A Mr. Herrera approached the counter to the postal
17 employee. He explained that he lived at [REDACTED] McDowell
18 Street and that he had a package that was accidentally
19 sent to [REDACTED] McDowell Street. He explained to the postal
20 employee, the lady at [REDACTED] had told him the package had
21 been returned to the post office and he was coming to pick
22 it up.

23 Q Did she have a package for him?

24 A She went to the back for a minute and she came back
25 out and she explained to Mr. Herrera she did not have a

1 package for him. He asked for her to look again. At that
2 time I decided to step in and talk to Mr. Herrera.

3 Q And what did you say?

4 A I actually told Mr. Herrera that I had his package.

5 Q What did he say?

6 A At that point and time he makes a statement, excuse
7 my language, but he said the words, oh shit, Senior. And
8 I am also at that point and time in the process of telling
9 him he is under arrest.

10 MS. MCNEILL: Objection, previously.

11 THE COURT: For the record consistent with your
12 arguments in-camera.

13 Q So in response to you telling him, I have your
14 package he said, oh shit, Senior?

15 A Yes.

16 Q At that point did you place him under arrest?

17 A Yes, I did.

18 Q Was he searched incident to arrest?

19 A Yes, I searched him incident to arrest.

20 Q Were you able to find anything?

21 A I found two slips of paper. Both slips of paper had
22 the name, Yems Smith and had McDowell Street address
23 written on the slips of paper. One was a white piece of
24 paper and the other was a green sales type receipt.

25 Q And they said what now?

1 A Had the name, Yems Smith, which was the name that was
2 on the box and it had a McDowell Street address. I have
3 to look at them, if I recall I think it was [REDACTED] McDowell
4 Street that was written on both slips of paper.

5 Q I show you State's number 3.

6 A Yes, those are the slips of paper. The only
7 difference in their condition is when I took them into
8 evidence I added a staple to them so they didn't get
9 separated or get lost and float away.

10 Q Yems Smith, were you able to investigate the name,
11 Yems Smith at all?

12 A I did. I ran the name through the National Crime
13 Computer, NCIC is what we commonly call it which is a
14 nationwide data base where it keeps up with driver's
15 license information, criminal histories, things like that.
16 I did not receive any type of hits on that name, Yems
17 Smith, in the computer. We also have an internal system
18 at the Laurens Police Department called Law Tracks
19 Internal Computer System that when you make a call or a
20 complaint or you are a victim or you are a defendant in a
21 crime you are entered into that and that name was also not
22 in our database at the police department.

23 Q So it is your testimony, as far as your
24 investigation, there is no such thing as Yems Smith?

25 A None that I could find.

1 Q That is what the, where is it on here. State's
2 number 1 you said had Yems Smith on here?

3 A On the priority mail label here, on the, where it
4 says 2, it is where it says Yems Smith, [REDACTED] McDowell
5 Street, Laurens, South Carolina, 29360, it is written.

6 Q Okay.

7 MR. SCOTT: Your Honor, the State would offer State's
8 number 3 for admission into evidence.

9 MS. MCNEILL: No objection.

10 THE COURT: State's 3 is entered without objection.
11 (Whereupon, State's Exhibit 3 was admitted into
12 evidence.)

13 MR. SCOTT: Permission to publish, Your Honor.

14 THE COURT: Sure, go ahead.

15 Q Mr. Bentley, what is this we are looking at here?

16 A This is one of the slips of paper that I found in Mr.
17 Herrera's possession.

18 Q I am sorry, did you say you stapled these together,
19 these were two separate pieces of paper?

20 A I stapled them together, it was two separate sheets
21 of paper.

22 Q This is the--

23 A That is the second sheet of paper also found in his
24 possession, also with the same information, Yems Smith at
25 the same address.

1 Q What pocket were they in, do you recall?

2 A They were in his pants pocket, I don't recall which
3 side.

4 Q And then you took him into custody?

5 A Correct.

6 Q Did you book him?

7 A Yes, I did.

8 Q Did he provide you a name?

9 A He identified himself as Daniel Herrera.

10 Q Did he give an address or anything else?

11 A Yes, he did. He gave me an address of [REDACTED] McDowell
12 Street in Laurens.

13 Q That is the house next door to Ms. Armstrong?

14 A Yes, it is.

15 Q Do you recall, did you have any kind of ID or
16 anything like that?

17 A He had a State issued ID but I don't think, recall, I
18 don't remember it being a South Carolina driver's license.

19 A lot of times we find Hispanics with a, what they call a
20 Mexican drivers license which is not an official document
21 in the United States.

22 MS. MCNEILL: Objection. May we approach?

23 THE COURT: Yes.

24 (Whereupon, a bench conference was held in the
25 presence of the jury but out of the hearing of the

1 jury.)

2 Q Without saying, did he give you some sort of ID?

3 A Yes, he did.

4 Q And did you document the identification that was
5 provided?

6 A Yes, I did.

7 Q And the information contained in the identification?

8 A Yes.

9 Q And what was the name that he went under?

10 A Daniel Herrera.

11 Q And you entered all of that into the booking
12 information when you processed him at the jail?

13 A Yes, I did.

14 Q Photographed the person you arrested?

15 A Yes, we photograph routinely as part of the booking
16 process.

17 Q Let me show you State's number 4.

18 A That is Mr. Herrera at his time of booking.

19 Q And that would be how he appeared the day of arrest,
20 and how he appeared at the post office?

21 A He had a purple shirt on at the post office. When
22 the booking photo was taken he had a white shirt on, that
23 is his appearance on that day.

24 Q But that was taken the day of arrest?

25 A Yes.

1 MR. SCOTT: Your Honor, the State would offer State's
2 number 4 for admission into evidence.

3 MS. MCNEILL: No objection.

4 THE COURT: State's 4 is admitted without objection.

5 (Whereupon, State's Exhibit 4 was admitted into
6 evidence.)

7 Q State's 4, that is the person that was arrested, that
8 is Daniel Herrera?

9 A Yes, it is.

10 Q What kind of followup did you do in regard, Nancy
11 Hefner, this is the shipper, the alleged shipper's name?

12 A Yes.

13 Q Is that where it is coming from, Mcallen, Texas? You
14 are an investigator here in Laurens, correct?

15 A Yes.

16 Q And at the time you worked for Laurens PD, correct?

17 A Correct.

18 Q What is the extent of your jurisdiction, your arrest
19 powers and all when you were working for the Laurens
20 Police Department?

21 A When I was working for the Laurens Police Department
22 it was within the city limits of Laurens.

23 Q But this box came from Texas?

24 A Correct.

25 Q And do you have arrest authority in Texas?

1 A No, I do not.

2 Q Did you followup in any way?

3 A Yes, I followed up in two different avenues. Because
4 this occurred at the post office we talked to the United
5 States Postal Inspectors Office, asked them to do some
6 back tracing on the address and do some investigation into
7 the address. And from what I understand, from their
8 investigation was that they did not find any furtherance
9 of this crime, no followup. Wasn't really satisfied with
10 all of that so I thought I should talk to the Department
11 of Drug Enforcement, the DEA, another Federal Agency. So
12 I did forward this information in this case onto the DEA
13 so they could followup on their end because they also have
14 Federal jurisdiction, Texas would be in their
15 jurisdiction.

16 Q As far as your jurisdiction, this being in the city
17 of Laurens, who was your suspect?

18 A Mr. Herrera was my suspect.

19 Q And in your jurisdiction, who attempted or involved
20 with bringing this into the State of South Carolina and
21 the city of Laurens?

22 A Mr. Herrera.

23 Q Who was it that you confronted at the post office
24 here in Laurens?

25 A Mr. Daniel Herrera.

1 Q Who was it that had the slips of paper in his pocket
2 that said, Yems Smith?

3 A It was also Daniel Herrera.

4 Q What is the significance of the name, Yems Smith?

5 A It was also the name that was on the box where the
6 package is being shipped to.

7 Q I may have said this, the entire city of Laurens is
8 in Laurens County?

9 A Yes, it is.

10 Q So this, [REDACTED] McDowell Street is here in Laurens
11 County?

12 A It is in Laurens County.

13 Q Okay. Thank you.

14 CROSS-EXAMINATION

15 By Ms. McNeill:

16 Q Office Bentley, when you said that you had a
17 description that was provided to you by Officer Anderson,
18 is that correct?

19 A It was from her incident report.

20 Q Her incident report. What was that description
21 exactly?

22 A You would have to show me her supplemental so I could
23 refresh my memory to get the exact.

24 (Whereupon, Mr. Bentley is handed the incident
25 report.)

1 A The first part of her incident report, Ms. Anderson
2 states she met with the complainant who stated a Hispanic
3 male about 5'7" to 5'9", 165 to 175 with dark wavy hair,
4 about two inches in length, in his mid-twenties. And a
5 Hispanic female about 4'9", 120 also in her mid-twenties
6 came to her home asking about the box.

7 Q Thank you. Now, did you ever go to [REDACTED] McDowell
8 Street?

9 A Not on the 12th or the 13th.

10 Q Did you ever followup at [REDACTED] McDowell Street?

11 A I did do some followup and found out that Mr. Herrera
12 lived at [REDACTED] McDowell Street and from what information I
13 could obtain he did live at [REDACTED] McDowell Street.

14 Q But according to the description given in Detective
15 Anderson's report there was also a female, correct?

16 A Correct.

17 Q So weren't you concerned that there was some other
18 woman conspiring in a crime out there?

19 A That is very possible but Mr. Herrera is the one who
20 came to the post office to pick the package up and brought
21 the package into the United States.

22 Q Okay. But did not this other woman attempt to do
23 that as well?

24 A Yes, but I did not have the identity of the other
25 woman.

1 Q Is that because you never went to [REDACTED] McDowell Street
2 to followup?

3 A I did followup at [REDACTED] McDowell Street but I could not
4 obtain the identity of the lady.

5 Q And you heard the testimony from Ms. Armstrong today,
6 did you not?

7 A Yes, I did.

8 Q And she stated that there was twelve Hispanic
9 individuals living at [REDACTED] McDowell Street, correct?

10 A That's what she said, yes.

11 Q And she also said he was in his mid-twenties, either
12 25 or 26, correct?

13 A Correct.

14 Q And how old was Mr. Herrera at the time of his
15 arrest?

16 A I would have to look at his date of birth.

17 Q I will tell you--

18 A In his early thirties.

19 Q Yes, in his thirties?

20 A Yes, I think 30, 31.

21 Q Exactly. So, your description of the person that
22 went to Ms. Armstrong's house on the date the package
23 arrived is a little bit different than it was at the post
24 office when you saw Mr. Herrera, correct?

25 A Ms. McNeill, I was sitting in a vehicle looking

1 through the glass of my vehicle into a parked car looking
2 at an individual in a car. So I couldn't get a lot of
3 description on how old the person is or their size in just
4 looking at them through a vehicle window.

5 Q So you would agree that was a little bit different in
6 the description given by Brandy Anderson who got that from
7 Armstrong and what you saw?

8 A It was a little different but as I explained, I was
9 looking at him through two different, through my car
10 window and his car window and he was seated in the
11 vehicle. So I didn't really have--

12 Q So, yes or no, there was a little bit of difference?

13 A Yes.

14 Q Thank you. There was also a woman who was at this
15 [REDACTED] McDowell Street, or [REDACTED] where ever the incident
16 location was along with this person who was in their
17 mid-twenties, correct?

18 A Yes.

19 Q And there was not a woman with Mr. Herrera, correct?

20 A No, there was only Mr. Herrera.

21 Q There was only Mr. Herrera. And I believe you
22 testified that, to questions of Mr. Scott on direct that
23 you had a description, a Hispanic male and you stated, it
24 was a rough description of what he looked like, correct?

25 A Correct.

1 Q So in your opinion, do all Hispanic men look the
2 same.

3 MR. SCOTT: Objection, Your Honor. Ask him for an
4 opinion, highly irrelevant, prejudicial.

5 THE COURT: I am going to overrule your objection, he
6 can answer it.

7 A No, I don't think that all Hispanic males look the
8 same.

9 Q So you just had this rough general description of a
10 Hispanic male, you go to the post office, you see a
11 Hispanic male and you assume that is your suspect?

12 A I didn't assume, I didn't feel like I should take the
13 package in the post office, this was our suspect.

14 Q You stated your jurisdiction is in Laurens, correct?

15 A Correct.

16 Q But you can call other officers in other states,
17 correct?

18 A Correct.

19 Q Did you call any officer in Texas?

20 A No, I used the Federal authorities to do this, due to
21 the fact that he came through the mail, I used the postal
22 inspectors office and I also used the DEA.

23 Q Did you ever do a lineup?

24 A A lineup for?

25 Q So that Ms. Armstrong could identify this Hispanic

1 male?

2 A No, I did not.

3 Q None was done. You didn't do an in-person lineup or
4 a photo, did you?

5 A No, I did not.

6 Q I believe you stated on previous testimony that Mr.
7 Herrera possibly recognized you as a law enforcement, is
8 that correct?

9 A I said at a hearing earlier, I knew, once I
10 recognized him, I recognized him being a waiter at Senior
11 Garcia's. And I do eat there quite a bit and I remember
12 him waiting on me in the past and I felt like he might
13 have recognized me, yes.

14 Q And when you walked up to him and he recognized you
15 as a law enforcement officer possibly, and then you asked
16 him, or you stated, I have your package. And your
17 testimony is that he said what now?

18 A He said the words, oh shit, Senior.

19 Q Oh shit, Senior. And do you think that could be
20 because you just had told him he was under arrest?

21 A I can't answer why he made the statement.

22 Q You can't answer why he made that statement, can you?

23 A No.

24 Q Thank you. No further questions.

25 REDIRECT EXAMINATION

1 By Mr. Scott:

2 Q Where did you take the marijuana after you attempted
3 the controlled deliver?

4 MS. MCNEILL: Outside the scope of redirect, Your
5 Honor.

6 Q Who did you see at the post office August 13th, 2010?

7 A Daniel Herrera.

8 Q Did he match the description given to you?

9 A He did roughly match the description, yes.

10 Q Did you see him with your own eyes?

11 A Yes.

12 Q What did he say when you told him, I have your
13 package?

14 A He said the words, oh shit, Senior.

15 Q What did he have in his pockets?

16 A He had two slips of paper with the Yems Smith which
17 corresponded with the name with the package being shipped
18 to along with the address of [REDACTED] McDowell Street.

19 Q Is this what you personally observed?

20 A Yes.

21 Q Not talking about what Ms. Armstrong observed, right.
22 This is what you observed?

23 A This is what I observed.

24 Q This is who you took into custody?

25 A Yes, it is.

1 Q He had two sheets of paper in his pocket with the
2 name, Yems Smith on it, correct?

3 A Correct.

4 Q Are you positive?

5 A Yes, I am.

6 Q You followed up with those authorities?

7 A Yes.

8 Q But the person here in Laurens who is attempting to
9 possess that was who?

10 A Was Mr. Herrera.

11 Q And was attempting to pick that up from the post
12 office was who?

13 A Was Mr. Herrera.

14 Q Thank you.

15 RECROSS-EXAMINATION

16 By Ms. McNeill:

17 Q He had an address and a name written on some paper
18 that you found in his pocket, correct?

19 A Two sheets of paper, yes.

20 Q And do you think that was to help him to know what
21 package to pick up?

22 A You could assume that.

23 Q You could assume that because one might not have to
24 write down their address to remember it, correct?

25 A You could assume that also.

1 Q Okay. Did you take any statement from Mr. Herrera?

2 A No, I did not.

3 Q So he didn't say anything other than, oh shit,

4 Senior, correct?

5 A That is all he said at the post office, yes.

6 Q Thank you.

7 THE COURT: You may step down. Call your next
8 witness.

9 MR. DANIEL: Your Honor, the State calls John Stankus
10 to the stand.

11 JOHN STANKUS, being
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Daniel:

15 Q State your full name for the record, please.

16 A John Joseph Stankus.

17 Q I see by uniform you are involved with law
18 enforcement?

19 A Yes, sir.

20 Q What agency?

21 A Laurens city.

22 Q What is your current rank?

23 A Captain.

24 Q How long have you been with the Laurens Police
25 Department?

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 By Mr. Scott:

4 Q Mr. Hunnicutt, where are you employed?

5 A Laurens Police Department.

6 Q What are your duties at the Laurens Police
7 Department?

8 A I am a Detective, I handle investigations and also I
9 am a marijuana analyst.

10 Q How long have you been a marijuana analyst?

11 A I was certified back in May of this year.

12 Q Of this year?

13 A Yes, sir.

14 Q How many occasions to analyze a substance and
15 determine whether or not it is marijuana?

16 A I have analyzed over 130 since.

17 Q How did you get to be a marijuana analyst at Laurens
18 Police Department?

19 A We didn't have one so they wound me up for it.

20 Q What did they do before you?

21 A Actually the guy I replaced was our marijuana analyst
22 and replaced him and so therefore I had to go to the same
23 training.

24 Q So anytime there is an arrest made and marijuana is
25 seized they send it to you and you test it?

1 A Yes sir, that's correct.

2 Q Tell me what kind of training you have to undergo, to
3 be qualified to be a marijuana analyst for Laurens PD?

4 A We had a two day SLED course put on by South Carolina
5 Law Enforcement Division in Columbia where you have a
6 one-hundred percent pass or fail. If you don't pass all
7 one-hundred samples correctly you fail, no margin for
8 error.

9 Q During the course, I guess the various instructors,
10 teach how to do marijuana analysis?

11 A Yes, sir. There is a two-prong examination,
12 microsporic and chemical. The microscopic you have three
13 signs that you look for, unicellular, multicellular,
14 glandular, bear claws, fine hairs and things like that
15 that actually show you under the microscope if it is
16 marijuana. And you also have the chemical test which is a
17 Duquenois-Levine test and it involves Duquenois-Levine
18 reagent, chloroform and hydrochloric acid which produces a
19 series of colors that lets you know that it is chemically
20 positive for marijuana as well as microscopically.

21 Q Is this course required of any officer in the State
22 who is testing marijuana?

23 A Yes, sir.

24 Q Tell me about this one-hundred tests, what is that
25 all about?

1 A You have to do, test one-hundred samples on those two
2 days and you have a zero percent error, no margin for
3 error, you cannot miss one sample of the one-hundred or
4 you won't be certified as a marijuana analyst.

5 Q So, what happens, does the instructor slip some
6 oregano in there at some point?

7 A Some oregano and other ground, fine ground things
8 that look similar to marijuana if you don't know what you
9 are looking at. And you have to test a series of samples
10 and figure out which one is the actual marijuana.

11 Q One-hundred times?

12 A One-hundred times, that's correct.

13 Q And so what is the result if they slip you oregano
14 and you tell them it is marijuana?

15 A Well, you fail.

16 Q They send you home?

17 A Yes.

18 Q So you did this back in May?

19 A Yes, sir.

20 Q And you passed?

21 A Yes, sir.

22 Q Talk to us some more about the test, are these
23 performed each time you are doing any kind of marijuana
24 analysis?

25 A Yes. Each time, each different, say if it is

1 packaged in a box with several bags, each bag is
2 separately tested so as to not, you know,
3 cross-contaminate or anything like that. Say this bag had
4 this and this bag had that, you have to test each single
5 bag.

6 Q I am glad you answered that. My question though was,
7 what are the signs, what is the test you employ when you
8 are analyzing a sample of marijuana?

9 A The first one is microscopic and you put a sample
10 under a microscope and you look for the three tales that
11 it is marijuana. Unicellular, multicellular and
12 glandular, that you have, you also have what is called
13 like a bear claw, it is claw shaped, it is brown. You
14 have fine hairs which are real thin, almost white in color
15 and you have the glandular which looks like a sap, it is
16 brown sap that, if you have those three you have
17 marijuana, microscopically driven.

18 Q That would be like a physical, observable distinctive
19 characteristic of marijuana?

20 A That's correct.

21 Q And you don't see these visual markers of some other
22 plant material, is that what you are saying?

23 A That's correct. They are unique to marijuana.

24 Q What is the other test?

25 A The other test is the Duquenois-Levine test. It is

1 the chemical test. It involves three chemicals. The
2 Duquenois-Levine reagent, chloroform and hydrochloric acid
3 which you, Duquenois-Levine reagent on the marijuana, it
4 starts turning it a darker color. You put chloroform on
5 there it turns it more of a pink if it is positive. And
6 when you put the hydrochloric acid on there it develops an
7 eye which is like a clear spot in their reagent. And once
8 you have all three of those present then you have
9 chemically positive marijuana.

10 Q So the second test, you are testing something you
11 can't readily see but it is a chemical makeup, it is
12 distinctive to marijuana?

13 A That's right.

14 Q Do you perform both of those tests every single time
15 you test marijuana?

16 A Every single time.

17 Q Now, since you graduated or passed the course in May
18 how many times have you had occasion to analyze marijuana?

19 A Upwards of 30 times at least.

20 Q Is this the first time you testified in General
21 Sessions Court?

22 A For marijuana analysis, yes.

23 MR. SCOTT: Your Honor, based on training and
24 experience we would offer Mr. Hunnicutt as an expert in
25 the marijuana analysis.

1 THE COURT: Any voir dire? I think you have to lay
2 more foundation.

3 Q How many years of law enforcement experience have
4 you, I think you have already, remind me how many years of
5 law enforcement have you had before becoming the marijuana
6 analysis for Laurens County?

7 A Approximately 10 years.

8 Q And how many times, and what were your duties prior?

9 A I was a road patrol officer for seven years, a
10 supervisor on the road for two and now in investigations.

11 Q Where did you do your undergrad studies?

12 A At Lander University.

13 Q And what was your major?

14 A Criminal Justice Management.

15 Q Did you do any graduate work?

16 A No.

17 Q During the time as a road officer did you make any
18 drug arrests?

19 A Numerous.

20 Q Make any marijuana arrests?

21 A Numerous.

22 Q How many times have you seen marijuana?

23 A You want an estimate, thousands probably.

24 Q Marijuana is something you are very familiar with in
25 your career as a police officer?

1 A That's correct.

2 Q You have undergone this training and you are required
3 to undergo continuous training thereafter?

4 A Yes sir, that is correct.. Also recertification every
5 several years.

6 MR. SCOTT: Your Honor, we would offer Mr. Hunnicutt
7 as an expert under Rule 702, based on scientific,
8 technical or other specialized knowledge of the trier of
9 fact to understand if he could be qualified as an expert,
10 knowledge, experience, training or education. We would
11 hold, Your Honor, based on over one-hundred analysis,
12 one-hundred percent pass rate at the training that is
13 required of anybody who is allowed to test marijuana in
14 the State. He has successfully passed and we offer him,
15 he is to assist the trier of fact and understanding what
16 we are here to talk about today.

17 MS. MCNEILL: I have got a couple of questions.

18 THE COURT: All right.

19 CROSS-EXAMINATION

20 By Ms. McNeill:

21 Q Mr. Hunnicutt, do you know what the definition of
22 marijuana is?

23 A The definition of marijuana?

24 Q Yes.

25 A I can give you a scientific name and most ingredient

1 of it if that is what you would like.

2 Q Sure.. Whatever you know.

3 A The scientific name is tetrahydrocannabinol. The
4 most, well actually, excuse me, that is the most
5 psychoactive ingredient. The scientific name is Cannabis
6 Sativa L.

7 Q Okay. And what does that include, when you are
8 looking at these bags of marijuana, what does that
9 include?

10 A I am sorry, excuse me, I am confused. I didn't hear
11 your question.

12 Q If you are looking at this bag of marijuana, is this
13 whole thing defined as marijuana?

14 A No, actually that is plastic along with it. It has,
15 like I said earlier, it has the glandular, the unicellular
16 and multicellular cystolic bear claws curve shape. That
17 is how you actually determine that it is marijuana. The
18 stems, roots, anything like that is not considered
19 marijuana.

20 Q Okay. And would you agree with me, you had how many
21 years in training in the field of marijuana?

22 A This year.

23 Q This year.

24 A Are you talking about the certification?

25 Q Yes, sir.

1 A Certification this year, but I have had approximately
2 10 years dealing with marijuana on a regular basis.

3 Q And the course just took two days?

4 A Yes, sir. Or, yes ma'am, excuse me.

5 Q How many hours in those two days?

6 A It is eight hours a piece, sixteen hours.

7 Q Sixteen hours of training?

8 A Yes.

9 Q And do you have a Bachelor's degree?

10 A Yes, I have a Bachelor's and an Associates.

11 Q What is the Associate's in?

12 A The Associate is in Public Service from Piedmont
13 Technical College. The Bachelor's is from Lander and
14 Criminal Justice Management.

15 Q And nothing in those studies you studied marijuana,
16 correct?

17 A Not in those studies at all.

18 Q Thank you.

19 THE COURT: Anything else?

20 MR. SCOTT: No, sir.

21 THE COURT: Okay, I need to look something up. We
22 will take a couple of minutes break. Y'all can step in
23 the back, don't begin discussing the case.

24 (Whereupon, the jury was excused from open court.)

25 MR. SCOTT: Do you want to proffer outside the

1 presence of the jury?

2 THE COURT: I would think.

3 Q Mr. Hunnicutt, SLED I guess puts on the course that
4 you took back in May?

5 A Yes.

6 Q Who were your instructors?

7 A I do not remember his name at the moment but I know
8 he was the guy that actually tests everything that comes
9 to SLED, he was there as the man analyst.

10 Q And what State was this training done in?

11 A South Carolina.

12 Q And do y'all go over the laws in South Carolina?

13 A For the marijuana analysis.

14 Q Drug laws?

15 A Drug laws, they brought them up which I have made
16 charges on that before so I do actually, you know, know
17 the laws fairly well.

18 Q Well, aside from the hands on aspect with your
19 actually testing marijuana, were there instructors
20 teaching you various aspects of marijuana and the analysis
21 thereof?

22 A Yes. They were teaching different parts of the
23 plant, and you know, what exactly is marijuana, what
24 isn't. What the most psychoactive ingredient is, you
25 know, different parts, things like that.

1 Q Okay. You are a certified police officer?

2 A That's correct.

3 Q And what about weighing of the drugs. Is there
4 anything that y'all are taught as far as weighing
5 marijuana?

6 A You have to zero out the scale and weigh them on a
7 digital scale.

8 Q And again, you do this at the instruction of the
9 teachers?

10 A That is correct.

11 Q Even though you had made thousands of marijuana
12 arrests before you went into this course, do you gain more
13 knowledge regarding marijuana in physical and chemical
14 makeup than you have before?

15 A I believe what I said, I have seen marijuana
16 thousands of times, I think is what I said. I made
17 numerous arrests. Yes, it is actually an educational
18 course.

19 Q Okay. I think you testified to this before, but the
20 standards and the techniques they teach you during this
21 course, is what any marijuana analyst across the State is
22 called when they are certified as a marijuana analyst?

23 A That is correct, statewide.

24 Q And asked how many times you have had a chance to
25 analyze marijuana since graduating the course?

1 A I would say around 30, approximately 30.

2 Q Have not testified in General Sessions yet?

3 A Not for marijuana analysis, no.

4 Q In Magistrate's Court?

5 A Yes, actually I have testified in that.

6 Q As an expert in marijuana?

7 A Submitted in evidence that it was testified and
8 advised that I had tested it. I believe they certified me
9 as an expert in Magistrate's court.

10 Q In marijuana analysis?

11 A Analysis, analyst, whatever you want to call it.

12 Q Thank you.

13 MR. SCOTT: Your Honor, we just offer him based on
14 training, I have got a State v. Myers case, it is a 1990
15 case, 301 SC 251. Basically the qualification of an
16 expert as we know falls within the discretion of the trial
17 Judge. It says it is incumbent upon the party offering
18 the expert to show that the witness possessed the
19 requisite of learning, skill or practical experience to
20 enable to give opinion testimony. Defects in the amount,
21 quality of education or experience go to the weight to be
22 accorded to expert's testimony. Again, as I have stated,
23 702 governs scientific opinion evidence. Essentially the
24 Supreme Court relying on 702 over this Daubert standard
25 which is Daubert v. Merrell Dow Pharmaceuticals,

1 Incorporated. That is 509 U.S. 597, 1993 case. In that
2 case there was a Federal standard for deterring the
3 admissibility of scientific evidence. That says,
4 indication of the adoption of the Federal rule of
5 evidence. Our Supreme Court has declined to adopt the
6 Daubert standard. They are relying on 702. Again, 702
7 simply says the trial Judge must find the evidence will
8 assist the trier of fact to understand the underlying
9 science involved. These people may have seen marijuana
10 but probably are unfamiliar with the chemical makeup and
11 some of the more detailed physical characteristics which
12 separate marijuana from other, I guess, plants that may
13 appear to be marijuana. Your Honor, we would hold that he
14 is qualified under 702, to testify as an expert in
15 marijuana analysis.

16 THE COURT: All right. Ms. McNeill; what have you
17 got.

18 MS. MCNEILL: Thank you, Your Honor. Setting Watson
19 versus Ford Motor Company, in order to qualify an expert
20 it is a three step process. Number one, subject matter, is
21 such that the jury would need assistance on. Number two,
22 training and qualifications. Your Honor, in this case we
23 would submit that a sixteen hour course is simply not
24 enough. And number three, it is going to be the defense
25 position that the State has not satisfied the four factors

1 of the State versus Jones and State versus Council. So we
2 would ask that you not qualify this man as an expert
3 witness.

4 THE COURT: What field are you offering him in, an
5 expert in?

6 MR. SCOTT: Analysis of marijuana. His sole
7 testimony is going to be, in your opinion is this in fact
8 marijuana, for identification and analysis of marijuana.

9 THE COURT: Qualifying an expert is in the discretion
10 of the Judge. And I am uncomfortable qualifying Detective
11 Hunnicutt as an expert for several reasons. This falls
12 back on some other work I did as a young lawyer. He has
13 had a training course of which I don't know the name. He
14 told me, he testified, and once I say this you can go and
15 ask questions but it is too late. I don't know the name
16 of the course, I haven't been given any testimony that he
17 is now certified as a marijuana analyst, much like a
18 breath testing analyst. You go to school and you get a
19 card that says, I am a analyst for a breath examination,
20 something along those lines. I have got no testimony on
21 that. Secondly, until you went back I didn't have as
22 widely accepted in the field of scientific and other
23 community, you got that. But the whole thing, it is just,
24 it is not there for me, it is close but it is just not
25 there.

1 MR. SCOTT: If I may, Your Honor.

2 THE COURT: Yes.

3 MR. SCOTT: It was testified that throughout the
4 State on two occasions that in order to be certified, to
5 test marijuana for any agency, any law enforcement agency
6 you must go for this course. And they teach the accepted
7 standards of testing, identifying marijuana course.
8 Everybody has got to be qualified once, the first time.
9 Thereafter it gets easier and easier and easier but you
10 have got to get through that first hurdle. In order to do
11 that you have got to go through the training. Testified
12 that he has made thousands of cases involving marijuana.

13 THE COURT: I agree with you. He testified that
14 100's of these cases, of the 130 were in training.

15 MR. SCOTT: But prior to that, in his experience in
16 law enforcement I would argue that he has got vastly more
17 experience in dealing with marijuana than these jurors.
18 He can help them to understand--

19 THE COURT: I agree with that but I am uncomfortable
20 qualifying him as an expert in the field of marijuana
21 detection and analysis and that is what you offered him
22 as, I thought.

23 MR. SCOTT: Identification, I think that would be,
24 identification, that is the sole question. In your
25 opinion is this marijuana or a bag of lettuce. I think he

1 is qualified to do that, I think he is more qualified
2 certainly than the trier of fact in this case. He can
3 help them to understand that that is not oregano in those
4 bags.

5 THE COURT: I don't think, I think you are close but
6 I don't think you got there and this is a discretion
7 thing. It is all enough, it is not fifty percent and it
8 is not sixty percent, it is I don't think you got there.
9 I think some of this I have helped you with and I am
10 comfortable helping you with your proving the case. I am
11 uncomfortable with that. I have fished and fished and
12 fished-

13 MR. SCOTT: Walter Bentley gave an opinion on whether
14 all Mexicans look alike. All I simply want is an opinion
15 on is that marijuana.

16 THE COURT: I am under the opinion that you think I
17 am wrong and I understand your opinion. It is a
18 discretionary evaluation that I make trying to qualify a
19 witness as an expert. And you have got him close but you
20 ain't got him there for me. And I offered you time to go
21 back and look and clean it up and you still didn't get it
22 for me, you got closer but you didn't get there for me.
23 And I can't qualify him. I think it is like ringing a
24 bell, once I say it I can't go back. He is not qualified.
25 And I am sorry, if I let you back up and ask all the

1 questions, I say you messed up then I am creating a
2 terrible issue for the defendant.

3 MR. SCOTT: All right.

4 THE COURT: So, my ruling is I can't qualify him as
5 an expert in the field of marijuana analysis and
6 identification.

7 MR. SCOTT: Okay. Are you going to allow me, I may
8 have already asked this, I am sorry. Are you going to
9 allow me to attempt to qualify him in identification of
10 marijuana?

11 THE COURT: Yes, I can do that. You provided that.
12 Based upon what you presented, experience, is working the
13 field and the additional training he gained from this
14 course, I can do that.

15 MR. SCOTT: I will just pick up where we left off.
16 That will be essentially what we will attempt to do then.
17 Thank you, Your Honor.

18 THE COURT: Bring them in.

19 (Whereupon, the jury came into open court at
20 approximately 2:45 p.m.)

21 CONTINUE DIRECT EXAMINATION

22 By Mr. Scott:

23 Q Mr. Hunnicutt, you are talking about 10 years you
24 have been in law enforcement, you were a patrol officer?

25 A That's correct.

1 Q And what are your duties as a patrol officer?

2 A Answer calls, investigate small crimes, traffic and
3 things like that.

4 Q Okay. Did you have an occasion to be involved with
5 cases involving marijuana?

6 A Yes, quite frequently, pull someone over and you can
7 smell the odor of marijuana. You detect this in the car
8 and once you, you know, upon questioning you can, you
9 know, ask them to see if they have any. They would
10 advise, yes or no. And once you did you can identify it.

11 Q Tell me what, describe it, what is the odor of
12 marijuana, is it something that is readily distinguishable
13 from something else?

14 A It is pretty noticeable, it is pretty sustainable,
15 yes.

16 Q How would you describe it, pungent?

17 A Very pungent. It is very odorous. It fills the room
18 up once you, you know, if you light one up or if you have
19 anything to do with marijuana in an open area situation it
20 is going to be filling the room.

21 Q Okay. Is it unique to marijuana, the odor you are
22 describing?

23 A Yes.

24 Q And have you had an occasion to observe, to look at
25 the whole and touch marijuana?

1 A Yes, more times than I can count.

2 Q More times, give us an estimate?

3 A Like I said earlier, I have seen it probably
4 thousands of times, maybe several hundred cases. So,
5 touching it and feeling it and smelling it and things like
6 that. Several hundred times.

7 Q You are saying it is something you are familiar with
8 during your law enforcement experience?

9 A That is correct.

10 Q Okay. So then in May of this year you do a SLED
11 course?

12 A Yes, sir.

13 Q All in South Carolina?

14 A Yes, sir.

15 Q And how many instructors did you have?

16 A We had one main instructor and we had two individuals
17 in the lab that were going around checking people's
18 results.

19 Q Two days you said, eight hours a day?

20 A Yes, sir.

21 Q And there are class rooms, I guess, where you are
22 lectured to?

23 A Yes; it is portioned half classroom, half lab.

24 Q And is that hands on aspect we were talking about?

25 A That is the lab portion.

1 Q And that involved one-hundred separate analysis?

2 A Yes, that's correct.

3 Q And even if you test something that is positive for
4 marijuana, when in fact the instructor knows it is not you
5 fail?

6 A That's correct.

7 Q And you passed that?

8 A Yes, sir.

9 Q Thereafter you became employed as the certified
10 marijuana analyst for Laurens Police Department?

11 A That is correct.

12 Q Even though you had been involved in a thousand cases
13 involving marijuana, did you gain more knowledge regarding
14 marijuana and did a makeup, I guess, identifying
15 characteristics in the result of your course than you had
16 before?

17 A That's correct. That is pretty much all the entire
18 course is, is to how to identify by unique characteristics
19 of marijuana chemically and microscopically.

20 Q Aside from the hundred, the test that you did there
21 performed in the past, certified, you have done what,
22 thirty-five percent then?

23 A Approximately thirty, thirty-five outside of training
24 as well.

25 MR. SCOTT: Your Honor, at this time we would offer

1 Jared Hunnicutt as an expert in the identification of
2 marijuana.

3 MS. MCNEILL: Subject to previous objections.

4 THE COURT: He is so qualified as an expert in the
5 field of identification of marijuana.

6 Q Did you have an occasion to become involved with the
7 case they heard here in Laurens involving Daniel Herrera?

8 A Yes, that is correct.

9 Q And when did you become involved in that case?

10 A On August 14, 2013.

11 Q And this happened back in 2010?

12 A Right.

13 Q You tested it this year?

14 A That's correct.

15 Q Where did you perform your analysis?

16 A The Greenwood Sheriffs Office.

17 Q Why?

18 A We didn't have enough supplies to test that amount of
19 marijuana.

20 Q Chemical supplies?

21 A Right.

22 Q You said on August 20th you were able to perform some
23 tests?

24 A That is correct, in Greenwood, South Carolina.

25 MS. MCNEILL: Objection, he is an expert in

1 identification only. I don't know why he is talking about
2 testing.

3 THE COURT: Subject to his qualification expert in
4 marijuana identification I am going to sustain her
5 objection.

6 MR. SCOTT: Yes, sir.

7 Q I have got a number of exhibits here. Let me show
8 them to you. I have got State's 2, 2a, 2b, 2c, 2d and 2e.
9 Take a minute to look at those. Do you recognize those?

10 A Yes, sir. These are the bags of marijuana that I
11 identified.

12 Q When did you receive those?

13 A I received them on the 20th of August.

14 Q And where did you take them from?

15 A I took them from the Laurens Police Department,
16 Captain Stankus released them to me. I took them to
17 Greenwood Sheriffs Office to test.

18 Q So Captain Stankus released those to you?

19 A That's correct.

20 Q Thereafter they were in your custody?

21 A That's correct.

22 Q Are you able, how are you able to identify those?

23 A I looked under the microscopic--

24 Q I am sorry, let me back up. I guess what I am asking
25 is, how are you able to identify these individual bags, 2,

1 2a, 2b, 2c, 2d and 2e.

2 A I cut them open from the box, looked at each bag,
3 opened up the vacuum seal, looked under a microscope and
4 saw the identifiers, like I said, the unicellular, the
5 multicellular.

6 Q Let me back up, they were vacuum sealed?

7 A They were vacuum sealed, yes.

8 Q What happened when you cut into that vacuum seal?

9 A It expanded a little bit due to oxygen. This is the
10 bag I put them back in and I initialed the seal on the bag
11 myself.

12 Q That is what I was asking, whose handwriting is this
13 on each one of these bags?

14 A Those are mine, my initials and the date.

15 Q And that is how you were able to identify each one of
16 those individual bags?

17 A Yes, sir.

18 Q It appears that they are in, I guess, a vacuum bag?

19 MS. MCNEILL: Objection, leading.

20 THE COURT: Don't lead.

21 Q Describe these bags, please.

22 A The inner bag is a vacuumed sealed bag, contains
23 green leafy substance consistent with marijuana that I
24 identified in Greenwood and I sealed them back up in a
25 loose plastic bag with initials and date.

1 Q And so the outer bag is yours?

2 A Yes, that's correct.

3 Q The inner bag what you would have--

4 A That is what it was given to me in.

5 Q There is six bags there?

6 A That's correct.

7 Q Did you test samples from each one of those bags?

8 A I identified samples from each one, yes.

9 Q Identified samples from each individual bag?

10 A Yes.

11 Q Did you form an opinion after your identifying each
12 one of the samples?

13 A That is correct. I identified each sample consistent
14 with marijuana from each bag, each individual bag.

15 Q That was going to be my question. Your opinion as
16 far as what was contained in State's number 2, what was
17 your opinion as far as identification, State's number 2?

18 A Marijuana.

19 Q State's 2a, what was your opinion as far as
20 identification?

21 A It was also consistent with marijuana.

22 Q 2b, what was your opinion as far as identification?

23 A Marijuana.

24 Q 2c?

25 A Also marijuana.

1 Q What about 2d?

2 A Marijuana as well.

3 Q What about 2e?

4 A That would be marijuana.

5 Q So each one of those six bags contained a quantity of
6 marijuana, that was your opinion?

7 A That is correct.

8 Q That is still your opinion today?

9 A That is correct.

10 Q Did you weigh each bag?

11 A I did.

12 MS. MCNEILL: Objection, as to the weight, this is
13 for ID purposes only.

14 THE COURT: All right. I have got to take up a legal
15 issue. Y'all step back in the jury room and don't begin
16 discussing the case.

17 (Whereupon, the jury was excused from open court.)

18 THE COURT: What is your objection?

19 MS. MCNEILL: My objection is this witness is not
20 qualified to testify to anything regarding testing the
21 marijuana or the weight, he was qualified for
22 identification purposes only. Anything that he testifies
23 to outside of identification purposes only is outside of
24 the scope of what he has been qualified to testify to.

25 MR. SCOTT: Your Honor, when do you have to be

1 qualified as an expert to weigh something, that is not an
2 opinion testimony. Anybody can testify if they personally
3 weighed, what the results were.

4 MS. MCNEILL: I think it takes more than a lay person
5 to testify as to how much weight marijuana weighs.

6 THE COURT: I think weight is a identification
7 characteristic.

8 MR. SCOTT: Brandy Anderson testifies each one of
9 those--

10 THE COURT: I think it is a identification, weight is
11 an identification issue.

12 MR. SCOTT: Yes, sir.

13 THE COURT: And if, and I haven't heard the
14 testimony. If it were something, 999 pounds and the
15 threshold were there it might, that may make a difference.
16 I am guessing that is not going to be an issue.

17 MR. SCOTT: No, sir.

18 THE COURT: I understand Ms. McNeill's objection. I
19 think weight would be a physical characteristic in
20 identification. You want to be heard any further, y'all
21 okay?

22 MR. SCOTT: No, I am fine, yes sir.

23 THE COURT: Bring them back.

24 (Whereupon, the jury came into open court at
25 approximately 3:01 p.m.)

1 CONTINUE DIRECT EXAMINATION

2 By Mr. Scott:

3 Q Were you able, as far as your identification of these
4 exhibits, were you able to weigh them?

5 A Yes, sir.

6 Q And you have your notes in front of you?

7 A I do.

8 Q How much, item number 1?

9 A In grams or ounces?

10 Q Item number 1 for the record is State's exhibit
11 number 2. How about grams, how many grams?

12 A 680.95.

13 Q Number 2, corresponds with State's 2a?

14 A 692.01 grams.

15 Q Number 3, State's 2b?

16 A 901.51 grams.

17 Q Number 4 is going to be 2C?

18 A 671.6 grams.

19 Q Number 5, the big one here, 2d?

20 A 1,188.41 grams.

21 Q Number 6, 2e?

22 A 494.13 grams.

23 Q All right. Were you able to convert that to pounds?

24 A Yes.

25 Q How many pounds did you come up with?

1 A 10 pounds, 3.2 ounces.

2 Q Is that with the bags?

3 A That's correct.

4 Q Have you subtracted out the weight of the bags?

5 A I have, 2.3 grams for each bag, brings us to 10
6 pounds, 2.78 ounces.

7 Q So in your opinion, each one of these items, 2, 2a,
8 2b, 2c, 2d and 2e are identified by you as marijuana?

9 A Yes, sir.

10 Q And the overall weight of these is 10 pounds, 2.78
11 ounces?

12 A That's correct.

13 MR. SCOTT: Your Honor, the State would offer State's
14 2, 2a, 2b, 2c, 2d and 2e for admission into the evidence.

15 MS. MCNEILL: Subject to previous objections.

16 THE COURT: They will be so admitted subject to
17 objection.

18 (Whereupon, State's Exhibits 2, 2a, 2b, 2c, 2d and 2e
19 were admitted into evidence.)

20 Q Answer any questions Ms. McNeill has for you.

21 CROSS-EXAMINATION

22 By Ms. McNeill:

23 Q Mr. Hunnicutt, did you open each and every one of
24 these bags?

25 A Yes, I did.

1 Q Can you tell me, did you spread it out on a table
2 when you opened it?

3 A No.

4 Q What did you do?

5 A I just opened the bags with a knife.

6 Q With a knife and how did you weigh it?

7 A On a scale.

8 Q Did you just take the clumps and put it on a scale?

9 A No, weighed the whole thing on the scale.

10 Q What I am asking you, in what manner did you weigh
11 the marijuana, if it is marijuana, did you take it out of
12 the bag and just put it directly on the scales?

13 A No.

14 Q How did you do it?

15 A I didn't take it out of the bag, it was left in the,
16 the bag you see, it is still on there. I just cut the bag
17 open and took out the sample that I am testing and then I
18 put the entire bag that you see minus the outer bag on the
19 scale and weighed it.

20 Q And then you weighed the bag separately?

21 A No, I actually weighed a bag, the same size and
22 consistency of that and it comes out to 2.3 grams.

23 Q But you didn't weigh the actual bag though, just
24 something similar?

25 A That's correct. I didn't want to lose marijuana than

1 I actually would have had if I had of weighed them all
2 together.

3 Q So you didn't take the marijuana out of the original
4 bags and also just weighed a similar bag that was similar
5 to your opinion but not this actual bag that you see here?

6 A I weighed a similar bag, empty bag that would be the
7 same amount of weight as that bag if I emptied it out of
8 the marijuana and weighed it as well.

9 Q So you didn't weigh that bag?

10 A I weighed that bag as well with the marijuana.

11 Q And do you personally calibrate your scales?

12 A No, that wasn't my scale, that was actually Greenwood
13 County Sheriffs Department and their evidence technician
14 calibrates those scales.

15 Q Would you agree with me that sometimes items in other
16 cases have field tested positive for whatever the
17 controlled substance is and then y'all send it off to SLED
18 to be reweighed, is that correct?

19 A Do what now?

20 Q Would you agree with me that sometimes when something
21 field tests positive or weighs to a certain weight that
22 law enforcement, local law enforcement agencies will send
23 off the controlled substance to SLED, South Carolina Law
24 Enforcement Division down in Columbia to be weighed by a
25 SLED agent, would you agree with me?

1 A No.

2 Q You would not agree with that?

3 A No.

4 Q So, SLED agents never weigh controlled substances?

5 A I don't believe that was your question.

6 Q That is my question, sir.

7 A No, your question was, do we send it as law
8 enforcement to them to be weighed. And we don't, we weigh
9 our own, they weigh it but they weigh it on their accord.
10 We don't actually send it off to be weighed.

11 Q Fine. Would you agree with me then that sometimes
12 that the weight of a drug is different when a SLED agent
13 weighs than when a local law enforcement agent such as
14 yourself weighs it?

15 A I couldn't speak on that, that is too many variables,
16 I wouldn't know.

17 Q In all of your experience, you testified that you
18 have had thousands of cases involving drugs, is that
19 correct?

20 A That's right, I have been involved in thousands of
21 cases.

22 Q So in all of that experience you cannot tell me that
23 sometimes the weight of the drug that is weighed at a
24 local law enforcement agency is different than when it is
25 weighed at SLED?

1 A Not to my knowledge, I haven't been presented with
2 that fact, no.

3 Q That is interesting.

4 A If you would like to present me some of those facts I
5 would be glad to look at them.

6 Q I am not here testifying, sir, it is you.

7 A Okay, fine.

8 Q Do you know the average weight of a paperclip?

9 A No, I do not. I am not certified in that.

10 Q That is fine. The average weight of a paperclip is
11 1.4 grams. Now you know.

12 MR. SCOTT: Your Honor, I object to her testifying.

13 MS. MCNEILL: Withdrawn.

14 Q What I am asking you is, is it possible that your
15 scale that you use at Greenwood could be off?

16 A Anything is possible.

17 Q Anything is possible?

18 A That's correct.

19 Q Because you testified that this total amount was 10
20 pounds, 3.2 ounces, is that correct?

21 A That's correct.

22 Q By looking at this evidence in front of you, can you
23 tell despite your naked eye that it weighs over 10 pounds?

24 A I can't tell, I could guesstimate.

25 Q You could guesstimate?

1 A Yes, that is why we use scales.

2 Q That is why you use scales is to verify, correct?

3 A That's correct.

4 Q So you had to verify that it weighed over 10 pounds,
5 correct?

6 A That's correct.

7 Q When you tested this marijuana, when you identified
8 it or weighed or whatever you did did you take out the
9 stems?

10 A I didn't dig into it to take anything out, all I took
11 out was a small sample to test. I don't know if there are
12 stems in there or not.

13 Q Well, I can see stems, can you?

14 A Not from this distance. I am not certified in
15 telling what stems are, I am certified in marijuana.

16 Q I am sorry but I thought we just made, qualified you
17 as an expert in identification purposes for marijuana, is
18 that correct?

19 A Of marijuana and earlier you asked me if stems were
20 marijuana and I told you, no.

21 Q Okay. Exactly. So I am trying to ask you, sir, if
22 you took the stems out of that marijuana in order to test
23 it?

24 A You don't test stems.

25 Q So you did mess with the marijuana?

1 A I didn't mess with anything.

2 Q Because before you testified that you just took it
3 out and put it on the scale and that you didn't want to
4 lose the marijuana, isn't that correct?

5 A Yes, I am not following exactly what you are asking
6 here.

7 Q So what I am saying is, there is stems in here,
8 correct, there is a lose piece right there with stems in
9 it. Do you see that?

10 A I see a lose piece of marijuana.

11 Q With the stem on it?

12 A Point it out.

13 Q See how it is--

14 A That is part of the marijuana where the stem is cut
15 off. The actual stem, I would assume, is what you mean
16 like a stick.

17 Q Exactly, just like this.

18 A That stem is a part that is not connected to the
19 actual marijuana.

20 MS. MCNEILL: Your Honor, can I publish this to the
21 jury, please?

22 THE COURT: You can publish it to them.

23 Q So you are saying that you did or did not pull apart
24 the marijuana before you tested it?

25 A I didn't pull anything apart.

1 Q You didn't, so it was all intact just like that?

2 A That's correct, just like it is right now.

3 Q Thank you. No further questions.

4 REDIRECT EXAMINATION

5 By Mr. Scott:

6 Q The stems is part of the marijuana plant, isn't it?

7 A It is part of the plant.

8 Q Okay. Thank you.

9 THE COURT: You may step down.

10 MR. SCOTT: Your Honor, the State rest.

11 THE COURT: Y'all approach.

12 (Whereupon, a bench conference was held in the
13 presence of the jury but out of the hearing of the
14 jury.)

15 THE COURT: I have got to put several things on the
16 record that are legal issues that I have got to resolve.
17 And that will take 10 or fifteen minutes and then with a
18 break and whatnot, my thinking is I would rather send
19 y'all home now, have you back here in the morning at 9:30
20 and do everything in a run. I can get all of that lose
21 work I have got to do, I can get all of that done this
22 afternoon so we can start first thing in the morning.
23 Does the defense plan on putting anything--

24 MS. MCNEILL: No, Your Honor.

25 THE COURT: I didn't think so. This is all the

1 testimony you will hear. Y'all be back in the morning at
2 9:30 and don't discuss the case.

3 (Whereupon, the jury was excused from the trial of
4 the case for the day.)

5 MS. MCNEILL: Your Honor, can I have five minutes?

6 THE COURT: Sure.

7 (Whereupon, a short break was taken.)

8 THE COURT: Ms. McNeill.

9 MS. MCNEILL: Your Honor, at this time I want to move
10 for a directed verdict under Rule 19 of the South Carolina
11 Rules of Criminal Procedure. Judge, it is the defense
12 position that the State must prove beyond a reasonable
13 doubt that the defendant both knowingly attempted to have
14 actual or constructive possession of the marijuana and
15 knew the amount of the marijuana itself. 370(e) states in
16 pertinent part, "knowingly in actual or constructive
17 possession or who knowingly attempts to become in actual
18 or constructive possession of", and then lists various
19 amounts of marijuana in the trafficking statute.
20 Knowingly both extends to, (1), actual or constructive
21 possession. And (2), the amount of the seized drug. To
22 construe otherwise where the defendant did not have
23 knowledge of the drug or the amount would make the statute
24 a strict liability offense which is not what the
25 Legislature intended. In fact, if it became a strict

1 liability offense then the post office would also be
2 liable. A similar statute, statutory construction
3 occurred in U.S. v. X-Citement Video, Incorporated. It is
4 513, US 64, 1994. This was a Supreme Court case that
5 involved the protection of children against sexually
6 exploitation acts which prohibited both knowingly
7 transporting, shipping and receiving a visual depiction if
8 such depiction involves the use of a minor engaged in
9 sexually explicit conduct. The State contending that
10 knowingly modified only the verbs, transporting, shipping
11 and receiving and not the nature of what was being
12 shipped, i.e., the depiction of a minor. The Court ruled
13 against such a construction as it would make the innocent
14 actor such as a drug clerk who returns an unexpected role
15 of film to a customer and the film contained described
16 image. Consequently the Court concluded that knowingly
17 modifies not only the act of shipping but also the nature
18 of the thing shipped. And that is cited 115, Supreme
19 Court at 472. The same application should be applied to
20 the trafficking statute that the defendant must also know
21 the amount of the drug being trafficked. Otherwise a
22 different construction would create a strict liability
23 offense and potentially hold innocently receivers at the
24 post office door guilty of trafficking for not knowing the
25 drugs and their amounts being shipped and received.

1 Judge, in this case the only evidence that the State has
2 presented goes towards a sort of evidence that the
3 defendant in this case knew that there was drugs inside of
4 the package, was Mr. Walter Bentley's testimony that Mr.
5 Herrera said, oh shit, Senior, once he said, I have the
6 package. Judge, this can mean so many things but it does
7 not rise to the level that needs to, beyond a reasonable
8 doubt to prove that he knowingly knew, A, what was inside
9 of the box. And, B, how much drugs were in the box. He
10 could have said that for a variety of reasons. One, he is
11 undocumented. Also, he had, there was also testimony that
12 he had a piece of paper, or two pieces of paper in this
13 pocket with a name and address. That also goes to show
14 that he had, probably somebody else told him, here is a
15 name, here is an address, go to the store and pick up this
16 package for me. It doesn't necessarily mean that he is
17 going to the store on his own accord but rather somebody
18 else in picking up the package. Your Honor, also State
19 versus Angela Taylor which is 323, SC 162, Court of
20 Appeals of South Carolina case also states that
21 trafficking requires knowing. They have to prove that my
22 client knew how much marijuana would be in the package.
23 Also, State, I am sorry, State versus Jamey Allen Reid,
24 which is 383, SC 285. It also goes towards talking about
25 attempt as a specific attempt to crime. Judge, we would

1 ask for Your Honor to grant a directed verdict in this
2 case as the State has not proven, has not submitted enough
3 evidence beyond a reasonable doubt in order to prove my
4 client had the mens rea component of knowing what was
5 inside of the box and also how much was in the box. If he
6 did not know how much marijuana was in the box this is not
7 a trafficking offense. Thank you.

8 THE COURT: Mr. Scott.

9 MR. SCOTT: First of all, I will remind Ms. McNeill
10 that reasonable doubt is not the standard in a directed
11 verdict motion. The existence, some competent testimony
12 intending to prove the defendant guilty of the crime
13 alleged, not the weight, not reasonable doubt, the
14 existence of some testimony and evidence. Furthermore
15 there is a case, Your Honor, State v. Taylor, 323 SC 162,
16 473, SE 2d, 817. That case that was a Court of Appeals
17 case or upheld by the Court of Appeals, the State is not
18 required to prove the defendant knew of the weight of the
19 controlled substance involved. How could you in a
20 situation like this, Your Honor, to show that he knew that
21 it was 10 pounds, 3 ounces. Never been required, as far
22 as the trafficking statute concerns. The State has proven
23 there was in fact 10 pounds or more of marijuana, not
24 required to prove that he knew the exact weight of the
25 marijuana. Evidence again, Your Honor, just to briefly

1 rehash, was that a Hispanic male appeared at Ms.
2 Armstrong's doorstep looking for the package in question.
3 She gave a description of the individual. Mr. Walter
4 Bentley indicated that he saw an individual that
5 substantially fit the description. Your Honor, his stats
6 were listed here in State's number 4, 185 pounds, 5'8",
7 approximately 30 years old in 2010. She was off maybe two
8 or three years, one inch and 10 pounds in her description.
9 Mr. Bentley again followed him inside and very clearly was
10 attempting to pick up that box, had the name that was
11 listed as the destination name indicated [REDACTED] McDowell
12 Street. And furthermore was found with the identifying
13 address and then the Yems Smith of, fake name written down
14 in his pocket. The State must prove beyond a reasonable
15 doubt in its case-in-chief and what the jury must decide
16 manufactured, cultivated, delivered, purchased, brought
17 into this State, provided financial assistance or
18 otherwise aided, abetted, attempted or conspired to either
19 sell, manufacture, cultivate, deliver, purchase or bring
20 into this State or was knowingly in actual or constructive
21 possession or knowingly attempted to become in actual or
22 constructive possession. Very clearly attempted to bring
23 into this State, that is from Texas, Your Honor. That was
24 the testimony, a large quantity of marijuana and then
25 attempted to possess directly in front of a law

1 enforcement officer. Your Honor, I think there is some
2 evidence that he is guilty of this trafficking. I think
3 that is all, Your Honor, I think this case should be given
4 over to the jury and they would decide if we have met our
5 burden beyond a reasonable doubt.

6 MS. MCNEILL: Thank you, Your Honor. To clarify for
7 Mr. Scott, saying, he is correct but grounds for the
8 motion, if there is a failure of component evidence
9 intending to prove the charge in the indictment. We are
10 alleging that there is no competent evidence to survive
11 the directed verdict motion. In the indictment it clearly
12 lists that he, that Daniel Martinez Herrera did in Laurens
13 County, state aforesaid, on or about the 12th day of
14 August, 2010 willfully, unlawfully and knowingly traffic
15 in marijuana. So, obviously we have the willful,
16 unlawfully and knowingly component which is a misread
17 component, Your Honor. And, again, we would contend that
18 there is no testimony going to the defendant knowing.
19 There was no statements taken from Mr. Herrera. The only
20 statement that was said was, oh shit, Senior. And, again,
21 it is undocumented, it is reasonable to think that anybody
22 that is told they are going to be put under arrest is
23 going to respond like that. Also, I would like to point,
24 I am going to spell this one, it is Frank Liparota,
25 L-I-P-A-R-O-T-A versus United States. And this case is

1 471, US 419, 105 SC 2084. It is a case where the Supreme
2 Court, Justice Brennan held that the offense has a mens
3 rea requirement, the Government must prove that the
4 defendant knew that his acquisition or possession in this
5 case, food stamps was in a manner unauthorized by statute
6 or regulations and then the Commission was reversed. And
7 I have with me Supreme Court cases if Your Honor would
8 like to read them.

9 THE COURT: What I believe the State has provided,
10 there is testimony of a Hispanic gentleman that came to
11 the house looking for the box. Went to the post office
12 looking for the box. And the box contained marijuana that
13 is in front of the Court at the bench. And if you just
14 couple that with the description, his comment, there is
15 testimony and evidence presented by the State that Mr.
16 Herrera was trying to possess that box if you tie all of
17 this back together. And that is a jury question. So,
18 respectfully I decline to grant the motion for a directed
19 verdict on that basis.

20 MS. MCNEILL: I also would like to renew all the
21 previous objections at this time.

22 THE COURT: All right, they are so renewed. I will
23 consistently rule and respectfully deny them. All right.
24 Is this a trafficking 10 to 100 and that is it?

25 MR. SCOTT: Yes, sir.

1 THE COURT: Not nothing lessor included?

2 MS. MCNEILL: Yes, Your Honor, there was included a
3 possession with intent to distribute and possession within
4 that statute. I would also like the definition to be, the
5 definition of marijuana to be included because it states
6 that marijuana means all species or variety of the
7 marijuana plant and all parts thereof whether growing or
8 not. And then it goes on to say that marijuana does not
9 mean, number one, mature stalks of the marijuana plant or
10 fibers produced from these stalks. Clearly in this case
11 there are several stems in there that was tested and went
12 to the weight of 10 pounds and some ounces which was also
13 tested or weighed at the same time. So, not just
14 marijuana was being weighed.

15 THE COURT: Any objection to the lessor included
16 being put in there?

17 MR. SCOTT: Judge, this is State v. Raffaltdt case.
18 318 SC 110. When the State puts into the evidence the
19 weight of a controlled substance which is greater than the
20 threshold amount, i.e., 10 pounds in this case and it is
21 not entitled to construction on the underlying criminal
22 act along with the trafficking charge. I think once we
23 establish that the weight is over the threshold amount, I
24 don't think they are entitled to possession with intent to
25 distribute according to that particular case, Your Honor.

1 I am trying to look for the definition of marijuana. The
2 stalk that she mentions, that it doesn't include it is not
3 at issue here. The stalk being the long uproot that comes
4 from the ground where the buds and everything sprout from.
5 In these particular cases there is various stems and
6 whatnot that is a part of the actual bud. Those are
7 weighed every time in a marijuana case. The analogy, I
8 guess would be trying to separate baking powder from crack
9 cocaine or various agents in a Methamphetamine case or
10 crack case. Those are included to establish the overall
11 weight. Essentially it is the same with marijuana. I
12 don't think that would be something that Your Honor--

13 THE COURT: Ms. McNeill, can we get the definition.
14 Do you have it.

15 MS. MCNEILL: It also says that the sterilized seeds
16 of the marijuana which is incapable of germination should
17 also not be included in the weight of marijuana which
18 clearly there is hundreds of seeds in that thing that was
19 also weighed. And we have no idea if those are capable of
20 germination or not because there was no one to testify to
21 that. And, Your Honor, also statute 44-53-392, weight of
22 controlled substance. Also it says notwithstanding any
23 other provision of this article, the weight of any
24 controlled substance referred in this article is the
25 weight of that substance in pure form or any compound or

1 mixture thereof. Which also goes through the definition
2 of marijuana.

3 THE COURT: What is the sterilized seed of the
4 marijuana plant.

5 MS. MCNEILL: The sterilized seed is one that will
6 not cultivate into a marijuana plant.

7 THE COURT: How do you know?

8 MS. MCNEILL: Well, good question. That is why seeds
9 should not be tested.

10 THE COURT: I mean if it says it, one, marijuana
11 means, number two. The seeds of a plant. Number four,
12 subpart four, the sterilized seed does not mean. So it
13 says it both ways.

14 MS. MCNEILL: That is not for Mr. Herrera to prove.

15 THE COURT: I am reading marijuana does not mean
16 mature stalks of the plant. That means the stalk of the
17 plant which is attached to the roots. It is not the stem
18 of a leaf. Stem versus a stalk, there is a difference.
19 Stem being a smaller part of the plant versus the stalk
20 being a heavier or more region part of the plant.

21 MR. SCOTT: Like a trunk of a tree and a limb on a
22 branch, essentially.

23 THE COURT: I tell you what, I am inclined to give
24 the marijuana definition shown here. But I don't know how
25 to distinguish between the seeds of the marijuana plant

1 and the sterilized seeds of marijuana plant. Do y'all
2 have any idea because that is, I have read that before but
3 never have thought about it.

4 MR. SCOTT: There is no testimony regarding seeds in
5 the exhibits. She mentioned stems. I didn't hear any
6 testimony about stems.

7 THE COURT: There was testimony about stems.

8 MS. MCNEILL: Also, Your Honor, I am requesting a
9 definition of intent, willful.

10 MR. SCOTT: No objection, Your Honor, just in regards
11 to knowledge of weight. I just, again, the State v.
12 Taylor case. That is a Court of Appeals case.

13 THE COURT: Ms. McNeill gave the same case reference.
14 I will read that case and figure it out.

15 (Whereupon, a short break was taken.)

16 THE COURT: Anything else, arguments?

17 MS. MCNEILL: No, Your Honor.

18 THE COURT: I am reading the Taylor case, it has got
19 the language that both of y'all quoted. I guess in the
20 quote, in the State versus Grandy, undisputed evidence in
21 the amount involved in the seeds that trafficking allowed.
22 Only trafficking should be submitted to the jury. How am
23 I getting around that. I was under the opinion before I
24 asked y'all the question that it was trafficking only.

25 MR. SCOTT: What was the case you just cited?

1 THE COURT: It is State versus Grandy but it is
2 within, a reference within State versus Taylor.

3 MR. SCOTT: What was the proposition?

4 THE COURT: It says, if the undisputed evidence is
5 that the amount involved exceeds the minimum trafficking
6 amount then only trafficking should be submitted to the
7 jury.

8 MR. SCOTT: Yes sir, that was my understanding.

9 THE COURT: I mean, that is kind of what I was
10 thinking before I asked the question. I just wanted to
11 see if y'all wanted something different. That is what I
12 thought it was.

13 MR. SCOTT: That is my understanding as well, Your
14 Honor.

15 THE COURT: We are going to adjourn for the day. If
16 you find something else that says I can charge the lessor
17 included I will be glad to consider it. I was thinking
18 that question, do I or don't I, do the lessor included on
19 the last break so I have been studying your question. If
20 you find something I want to know it, otherwise I intend
21 on not charging the lessor included.

22 MR. SCOTT: Any proposed charges we can email you?

23 THE COURT: Sure. I will see y'all in the morning at
24 9:30.

25 (Whereupon, the case will resume the next morning at

1 9:30 a.m.)

2 December 18, 2013.

3 THE COURT: All right.

4 MS. MCNEILL: Judge, you want to take up the lessor
5 included now?

6 THE COURT: Let's hear it now.

7 MS. MCNEILL: Your Honor, I am requesting that the
8 Court do charge the lessor included offenses of possession
9 with intent to distribute marijuana as well as possession
10 of marijuana. I am renewing my argument from yesterday at
11 this time. My opinion, I think that the defense has
12 raised an issue of weight, the weight of the marijuana is
13 in dispute. Also, Hunnicutt weighing everything that is
14 in the bag was including stems and seeds. Because I think
15 that the weight should go to the jury, I am going to cite
16 the State versus Kay. This case is on point for charging
17 lessor included offenses if there is dispute in the
18 amount. Also I cite State versus Grandy and Matthew
19 versus State which both support my position.

20 THE COURT: Anything, Mr. Scott?

21 MR. SCOTT: Your Honor, just the opposite, I would
22 cite Grandy as a standard for the proposition that the
23 undisputed evidence, if the undisputed evidence in the
24 amount involved exceeds the minimum trafficking amount
25 then only the trafficking charge should be submitted to

1 the jury. There is a '96 State v. Taylor case we talked
2 about yesterday, they cite Grandy. The amount of cocaine
3 within the criminal acts triggers the trafficking statute.
4 The amount of cocaine in that case, any mixture thereof
5 meets the threshold amount. And the trafficking statute
6 applies in Raffaldt I cited yesterday, 318 South Carolina
7 110, 1995 case. Again, the defendant is not entitled to a
8 charge on the lesser offense if the evidence shows that
9 the threshold amount is met.

10 MS. MCNEILL: And, Your Honor, my position would be
11 that the evidence does not necessarily show that.

12 THE COURT: You are saying the evidence is disputed,
13 not undisputed?

14 MS. MCNEILL: Correct.

15 THE COURT: I am going to read Grandy while y'all are
16 closing. My feeling is that I should charge the lesser
17 included because the amount was disputed and it is so
18 close. That is kind of my feeling right now.

19 MS. MCNEILL: I just have one more issue.

20 THE COURT: All right.

21 MS. MCNEILL: The other issue I wanted to address
22 with the Court today, is yesterday I talked about I would
23 like the words, knowingly and willingly definitions
24 charged to the jury. I cannot recall what Your Honor's
25 ruling was on that. And what I am basically trying to

1 figure out is, am I able to argue that in my closing. It
2 is cited in the indictment.

3 THE COURT: It is in the indictment, correct.

4 MR. SCOTT: That issue is actually covered in the
5 State v. Taylor case. They discuss knowingly in that
6 case. The same kind of issues. They want to charge that
7 the defendant in that case had to know of the weight, the
8 drugs they possessed. And the Court covers the definition
9 of knowing in that case.

10 THE COURT: How would you intend on these
11 instructions knowingly?

12 MS. MCNEILL: Just the definition, Your Honor, which
13 is cited as Mr. Scott stated.

14 THE COURT: I don't want to define every single word
15 in this case but knowingly, I don't mind defining it.

16 MS. MCNEILL: Thank you.

17 THE COURT: Bring them in.

18 (Whereupon, the jury came into open court at
19 approximately 9:38 a.m.)

20 THE COURT: All right, ladies and gentlemen, we are
21 ready to have closing summaries provided by the attorneys.
22 Upon them summarizing their positions I will then give you
23 the instructions on the law as to how to evaluate what you
24 have heard. Please give careful attention to the
25 attorneys as they give you their closing summaries. Since

1 the defense put up no evidence they get to argue last and
2 the State will go first. Mr. Scott or Mr. Daniel.

3 MR. SCOTT: Thank you, Your Honor, may it please the
4 Court. 8, 14, 17, 20, 39. Y'all know what those mean. A
5 few numbers can make a whole lot of difference. As Mr.
6 Daniel said in the opening, if I had known those numbers
7 last night, today I would be half way to being a
8 billionaire. A few numbers can make a big difference.
9 One number made a big difference for Mr. Herrera on August
10 the 12th of 2010. If the shipper who intended to send him
11 all of that weed had written down [REDACTED] McDowell Street
12 instead of [REDACTED] the wheels wouldn't have been set in motion
13 and we all wouldn't have been here today most likely.
14 Because he would have received a crate of marijuana and he
15 would have done whatever he was going to do with it and we
16 probably wouldn't be here today. But as luck would have
17 it, the wrong address was put on there and Ms. Armstrong
18 found that box on her doorstep. Called the police as you
19 all heard, Ms. Brandy Anderson went out there, reserved
20 the box of marijuana and took it back to the police
21 station and told her if you hear from anybody or if
22 anybody gives you any trouble make sure to call her. Sure
23 enough, who shows back up at her doorstep is Mr. Herrera.
24 Probably saw through the trafficking that it had been
25 delivered to the wrong address. Asked Ms. Armstrong about

1 it and it was pretty sligh of her, instead of saying, I
2 sent it to the police station, she says, oh, I took it
3 back to the post office. You can probably find it there,
4 they should still have it. Called the police station and
5 tells them, hey, he has been back over here looking for
6 his marijuana. I told him that it was at the post office.
7 Walter Bentley who now has got the marijuana at the police
8 station takes it there, the post office opens at 9:00.
9 Mr. Herrera sure wants that weed and he wants to get it as
10 quick as he can so he is there at 8:30, he beats Walter
11 Bentley there. It alters Mr. Bentley's plan to some
12 degree. What he had intended on doing is taking that in
13 and telling the authorities at the post office what was
14 going on, have them hand it to him and then arrest him as
15 he walks out the door with a box under his arm. But Mr.
16 Herrera wanted that marijuana, he beat the police there.
17 So what happens. Herrera goes to the counter, have y'all
18 seen a box, Yems Smith, Y-E-M-S Smith, it shows on the
19 label. I live at [REDACTED] McDowell Street, it was sent to [REDACTED]
20 do y'all have that box. No sir, we don't have anything
21 like that back here. Check again, please, because I
22 really need this box. No sir, we checked, we don't have
23 it. At that point the infamous words, you know, in this
24 case, you heard it a number of times probably, humorous to
25 some degree that this is what Mr. Herrera said. Walter

1 Bentley, you know, this has been going on for some time
2 and finally lets the cat out of the bag, hey, I have got
3 your box over here. That is when Mr. Herrera turns and
4 looks at him, oh shit, Senior. What does that tell you.
5 He knew the jig was up. Arrest him, what does he have in
6 his pocket. Yems Smith, [REDACTED] McDowell Street on two
7 separate pieces of paper in his pocket. This case is not
8 complicated. I mean, here we are on the second day
9 talking about this case. We have got to cover everything.
10 It is really not complicated, is it? That is the story in
11 a nutshell. I mean you heard the testimony from everyone
12 here. That is pretty much it, right? They are the same
13 in litigation, if the facts are on your side, then pound
14 on the facts. If the law is on your side, pound on the
15 law. If neither is found then just pound on the table.
16 That is what the defense has done. Opening statement, how
17 many times has the defense talked about the State, the
18 Government. The State is on trial. Why do you think they
19 did that? Mr. Daniel is the State, I am the State, well,
20 they are the State. The Judge is the State. Do we look
21 like some buzz saw that is wanting to tear people from
22 limb to limb. That was designed to prejudice you all. If
23 the facts are on the side pound on the facts. If the law
24 is on your side pound on the law. If it is me on your
25 side pound on the Solicitor's office. Witness who sits up

1 here, Brandy Anderson, first officer who went to the
2 scene, talked to Ms. Armstrong, took the marijuana from
3 her, a patrol officer. Ms. Armstrong, if anybody comes
4 looking for you call me to take care of her. Leanne
5 Riggott investigated, she was to store the marijuana
6 overnight. Walter Bentley, to pick up the case, he was
7 the lead investigator. What was the cross-examination on
8 Brandy Anderson, the one who went out there initially, the
9 patrol officer. What else did you do to protect this
10 woman, why didn't you protect her anymore. Leanne
11 Riggott, why didn't you protect this woman anymore. All
12 you told her to do was call the police department if she
13 had any trouble. Why didn't you do more. Where is your
14 incident report even though all you did was store the
15 marijuana in your office overnight. Walter Bentley, you
16 think all Mexicans look alike, don't you. What is that
17 designed to do and what does that have to do with the
18 price of tea in China. If the facts are on your side
19 pound on the facts. If the law is on your side pound on
20 the law. If neither is on your side pound on public
21 service, pound on the police. Don't take your eye off the
22 ball. I don't want to harp on it too much but what is
23 complicated about this. This case isn't about stems, the
24 fear of a prosecutor is that a juror, once they present
25 their case and the defense throws up red herrings here and

1 there, tries to make you chase rabbits up here instead of
2 focusing on the ball, you will lose the sight of the
3 forest for the trees. I hope you aren't doing that
4 because these facts aren't complicated. And I know they
5 are going to get up here and tell you how complicated this
6 whole thing is. You don't have to judge this case on
7 anything other than what you heard here in court.
8 Evidence that came from right here. It is really in
9 essence what a criminal trial is all about, it is not what
10 you saw on CSI, it is not about a story a friend told you
11 about what happened in another state. This is what
12 happened here, yesterday from this stand. You don't have
13 to make assumptions, you don't have to jump at
14 conclusions, really that is kind of liberating when you
15 think about that. Just use your common sense and base it
16 on the story we told here. That is really all you have to
17 do, you don't have to consider all of these erroneous,
18 irrelevant red herrings is what I call them. After you
19 hear all of this you just have to make the decision, is
20 Daniel Herrera guilty of trafficking in marijuana. Did he
21 conspire with someone else or did he, himself, bring into
22 this State, bring into Laurens County marijuana, 10 pounds
23 or more. Did he actually possess or attempt to possess
24 marijuana, 10 pounds or more. The evidence is clear, what
25 you have heard is clear. Weighed 10 pounds, 2.78 ounces.

1 The marijuana came from a border town in Texas. He is
2 caught redhanded at the post office trying to pick it up.
3 The thing that I was also thinking about was how really, I
4 guess, ideas on marijuana specifically began to involve.
5 That has been something that is happening in the years
6 now. It has been decriminalized in a lot of places out
7 West. I want to remind you all that we are not talking
8 about somebody smoking a joint in their living room. We
9 are not talking about 20-year-old smoking a joint in his
10 dorm room. This is somebody with a box full of marijuana
11 that he has had shipped here. And in South Carolina, like
12 or not, that is still our law and we all took the oath
13 when we were sworn yesterday that we would judge this case
14 fairly based on the evidence produced here and we would
15 apply the law faithfully as instructed by the Judge. It
16 is still the law here and I just want to remind y'all of
17 that. I mean, and I am not saying anybody has any ideas
18 specifically on marijuana. I actually heard a radio
19 segment yesterday on the way home from work and it was
20 somebody out in Colorado talking about the
21 decriminalization of marijuana but maybe I shouldn't even
22 bring that up. But it was something that I thought of.
23 The standard here, and you are going to hear about it
24 because you need to. The prosecution has to prove a case
25 beyond a reasonable doubt. The key word there is

1 reasonable. I have to prove that he is guilty of
2 trafficking marijuana beyond a reasonable doubt. And that
3 is nothing new to Laurens County, that is nothing new to
4 South Carolina. All across the nation, anybody that is
5 convicted of any crime they have to be found guilty beyond
6 a reasonable doubt. It doesn't mean beyond any and all
7 doubt, it doesn't mean one-hundred percent certainty. You
8 can have doubt about something here or something there,
9 wasn't the ultimate issue of guilt, whether he is guilty
10 of trafficking marijuana, it has got to be beyond a
11 reasonable doubt. But we can't be one-hundred percent
12 certain of anything in this case. What we rely on is
13 people who were there and testimony that comes from here
14 into evidence. So as long as you are firmly convinced,
15 based on that evidence if he is guilty of trafficking then
16 you must find him guilty. So when you get back there and
17 you are deliberating and somebody says, well, I am
18 wondering about this. If there is a doubt on an issue the
19 question is, well, is that a reasonable doubt. Firmly
20 convinced I think is the best way I, at least I can rack
21 my brain and see reasonable doubt. As long as you are
22 firmly convinced and the Judge will instruct you on that,
23 that he is guilty of the charges as we produced them in
24 court. If you find some, you know, reason, truly that
25 makes sense to you and you are using your common sense in

1 coming up with it and it is a doubt that you all agree on
2 together as very reasonable that he is not guilty cut him
3 loose. That is the law, I am not trying to hide it from
4 you. But if you are firmly convinced he did it you have
5 got to find him guilty. That is what reasonable doubt is.
6 I am going to sit down now but I don't want y'all to lose
7 sight of the forest for the trees. Who was in the post
8 office trying to pick up the box. Who was it that Ms.
9 Armstrong saw earlier that day asking her if she received
10 the box. Who was it that had the name Yems Smith in his
11 pocket. Daniel Herrera. He was caught redhanded by law
12 enforcement officers. How easy does it get. As the Judge
13 said, the defense gets the last argument. That is just
14 how the legal system works. It is a helpless type
15 situation when I sit down. They may get up and what about
16 this and what about that and I can't answer to it because
17 I have already made my spill to you all. But they really
18 don't, at the end of the day, have the last argument. The
19 last argument belongs to you all. And I am asking you,
20 after you go back to your room and deliberate and you
21 reflect on the facts and you reflect on the evidence, I am
22 going to ask you to find Mr. Herrera guilty of trafficking
23 marijuana. Thank you.

24 THE COURT: Ms. McNeill.

25 MS. MCNEILL: Thank you, Your Honor. Good morning.

1 Mr. Scott gives me too much credit. I am not up here to
2 try to do, to demean the system in any way. I think if
3 anybody is charged with a criminal offense they deserve a
4 zealous advocate and they deserve representation, good
5 representation against the State. And I am not the State,
6 I am a criminal defense attorney and I am proud of that.
7 And if I am up here poking holes in a story and the facts
8 that is me doing my job. And anyone in this country who
9 is accused of a crime deserves somebody to do that for
10 them. That is why we have jury's. And I am grateful for
11 that. I would hope that the State would be grateful for
12 that as well. In saying that, that is all I am going to
13 say about that issue. Moving forward, what we are here to
14 do today in determining the guilt or the innocence of Mr.
15 Herrera. Well, trafficking marijuana in the State of
16 South Carolina requires that you knowingly and willfully
17 in actual or constructive possession where you intend to
18 become in actual or constructive possession. And let me
19 explain to you what that actually means. I am holding
20 this pen, there is no doubt this pen is mine. I am in
21 actual possession of this pen. I am actually picking it
22 up. Now, if I put it over here, this is still in my
23 vicinity, that is still my pen even though I am not
24 actually possessing it, I am now in constructive
25 possession of it. It is still my pen but not on my

1 person. Does that make sense. So I am constructively
2 possessing it, now I am actually possessing it. To
3 knowingly and willfully be in actual or constructive
4 possession I actually have to know I am in possession of
5 the pen. I constructively have to know I am in possession
6 of a pen. And in this case we are talking about this box
7 right here of marijuana. Okay. So, if this is my box I
8 am right now constructively possessing that box and I know
9 what is inside of that box, there is marijuana inside of
10 that box. So I am willfully and knowingly in constructive
11 possession of that box right now. Now, I am in actual
12 possession of this box and I willfully am being so and I
13 know what is inside of this box. Does that makes sense.
14 But let's say, there is something over here. There is a
15 box over here, I have never seen this before, have y'all
16 ever seen this before. No, me neither, right. But I am
17 trying to get to it, let's say that it is the Judge's box
18 and I am walking over here to attempt to possess that box
19 and it is the Judge's box and I am walking over here to
20 attempt to possess that box. And it is the Judge's box
21 and he says, Ms. McNeill, there is a box over there for
22 you. So I come over here, I am attempting to possess this
23 box, right. Right at this moment I attempt to be in
24 constructive possession and now I am in actual possession.
25 But do I know what is inside of that box, do you know what

1 is inside of that box. What if somebody gave you a piece
2 of paper with a name and an address on it and said, here
3 you go, I need you to go pick up this box, it is at the
4 post office and they delivered it to the wrong address.
5 They delivered to our next door neighbor's house. Can you
6 go pick this box up for me. Sure, no problem. But let me
7 take that address from you because it is not my address,
8 why would you need somebody to write down your address if
9 you already know it or the next door neighbors. You
10 wouldn't, you would have that memorized, right. But if
11 you don't know the address and you are just merely going
12 to accomplish a task of picking up somebody's else box you
13 would take that name and that address and you would go to
14 the post office and you would be like, oh, can I pick up
15 the box that was sent to, hang on, let me double check,
16 let me pull out that paper from my pocket, oh right, it
17 was delivered to [REDACTED] McDowell Street. And the name Yems
18 Smith is on it and I am here to pick up this box. Now,
19 you heard testimony from Walter Bentley that he felt like
20 Daniel Herrera, my client, recognized him as a law
21 enforcement agent. Why in God's green earth would anybody
22 go and try to attempt to pick up a box that they know had
23 weed inside of it if a law enforcement agent officer is
24 sitting right there. Would you do that. I mean, come on,
25 if I knew that I was going to pick up some weed and I saw

1 a law enforcement officer, granted he was dressed in plain
2 clothes, but as he stated he eats at Senior Garcia's where
3 Daniel Herrera was a waiter, all the time. And I stand
4 there and I say, okay, can I go and pick up this box and I
5 know what is in it. That just does not make any sense,
6 use your common sense here. Okay. But what are in the
7 contents of that box. Daniel Herrera didn't know, I don't
8 know what is in this box actually, I have no idea. Let's
9 find out, it is CD's and there is a remote control, I am
10 assuming it goes to this technology right here. Did you
11 know what was in this box. Right. If you didn't know
12 what was in this box and you went to go and pick up this
13 box from the post office and there happened to be weed in
14 it were you willfully and knowingly, attempting to be in
15 actual or constructive possession of 10 pounds or more of
16 marijuana. Which brings me to the other point. How in
17 the world did Mr. Herrera know how much weight was inside
18 the box. You heard testimony from Brandy Anderson who
19 said that by looking at the weed she felt it was a
20 trafficking offense. What she didn't know, however, was
21 that I put two of these big bags of marijuana underneath
22 the table, right. And then I said, this looks like
23 trafficking to you. Yes, it does. Well, that was only
24 over 5 pounds on the table, it has to be over 10 pounds to
25 be trafficking. She has been in the force 18 years, how

1 does she not know that. So then I move the other two bags
2 of weed. Now, ma'am, does it look like trafficking to
3 you. She says, well, it looked like trafficking to me
4 before. So law enforcement officer of 18 years has no
5 idea of how much weed it takes to traffic. Then you got
6 the guy who comes up here, Officer Hunnicutt, yesterday
7 who weighed the marijuana. And I said to him or asked
8 him, did you know that this was the amount of weed
9 necessary for trafficking. No, I didn't, I have to weigh
10 it to verify. Well, how is Mr. Herrera willfully and
11 knowingly into actual or constructive possession of the
12 box. And how does he know that there was weed inside of
13 it and how does he know that there is over 10 pounds of
14 weed inside of it. Does that make any sense. What if it
15 was 9.99, 9 pounds, .99. Then it is not trafficking.
16 Would Mr. Herrera have known the difference. Was he
17 willfully and knowingly in actual or constructive
18 possession of a box that contained over 10 pounds of weed
19 in it. That is the question you are here to answer. Or
20 are you not firmly convinced of that. If you are not
21 firmly convinced that the State has proven beyond a
22 reasonable doubt that Mr. Herrera was willfully and
23 knowingly in possession or attempting to possess a box
24 that has over 10 pounds of weed in it then you must find
25 him not guilty. I hope that my analogy makes sense. It

1 is kind of complicated when you throw in all of these
2 technical terms. But really that is what it comes down
3 to, that box over there, I had no idea what was in it.
4 What if there was a 10 pounds, 1 ounce brick of marijuana
5 in there. I just told you, I had no idea what was in the
6 box. I went over to try to possess it. Am I screwed
7 because there is over 10 pounds of weed in that box and
8 the State is going to put me on trial saying that I was
9 willfully and knowingly in violation of a trafficking law.
10 Am I now deemed a criminal. That is what you are here to
11 answer. Please find Mr. Daniel Herrera not guilty of this
12 offense. Thank you.

13 THE COURT: All right, let's, bear with me real
14 quick. I need to ask the lawyers one question. Come on
15 up.

16 (Whereupon, a bench conference was held in the
17 presence of the jury but out of the hearing of the
18 jury.)

19 THE COURT: All right, folks, the lawyers are allowed
20 to give me suggestions on instructions I give you as to
21 what the law says. But sometimes there is a debate of the
22 interpretation of law and I want to give y'all clear
23 instructions on what to do and how to evaluate the
24 evidence you have been presented. So I am going to give
25 you my instructions and then have y'all step out. And

1 when I finish I get the lawyers to then also give me more
2 suggestions in case I omitted something or I glossed over
3 something or I didn't give a specific definition as they
4 think is appropriate because the lawyers are trained.

5 They went to law school and they have been practicing law
6 and everybody is comfortable, so y'all are no lawyers so I
7 am trying to make it clear for non-lawyers of the law of
8 South Carolina. First and foremost, Mr. Hunter, I am
9 selecting you to be the foreperson. So you will preside
10 over deliberations and you will sign the verdict form.
11 Other than that you don't get any extra candy, no greater
12 pay, but you will just preside over the deliberations. If
13 you don't mind I would appreciate that. You are now so
14 selected and Mr. Bolt will then allow you to come and go
15 first and last so that you will sit in the front when you
16 come back in here. All right.

17 Mr. Hunter and members of the jury, as I told you
18 earlier, the State of South Carolina charges the
19 defendant, Daniel Herrera with the offense of trafficking
20 in marijuana. You will have a verdict form in the jury
21 room with you during your deliberations. So, Mr. Hunter
22 and members of the jury, you will of course bear in mind
23 that Mr. Herrera has plead not guilty. And by entering
24 the plea he has denied all charges in the indictment
25 before him.

1 An indictment is merely an accusation against him.
2 The evidence which you are to consider is the testimony
3 from the various witnesses along with any exhibits which
4 have been introduced by the witnesses and into the record
5 during the course of this trial. As you have noticed we
6 have introduced records and numbered them and Ms. Holston
7 has taken account of those numbers and everything admitted
8 you will have in the jury room for your review.

9 Now, a defendant comes into court, all defendants
10 come into court clothed with a presumption of innocence
11 and this presumption of innocence continues throughout the
12 case and entitles him to a verdict of not guilty unless
13 and until it is dispelled by the evidence satisfying you,
14 the jury, beyond a reasonable doubt of his guilt, of the
15 offense of trafficking in marijuana. The State must prove
16 each and every element of this crime beyond a reasonable
17 doubt. As I told you earlier, you as a group are the sole
18 fact finders in this case. Under the constitution and
19 laws of South Carolina that is your job. I may not
20 suggest in any way what I think about the facts or about
21 the guilt or innocence of Mr. Herrera. You will make that
22 decision during your deliberations with a unanimous
23 verdict. Also, the same constitution and law which makes
24 you the finders of fact from the evidence makes me the
25 sole Judge and the sole instructor of the law. You must

1 accept the law as I am instructing it to you, apply it to
2 the evidence which you have been presented, evaluate the
3 evidence and weigh it and reach a unanimous verdict. If I
4 should make an error in the law as I am instructing it to
5 you there is another time and another place in another
6 court where that error can be considered and if necessary
7 corrected. For the purposes of today you must accept the
8 law as I am instructing it to you. In that regard, I tell
9 you that neither you nor I should be concerned with what
10 we think the law is or what it ought to be or anything of
11 that sort but only concern ourselves with the law as I am
12 instructing it to you today.

13 Now, as the sole fact finders you should have
14 listened closely to the evidence presented and you are
15 going to weigh the evidence using your good judgment and
16 common sense. Weighing evidence is entirely a mental
17 process. Evidence weighs with you that which convinces
18 you of the truth. Your objective here today is to find
19 the true facts. You are to be the sole judges of the
20 credibility and the believability of the witnesses who
21 have testified in this case. Now, in passing upon a
22 person's credibility or believability you may take into
23 consideration anything in your good judgment and common
24 sense you deem appropriate. You may also consider things
25 such as this, what was the manner and appearance of the

1 way the witness testified. Was the witness
2 straightforward, was the witness hesitant in answering.
3 How did the witness come to know the facts to which he or
4 she testified to or what was his or her ability to know
5 these facts. Is there some reason a witness would want to
6 give testimony which would help or hurt one side or the
7 other. In other words, was the witness biased or
8 prejudiced. And was the testimony of a witness
9 strengthened or weakened by other testimony or other
10 evidence. You as a jury may believe as much or as little
11 of each witness' testimony as you deem appropriate. You
12 may believe the testimony of a single witness against that
13 of many or just the opposite. You may believe part of a
14 witness' testimony and disbelieve the rest. Now also, the
15 fact that testimony is not disputed does not mean you must
16 accept it as true and undisputed. You still must gauge
17 the credibility of the witness to determine the
18 believability or the truth of the facts offered through
19 this testimony. Keep in mind, you have but one objective
20 and that is to seek the truth.

21 Now, in trials such as this there are generally two
22 types of evidence presented, there is direct evidence and
23 circumstantial evidence. Direct evidence is the testimony
24 of a person who asserts or claims to have actual knowledge
25 of certain facts, such as an eyewitness. Circumstantial

1 evidence is proof of a chain of facts and circumstances
2 indicating the existence of another fact. Our law makes
3 absolutely no distinction between the weight or the value
4 to be given to either direct evidence or circumstantial
5 evidence. Nor is a greater degree of proof required of
6 circumstantial evidence than that of direct evidence. You
7 should just weigh all of the evidence presented to you in
8 this case. And using your good judgment and common sense,
9 weighing all the evidence, if you are not convinced of the
10 guilt of the defendant beyond a reasonable doubt you must
11 find him not guilty.

12 Now, in a criminal prosecution the State has the
13 burden of proof. The defense has no burden whatsoever as
14 the defendant is presumed innocent. In our State
15 according to our constitution the prosecution must prove
16 their case to the standard of proof called beyond a
17 reasonable doubt before a finding of guilt may occur. If
18 the State fails to meet this burden then the defendant is
19 entitled to an acquittal or a not guilty verdict.

20 Now, we have discussed the State has to prove their
21 case beyond a reasonable doubt. What is a reasonable
22 doubt in the law. I tell you this, a reasonable doubt is
23 the kind of doubt which would case a reasonable person to
24 hesitate to act. It is a doubt which would make an
25 honest, sincere, conscientious juror in search of the

1 truth hesitate to act. Proof beyond a reasonable doubt is
2 proof which leaves you firmly convinced of the defendant's
3 guilt. If you have a doubt for which you could give a
4 reason as to the guilt of the defendant then he is
5 entitled to a verdict of not guilty. Reasonable doubt may
6 arise from evidence which is in this case or from the lack
7 of evidence or the absence of evidence in this case. You,
8 the jury, must make the determination of whether or not a
9 reasonable doubt exists as to the guilt of the defendant.
10 Now, the very fact that you engage in full and free
11 discussion of the issue of guilt or non-guilt in this case
12 does not automatically mean that a reasonable doubt exists
13 in this case. You must reach a unanimous verdict in
14 making the determination of this issue.

15 Now, criminal intent is a necessary element of each
16 crime which must be proved by the State beyond a
17 reasonable doubt. Criminal intent is a matter that must
18 be determined from the circumstances surrounding the
19 situation. There is no way to prove intent to a
20 mathematical certainty. There is no way medical science
21 can dissect a person's brain and determine what he or she
22 had in mind. So the law states that intent may be
23 inferred from the circumstances shown to have existed both
24 before and after the fact. This is how you make a
25 determination of whether or not the element requiring an

1 intent was present. Criminal intent is a state of mind
2 that operates jointly with an act or omission in the
3 commission of a crime. It is a mental state of conscious
4 wrongdoing so it is up to you, the jury, to determine what
5 the defendant intended to do based on the circumstances
6 shown to have existed. I tell you that the State must
7 prove criminal intent beyond a reasonable doubt just as
8 the State must prove all of the elements of a crime beyond
9 a reasonable doubt.

10 Now, the defendant, Mr. Daniel Herrera is charged in
11 this case with trafficking in marijuana. I instruct you
12 now the law on this charge including any lesser included
13 offenses. The State must prove beyond a reasonable doubt
14 that the defendant knowingly sold, manufactured,
15 cultivated, delivered, purchased, brought to this State,
16 provided financial assistance or otherwise, aided,
17 abetted, attempted or conspired to sell, manufacture,
18 cultivate, deliver, purchase or bring into the State. He
19 was knowingly in actual or constructive possession or he
20 knowingly attempted to become in actual or constructive
21 possession of marijuana. The State must also prove beyond
22 a reasonable doubt that the amount of marijuana in the
23 trafficking offense was more than 10 but less than 100
24 pounds.

25 Now, if you find the State has not proven trafficking

1 in marijuana beyond a reasonable doubt you should then
2 consider whether the State has proven beyond a reasonable
3 doubt that Mr. Herrera is guilty of possession with intent
4 to distribute marijuana. Possession with intent to
5 distribute contains all of the elements of trafficking
6 except the amount of marijuana. The State must prove
7 beyond a reasonable doubt that Mr. Herrera had the intent
8 to distribute the marijuana. To prove possession the
9 State must prove beyond a reasonable doubt that the
10 defendant had both the power and intent to control the
11 disposition or use of the marijuana. Possession may be
12 either actual or constructive. Actual possession means
13 the marijuana was in the actual physical custody of the
14 defendant. Constructive possession means that the
15 defendant had dominion and control or the right to
16 exercise dominion and control over either the marijuana
17 itself or the property on which the marijuana was found.
18 Mere presence at the scene where the drugs were found is
19 not enough to prove possession. Actual knowledge of the
20 presence of marijuana is strong evidence of the
21 defendant's intent to control his disposition or use. The
22 defendant's knowledge and possession may be inferred when
23 the substance was found on property under the defendant's
24 control. Distribute means to deliver, other than
25 administering and dispensing a drug. Intent may be shown

1 by acts and conduct of the defendant and other
2 circumstances from which we naturally and reasonably infer
3 intent. Knowingly means an awareness that a certain
4 result is practically certain. In determining whether the
5 defendant had the intent to distribute marijuana you may
6 consider circumstances surrounding the defendant's alleged
7 possession. You may consider the amount of the substance
8 alleged to have been possessed, the manner in which it was
9 possessed, the place in which it was possessed and other
10 factors which you consider to be important. You must find
11 the defendant did not have the intent to possess the
12 marijuana solely for his own use. Possession of more than
13 one ounce of marijuana creates an inference that the
14 defendant intended to possess the marijuana with intent to
15 distribute. This inference does not relieve the State
16 from proving beyond a reasonable doubt that the defendant
17 had the intent to distribute. It simply means, it is
18 simply an evidentiary fact in the taking and consideration
19 by you, the jury, along with all the other evidence in
20 this case and to be given the weight you decide it should
21 have.

22 Now, I instruct you and emphasize the fact that the
23 defendant did not testify, it is not a factor to be
24 considered by you in any of your deliberations and in your
25 consideration of the question of the guilt or innocence of

1 the defendant. It must not be considered by you in any
2 manner whatsoever. A defendant has the constitutional
3 right to remain silent and his assertion of his right must
4 not be considered in your deliberations. Under your oath
5 you are not to draw any conclusions whatsoever in the fact
6 that the defendant did not testify. And the fact that he
7 did not testify should not be even discussed in the jury
8 room. The burden of proof, as I told you earlier, is upon
9 the State. The defendant is not required to prove his
10 innocence. The burden is upon the State to prove him
11 guilty beyond a reasonable doubt.

12 Now, also a defendant's failure to appear may not be
13 construed in any manner whatsoever as an admission of
14 guilt by the defendant. As I said, you must not discuss
15 his failure to testify or his failure to appear in any way
16 in reaching your conclusion as to the guilt or innocence.

17 Now, Mr. Hunter and members of the jury, as you
18 retire to the jury room to begin your deliberations I wish
19 to express the hope that each of you will be mindful of
20 the importance of your responsibilities. You are not
21 called to be jurors very often, you and I are acting for
22 this community and for this State. And we must see to it
23 that this trial is fair and the verdict is just. You take
24 care of the preservation and the honor of this community
25 and the honor of this State. I am not trying to tell you

1 how to decide this case. Under the laws of South Carolina
2 I am not allowed to suggest to you in any way which
3 verdict to reach. It would be improper for me to
4 influence you. But I do tell you that I am convinced that
5 the verdict you reach will be fair and it will be a result
6 of your going in the jury room and finding in your
7 consideration the evidence presented, the law as I have
8 instructed it to you and weighing the evidence fairly and
9 impartially and reaching a unanimous verdict. Everyone is
10 entitled to justice in this case, both the State and the
11 defendant. Nothing more, nothing less. You owe no
12 support to anyone or sympathy to anyone. And I am
13 confirmed, I am of the confirmed opinion that you will
14 reach a fair and just verdict. And remember I have told
15 you several times, your verdict must be unanimous.

16 Now, I am going to let you step back in the jury room
17 momentarily, all thirteen. I will go over with the
18 lawyers my instructions to see if they wish to request
19 that I give you any further instructions on the law. If
20 during your deliberations, once you start the
21 deliberations, I don't want you to start until I tell you
22 to, once you begin if someone wants to take a break or
23 step outside, smoke a cigarette, use your cell phone, that
24 is allowed. But once someone steps out the deliberations
25 stop. All twelve have to be in the room to discuss the

1 case. If y'all take a break everyone takes a break. So,
2 you are on your time, take a break and then start. You
3 can work for a little bit and then take a break.
4 Everybody stops until you get back together. If you reach
5 a question, we would like further instructions on this
6 aspect of the law, what is the definition of reasonable
7 doubt, anything like that. Write it down on a piece of
8 paper, hand it to Mr. Bolt and they will bring it to me, I
9 will talk to the lawyers and give them further discussions
10 on how to address the issue you have requested. If you
11 would like to hear testimony replayed, Ms. Holston
12 recorded the entire trial, so we would like to hear the
13 testimony of, write the witness name or describe the
14 witness. If you want to hear a witness' testimony, we
15 would like to hear that testimony replayed for us. Give
16 me a few minutes, that would be a good time to take a
17 break when you ask for something like that, then Ms.
18 Holston can bring that up and we will bring you in and she
19 can play that for you. If you need instructions, have any
20 questions, like to hear testimony, write a note and hand
21 it to Mr. Bolt. Y'all can begin your work as soon as I
22 talk to the lawyers. So when I hand you the verdict form
23 and the evidence to Mr. Bolt to bring to you that is when
24 you begin your deliberations at that time. Until then
25 don't begin discussing the case until I tell you to. So,

1 all thirteen to the jury room and then once y'all start
2 deliberations I will pull my alternate out.

3 (Whereupon, the jury was excused from open court.)

4 THE COURT: Any clarifications or adjustments needed
5 in that instruction from the State?

6 MR. SCOTT: Your Honor, I guess the possession charge
7 would have been under a theory of constructive possession.
8 I don't think you can attempt simple possession.

9 THE COURT: I didn't give simple possession in the
10 charge.

11 MR. SCOTT: Okay, I didn't hear that either.

12 THE COURT: I thought the same thing.

13 MR. SCOTT: I didn't hear it either.

14 THE COURT: I did say possession of more than an
15 ounce is, show intent, I did say that. But aside of that
16 I did not go into possession of marijuana, flat, I did not
17 give that instruction. And for the record, I had jury
18 instructions provided to me in 2008 and then somebody
19 rewrote them and gave us an updated version. I do not
20 like the updated version for the record.

21 MR. SCOTT: That was my other question--

22 THE COURT: It is cluttered up. That is cluttered up
23 and as I am reading it I am trying to sort it as I am
24 reading it. So if I stammered a little bit because I was
25 not comfortable, that is not what I am used to giving.

1 MR. SCOTT: What was the reasonable doubt charge,
2 that wasn't your standard.

3 THE COURT: It was pretty close, I was pretty close
4 on it.

5 MR. SCOTT: I didn't hear my favorite, finally
6 convinced.

7 THE COURT: Oh yes, I read that, I did. I start out,
8 I always, I give the same reasonable doubt charge. And my
9 clerk, Greg, and I talked about it. They have a longer
10 one, and this is the one that I have gotten comfortable
11 with. So the reasonable doubt is my charge, reasonable
12 doubt, kind of doubt that causes a reasonable person to
13 hesitate, makes a honest, sincere, conscious juror. Proof
14 beyond reasonable doubt is the proof which leaves you
15 firmly convinced of the defendant's guilt. That is the
16 third sentence in, I did that one.

17 MR. SCOTT: The only thing, I suspect I know how Your
18 Honor will rule on this. But since it was argued at
19 closing, the knowing aspect. I would ask that the State
20 must prove beyond a reasonable doubt the defendant
21 knowingly committed the underlying criminal act. That
22 would not apply to the knowing aspect applying to the
23 weight of the drugs. And that is under the State v.
24 Taylor case.

25 THE COURT: I gave knowing is knowledge, that means

1 certain results, that definition also.

2 MR. SCOTT: That would be my only suggestion, Your
3 Honor. Otherwise it is fine with me.

4 THE COURT: Ms. McNeill?

5 MS. MCNEILL: Nothing, Your Honor.

6 THE COURT: Y'all inventory the evidence.

7 (Whereupon, the jury started deliberations at
8 approximately 10:41 a.m.)

9 (Whereupon, the alternate was excused from the trial
10 of the case.)

11 THE COURT: We have a note from the jury regarding
12 the testimony of the identification expert for the State.
13 Also a question to whether stems are counted in the
14 weight. So we submitted a response to one of the
15 questions that we would provide testimony of Officer
16 Hunnicutt if it is so requested. And also we did an
17 instruction from the statute regarding what the controlled
18 substance was as well as the definition of what marijuana
19 was, what marijuana means and what marijuana is not which
20 is codified. Do y'all have the code section handy, it is
21 on the form, it is defined under the statute. Those will
22 be sent to the jury.

23 (Whereupon, the jury continues deliberations.)

24 THE COURT: We have a verdict. Bring the jury in.

25 (Whereupon, the jury came into open court at

1 approximately 11:56 a.m. with the verdict.)

2 THE COURT: Mr. Hunter, have y'all reached a verdict?

3 MR. HUNTER: Yes we have, Your Honor.

4 THE COURT: Was it unanimous?

5 MR. HUNTER: Yes, it was.

6 THE COURT: Hand it to Mr. Bolt, please, sir.

7 (Whereupon, the bailiff hands the verdict form to the
8 Court.)

9 THE COURT: All right, Ms. Lancaster, you can publish
10 the verdict.

11 CLERK OF COURT: Your Honor, in the case of the State
12 of South Carolina versus Daniel Martinez Herrera, case
13 number 2010-GS-30-1918. We, the jury, find as follows:
14 As to the charge of trafficking marijuana. We find that
15 the defendant, Daniel Martinez Herrera guilty. Signed by
16 the Foreman, George M. Hunter dated December 18th, 2013.
17 Ladies and gentlemen, if that be your verdict please
18 indicate by raising your right hand.

19 (Whereupon, all jurors raised their hand.)

20 THE COURT: Any other issues for the jury, Ms.
21 McNeill?

22 MS. MCNEILL: I would like the jury to be polled,
23 please.

24 CLERK OF COURT: Ladies and gentlemen, the verdict
25 that I just published, is that the verdict that you

1 reached in the jury room. I ask was it your verdict then
2 and is it your verdict now. When I call your name can you
3 please answer yes or no.

4 CLERK OF COURT: George M. Hunter.

5 JUROR: Yes.

6 CLERK OF COURT: William D. Flowers, II.

7 JUROR: Yes.

8 CLERK OF COURT: Loleta A. Williams.

9 JUROR: Yes.

10 CLERK OF COURT: Tya L. Kennedy.

11 JUROR: Yes.

12 CLERK OF COURT: Tkeya L. Speaks.

13 JUROR: Yes.

14 CLERK OF COURT: Kara C. Copeland.

15 JUROR: Yes.

16 CLERK OF COURT: Darren M. Rice.

17 JUROR: Yes.

18 CLERK OF COURT: Teresa D. Fowler.

19 JUROR: Yes.

20 CLERK OF COURT: Ambra V. Merrill.

21 JUROR: Yes.

22 CLERK OF COURT: Daniel M. Koch.

23 JUROR: Yes.

24 CLERK OF COURT: Robert L. Hames.

25 JUROR: Yes.

1 CLERK OF COURT: Thomas C. Reece.

2 JUROR: Yes.

3 THE COURT: All right, Mr. Hunter, y'all go back to
4 the jury room and I will come back and speak to y'all and
5 I will turn y'all loose.

6 (Whereupon, the jury is excused from open court.)

7 THE COURT: Any motions.

8 MS. MCNEILL: Judge, I am renewing all of my motions
9 throughout the trial and moving for a motion for a new
10 trial.

11 THE COURT: All of your motions and the basis for
12 them are renewed herein and respectfully denied for the
13 same reasons we gave prior. But your record is protected.

14 MS. MCNEILL: Thank you.

15 THE COURT: Do you have a sentencing sheet for him,
16 Mr. Scott?

17 MR. SCOTT: Yes, sir.

18 THE COURT: The sentencing sheet will be sealed with
19 the indictment in the Clerk of Court's office if and when
20 Mr. Herrera is located and brought back to Laurens County,
21 it will be opened at that time.

22 MS. MCNEILL: Thank you. I am making a motion for
23 the evidence to be preserved at this time.

24 THE COURT: All right. Until the appellate record is
25 preserved and he is located and the sentence is read then

1 the, the time of the appeal doesn't start until he is
2 sentenced. Would everybody agree that the Laurens City
3 can maintain possession of the drugs in their evidence
4 locker as it was maintained before trial?

5 MR. SCOTT: Yes, sir.

6 THE COURT: Any objection to that?

7 MS. MCNEILL: No, sir.

8 THE COURT: All right. That is what we will do. The
9 exhibits which was not marijuana, so exhibit 2, 2a, b, c,
10 d and e will be maintained by Laurens County. All the
11 other evidence will be maintained by the Clerk. The box
12 and the five packages.

13 MS. MCNEILL: Yes, sir.

14 (Whereupon, Court's Exhibits 1, 2, and 3 were marked
15 for identification only.)

16 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
17
18
19
20
21
22
23
24
25

1 State of South Carolina
2 County of Laurens Court of General Sessions

3
4
5 State of South Carolina) Transcript of Record
6 vs.) 2010-GS-30-01918
7 Daniel Herrera,)
8 Defendant.)

9
10
11 June 6, 2014
12 Laurens, South Carolina

13 B E F O R E:

14 The Honorable Frank R. Addy, Jr., Judge

15
16 A P P E A R A N C E S:

17 Christopher Dale Scott, Solicitor
18 Attorney for the State

19 Chelsea McNeill, Esquire
20 Attorney for the Defendant

21
22 Stacy S. Johnson, RPR
23 Circuit Court Reporter
24
25

I N D E X

PAGE

CERTIFICATE OF REPORTER

5

E X H I B I T SNO.DESCRIPTIONID.EVD.

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held on
2 June 6, 2014.)

3 **THE COURT:** Okay, Solicitor.

4 **MR. SCOTT:** Judge, this is a matter of
5 the State versus Daniel Herrera, Indictment
6 10-GS-30-1918. That is an indictment on a
7 trafficking marijuana charge, less than ten
8 pounds. What was it, trafficking --

9 **MR. BENTLEY:** Over ten.

10 **MR. SCOTT:** Over ten.

11 **THE COURT:** I've got the folder. I've
12 been handed this indictment, 10-1918, that indicates
13 that on December the 18th apparently Mr. Herrera
14 was found guilty of trafficking in marijuana, and
15 I've been provided with a sealed sentence that
16 bears the same incident or same indictment number.
17 This is just for purposes of sentencing; is that
18 correct?

19 **MS. McNEILL:** Yes, Your Honor.

20 **MR. SCOTT:** Yes, sir.

21 **THE COURT:** Judge Griffith's name appears
22 on the front of the envelope. I'll open the
23 envelope and read the sentence.

24 All right. It would appear that Judge
25 Griffith imposed a sentence of five years in the

1 Department of Corrections. He left blank the
2 portion concerning the jail time credit.

3 Is Mr. Herrera entitled to any pre-trial
4 confinement credit or was that addressed at the
5 time mitigation was offered?

6 **MS. McNEILL:** Judge, to be honest with
7 you, this is the very first time I've ever met
8 Mr. Herrera. I inherited -- it's a 2010 case. I
9 inherited it from Ms. Schultz. I tried to locate
10 him and I just met him about twenty minutes ago in
11 the back holding cell.

12 I was his trial lawyer. I tried this case
13 by myself. I'm unfamiliar with how much time he's
14 entitled to credit. I do know now he's been in the
15 detention center for two days.

16 **THE COURT:** Well, I've amended the
17 sentencing sheet just to reflect that he's entitled
18 to credit for any time that he served in pre-trial
19 confinement. That's something the jail can check
20 into before he goes to the Department of Corrections.

21 Good luck, Mr. Herrera.

22 (End of proceedings.)
23
24
25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 21st day of January, 2014.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

October 8, 2014

s/ Stacy S. Johnson
Stacy S. Johnson, RPR
Circuit Court Reporter

WITNESSES

Walter Bentley
Laurens Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2010
Indictment # 10GS30-1918

WARRANT NUMBER

J618426

THE STATE

vs.
Daniel Martinez Herrera

True Bill
Angie Nelson
Foreman of the Grand Jury
Date: 10/8/10

VERDICT

Guilty 12/18/13
George [Signature]
Foreman

INDICTMENT FOR

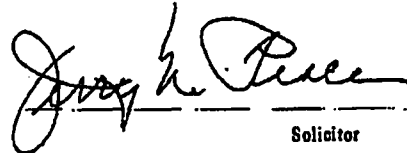
TRAFFICKING MARIJUANA
44-53-0370

THE STATE OF SOUTH CAROLINA**COUNTY OF LAURENS****INDICTMENT FOR****TRAFFICKING MARIJUANA
44-53-0370**

At a Court of General Sessions, convened on the 8th day of October, 2010 the Grand Jurors of Laurens County present upon their oath:

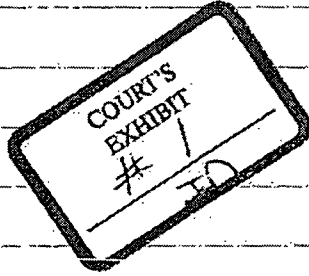
That Daniel Martínez Herrera, did in Laurens County, state aforesaid, on or about the 12th day of August, 2010 willfully, unlawfully, and knowingly traffic in marijuana, to wit: that the said defendant(s) did distribute, manufacture, cultivate, deliver, purchase, or bring into this State, and/or did provide financial assistance or otherwise aid, abet, attempt, or conspire to distribute, manufacture, cultivate, deliver, purchase, or bring into this State, and/or was knowingly in actual or constructive possession of more than ten pounds but less than one hundred pounds of marijuana, a schedule I controlled substance, in violation of Section 44-53-370 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



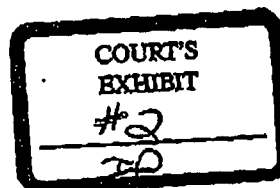
Solicitor

Do STEM COUNT in the weight
we like to hear what was
said about STEM from Hunnicut
EXPERTS Testimony



Would you like
to hear his testimony

186



"Marijuana" means:

- (1) all species or variety of the marijuana plant and all parts thereof whether growing or not;
- (2) the seeds of the marijuana plant;
- (3) the resin extracted from any part of the marijuana plant;
- (4) every compound, manufacture, salt, derivative, mixture, or preparation of the marijuana plant, marijuana seeds, or marijuana resin.

"Marijuana" does not mean:

- (1) the mature stalks of the marijuana plant or fibers produced from these stalks;
- (2) oil or cake made from the seeds of the marijuana plant;
- (3) any other compound, manufacture, salt, derivatives, mixture, or preparation of the mature stalks (except the resin extracted therefrom);
- (4) the sterilized seed of the marijuana plant which is incapable of germination.



SECTION 44-53-392. Weight of controlled substance.

Notwithstanding any other provision of this article, the weight of any controlled substance referenced in this article is the weight of that substance in pure form or any compound or mixture thereof.

HISTORY: 1990 Act No. 604, Section 9.

188

Yems Smith
 Maxwell St.
 Laurens S.C.

GUESTCHECK™

Date	Table	Guests	Server
			415799

APPT-SOUP/SAL-ENTREE-VEG/POT-DESSERT-BEV

Yems Smith	
Maxwell St	

CONTROL NO: S 2525959

EVIDENCE

(TO BE OPENED BY AUTHORIZED PERSONNEL ONLY)

NOTE

- A) Do not use this bag for any evidence that has wet/damp body fluids on it.
 B) To seal bag, peel off blue release liner, then seal bag by pressing down on red glue film.

Case Number:

Description of Enclosed Evidence:

Submitting Agency:

Telephone Number:

Evidence Recovered By:

Victim's Full Name:

Suspect's Full Name:

Evidence Bag Sealed By:

Date Sealed:

AM
PMSTATE'S
EXHIBIT

#3 ID

LAURENS POLICE DEPARTMENT



0000004579

Case: 2010-4724

Location: D-3

Officer Code: LEANNR

Offense: NARCOTICS

Description: SALES SLIP WITH NAME AND ADDRESS OF SUBJECT

NOTES:

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."

November 12th, 2015

A handwritten signature in black ink, appearing to read "John H. Strom", is written over a horizontal line.

John H. Strom
Appellate Defender

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

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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November 12th, 2015



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ATTORNEY FOR APPELLANT

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SC Court of Appeals