ALAN WILSON
ATTORNEY GENERAL

June 5, 2017

The Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211
Via hand delivery

Re: State v. Lance Miles, App. Case No. 2015-000308

Dear Ms. Kitchings:

Oral argument is scheduled in the referenced case for June 7, 2017 at 11:20 a.m. Pursuant to Rule 208(b)(7), SCACR, I would refer to the following as additional authority:

As to issues I and II:

(1) S.C. Code §44-53-370(a)(c) (prohibiting distribution/possession of controlled substances);
(2) McFadden v. United States, 135 S.Ct. 2298 (2015) (interpreting federal statute to require proof defendant knew substance was a controlled substance or knew what the substance was, even if defendant did not know it was a controlled substance);
(3) People v. James, 348 N.E.2d 295 (Ill. App. Ct.) (finding where defendant knew he was delivering a controlled substance, defendant could be convicted for delivering LSD even though defendant thought substance was mescaline);
(4) Sierra v. Commonwealth, 722 S.E.2d 656 (Va. Ct. App. 2012) (distinguishing Young v. Commonwealth, 659 S.E.2d 308 (Va. 2008) (cited in Appellant's brief) and finding the drug statutes do not excuse a defendant who knowingly possesses a controlled substance but is unaware or mistaken as to the precise identity of the substance);
(5) State v. Taylor, 323 S.C. 162, 473 S.E.2d 817 (Ct. app. 1996) (finding defendant may be convicted of trafficking even if defendant did not know the amount of drugs exceeded ten grams);

As to issue II:

ALAN WILSON
ATTORNEY GENERAL

(6) State v. Larmand, 415 S.C. 23, 32, 780 S.E.2d 892, 896 (2015) ("[O]ur duty is not to weigh the plausibility of the parties' competing explanations. Rather, we must assess whether in the light most favorable to the State, there was substantial circumstantial evidence from which the jury could infer [the defendant's] guilt."
(7) State v. Needs, 333 S.C. 134, 144, 508 S.E.2d 857, 862 (1998) (noting "the resolution of the credibility of a witness is within the province of the jury."
(8) "As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt." State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976);

As to issue III:

(9) State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal.").
(10) An issue is not preserved for review unless a contemporaneous objection is made to and ruled upon by the trial court. State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).
(11) The introduction of inadmissible evidence is harmless when the evidence is merely cumulative to other evidence presented without objection. State v. Kirton, 381 S.C. 7, 37-38, 671 S.E.2d 107, 122-23 (Ct. App. 2008).

I am also forwarding a copy of this letter by e-mail attachment to opposing counsel.

Sincerely,

David Spencer
Senior Assistant Attorney General

cc: John H. Strom, Esquire
jstrom@sccid.sc.gov