STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2017-002338

THE STATE,

Respondent,

vs.

LANCE LEON MILES,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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TABLE OF CONTENTS

STATEMENT OF ISSUES ON CERTIORARI

I. The Court of Appeals correctly found the trial court properly instructed the jury that the State only needed to prove Petitioner knew the package contained illegal drugs to convict him of trafficking in illegal drugs, where the jury asked the court during deliberations whether the State needed to prove Petitioner knew the package contained Oxycodone specifically or illegal drugs generally and the court properly and correctly responded to the jury's question.

II. The Court of Appeals correctly found the trial court properly admitted Petitioner's statements to law enforcement into evidence.

STATEMENT OF THE CASE

Procedural History

On September 13, 2013, Lexington County law enforcement officers arrested Petitioner Lance Leon Miles following the controlled delivery and subsequent seizure of 300 tablets of Oxycodone concealed inside a package. In March 2014, the Lexington County Grand Jury indicted Petitioner for trafficking in illegal drugs. On February 11, 2015, Petitioner proceeded to a jury trial before the Honorable Thomas A. Russo. On February 12, 2015, the jury convicted Petitioner as indicted. Judge Russo sentenced Petitioner to twenty-five years imprisonment.

Thereafter, Petitioner filed a timely notice of appeal. Following briefing and oral argument, the Court of Appeals affirmed Petitioner's convictions and sentence by published opinion filed Aug. 23, 2017. State v. Lance Leon Miles, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017). Petitioner petitioned for rehearing, which the Court of Appeals denied on October 19, 2017. The petition for a writ of certiorari was filed on November 14, 2017.

Factual History

During the early morning hours of September 13, 2013, Agent Douglas Edmonson, a narcotics investigator with the Lexington County Sheriff's Department, was working at the Federal Express shipping and distribution center in West Columbia. (R. 8, 16, 43-44, 80-83). Edmonson was a member of the Lexington County Multi Agency Narcotics Team and focused

solely on parcel interdiction and package monitoring at major shipping companies to thwart narcotics trafficking. (R. 8-9, 16, 81-85, 185). Edmonson's shift began routinely alongside fellow officer Dennis Tracy, with the two watching the conveyor belt for suspicious packages. (R. 16-17, 82-87). During the morning, Edmonson noticed a particular box with excessive tape that roused his suspicions. (R. 8, 16-17, 44, 82-87). In accordance with standard procedures, Edmonson used his cellular phone to photograph the package's label for further investigation in the future and allowed the package to continue down the conveyor belt. (R. 8, 45, 85-88).

A few hours later, Edmonson resumed his investigation into the suspicious package. (R. 87-88). He and Tracy ran information from the label through a law enforcement database and determined the listed information for the sender and recipient was either vague or inaccurate. (R. 45-46, 88, 116). Edmonson also noted the shipper sent the box overnight from California to South Carolina via the United States Postal Service at a considerable expense. (R. 44-45, 112-15). Recognizing these factors as common signs that the package contained illegal drugs, Edmonson decided to investigate further. (R. 44, 88). Edmonson set up a team with fellow investigators, including Travis Bass and Marc Miramontes, to conduct surveillance at the delivery location, 146 Villas Court. (R. 9, 88).

Around 9:30 a.m., Miramontes drove an undercover vehicle to the Villas Court complex and parked in a location enabling him to view where the delivery was to take place and the central mailbox unit for the complex. (R. 90, 199-201). Edmonson and Bass drove two separate undercover vehicles to the complex and parked out of view. (R. 90-91). The three communicated by radio, with Miramontes relaying his observations to Edmonson and Bass. (R. 90-91).

Miramontes watched as the mail carrier filled various boxes and noticed a man, later identified as Petitioner, come out of an apartment, get on a bicycle, ride to the mailboxes to retrieve mail, and ride back to the same apartment. (R. 201). Petitioner then exited his apartment

again and milled around the parking lot until the mail carrier finished filing the boxes. (R. 201). Once finished, the mail carrier proceeded to deliver the packages too large to fit into the boxes, including the suspicious package Edmonson identified earlier that morning. (R. 201-02). The mail carrier drop the suspicious package on the doorstep of 146 Villa Court, rang the doorbell, and left. (R. 201-02). Miramontes observed Petitioner, who on his cellular phone, walking towards the apartment. (R. 201-02). He relayed this information to Edmonson and Bass by radio. (R. 201-02). Simultaneously, a young woman on her cellular phone came out of the apartment, bent down to look at the box, but went inside without picking up or otherwise touching the box. (R. 201-02). Petitioner approached the apartment, picked up the box, and started walking back towards his apartment. (R. 202).

Edmonson and Bass converged on Petitioner, who threw the package near a vehicle and began looking around as if he was trying to find an escape route. (R. 92-94, 122, 187-88). Bass exited his vehicle with his gun drawn and ordered Petitioner to the ground. (R. 121, 187-88). When Petitioner failed to comply, Bass assisted Petitioner to the ground and placed him in handcuffs. (R. 94, 121, 188). Edmonson identified himself as law enforcement and asked Petitioner what was in the package. (R. 94-95). Petitioner indicated the package likely contained illegal drugs. (R. 95, 170). Edmonson read Petitioner his rights and Petitioner orally waived his rights. (R. 9-10, 94-95). Petitioner acknowledged the package likely contained narcotics and gave consent to open the package. (R. 11, 95). Edmonson elected to call a canine unit trained to identify narcotics before opening the package. (R. 95).

Canine handler Ted Xanthakis and his dog Arcos arrived on the scene shortly thereafter. (R. 123, 218-19). Xanthakis circled Arcos around the vehicle near the package and reported that Arcos's behaviors indicated the package contained narcotics. (R. 223-24). Xanthakis informed Edmonson of Arcos's response and Edmonson took control of the package. (R. 223-24).

Edmonson contacted his partner, Dennis Tracy, who was working off-site, and asked him to get a search warrant for the package. (R. 46-47, 54-61, 96-97). Tracy obtained a search warrant from a magistrate and called Edmonson while still before the magistrate to tell him the search warrant had been signed. (R. 46-47, 54-61, 96-97, 125-26). Edmonson opened the package and saw that it contained a gift bag, a stuffed toy, child's t-shirt, and a wax candle. (R. 97-99, 132, 136-37, 224-25). Edmonson broke apart the wax candle and found three-hundred Oxycodone pills hidden inside three separate plastic bags. (R. 99-101, 133-35, 224-25).

After discovering the pills, Edmonson asked Petitioner what was going on and Petitioner agreed to give a statement. (R. 100-01). Edmonson advised Petitioner of his rights for second time and Petitioner acknowledged in writing he understood those rights and wished to waive them. (R. 101-02, 106-08). Petitioner gave a written statement that he was picking up the package for $100, was to deliver it to its owner, and knew it contained illegal drugs. (R. 106-07). Following his statement, Edmonson transferred Petitioner to the detention center. (R. 110).

Edmonson took the pills into his custody and placed them into an evidence bag, commonly referred to as a BEST Kit, before turning it over to the Lexington County Sheriff's Department evidence custodians. (R. 110-12). The pills remained sealed in the BEST Kit within the custody of the Lexington County Sheriff's Department evidence custodians until chemist Emily Homer-Conrad removed the kit for testing on February 7, 2014. (R. 238-41). Homer-Conrad tested the pills on February 10 and 18, 2014, and determined the pills were Oxycodone. In total, the 300 pills amounted to nine grams of Oxycodone, a Schedule II drug. (R. 244-60).

Petitioner proceeded to trial on February 12, 2015. During pre-trial hearings, Petitioner moved to suppress his oral and written statements made at the scene and the trial court conducted a Jackson v. Denno hearing. (R. 7). During the hearing, the State presented testimony from Edmonson, Miramontes, and Bass. Edmonson testified he and Bass ordered Petitioner to stop

and placed him in handcuffs before they asked Petitioner what he was doing. (R. 9-10, 20-21). Edmonson testified Petitioner initially denied being in possession of the package or knowing what was inside the package, but eventually indicated the package likely contained narcotics. (R. 10-11, 19-21). Edmonson then read Petitioner his rights pursuant to Miranda. (R. 10-11). After Edmonson informed Petitioner of his rights, Petitioner indicated again the package likely contained illegal drugs—likely narcotics—and agreed to waive his rights and speak with law enforcement. (R. 10-12). Petitioner agreed to give a written statement and Edmonson advised him of his rights pursuant to Miranda for a second time. (R. 12-13, 345-46, Court's Ex. No. 1). Petitioner signed a written waiver of his rights and provided a written statement that he knew drugs were in the package and he was picking it up for money. (R. 12-15, 345-46, Court's Ex. No. 1). Miramontes testified he watched Petitioner pick up the package from the doorstep, but was not present when Petitioner gave any statements. (R. 28-33). Bass testified similarly to Edmonson to the events surrounding Petitioner's statements, but recalled Petitioner receiving Miranda warnings before giving his initial oral statement that the package likely contained drugs. (R. 34-39). Petitioner did not testify and did not call any witnesses on his behalf.

Following the testimony from the three law enforcement witnesses, Petitioner moved to suppress his oral and written statements and argued he was under duress when he made the statements. (R. 40). Petitioner also argued there was conflicting testimony as to whether Edmonson questioned Petitioner prior to giving any Miranda warnings. (R. 40). The State conceded Petitioner's statements made pre-Miranda warnings were inadmissible and it would not seek to introduce those in its case in chief. (R. 41). The trial court ruled Petitioner's oral and written statements made following the advisement of Miranda warnings were given knowingly, freely, and voluntarily, and therefore, were admissible. (R. 42). However, the trial court

determined the portions of Petitioner's statements pertaining to his prior involvement in retrieving packages for money must be redacted. (R. 41-43).

During trial, the State presented Edmonson, Bass, Miramontes, Xanthakis, and Homer-Conrad as witnesses, along with Lexington County Sherriff's Department Evidence Custodian Margaret Elizabeth Holliman. During Edmonson's testimony, the State presented Petitioner's oral and written statements establishing Petitioner knew the package contained illegal drugs. (R. 95-110). During cross-examination, Petitioner's counsel questioned Edmonson if Petitioner initially denied knowing what was in the package. (R. 123). Following cross-examination, the State argued Petitioner had opened the door to allow it to question Petitioner on his pre-Miranda statements to law enforcement by questioning Edmonson if Petitioner initially denied knowing the package's contents. (R. 146-49). The trial court allowed the State to proffer its intended line of questioning, which was intended to elicit testimony regarding Petitioner's recent release from prison, his inability to find employment, and his previous involvement picking up packages he knew contained illegal drugs. (R. 148-56). After argument from both parties, the trial court ruled the preferred testimony was more prejudicial than probative, but did allow the State to elicit testimony from Edmonson that Petitioner knew the package contained illegal drugs and was picking it up for payment. (R. 152-63, 169-70).

Following the State's case and the denial of Petitioner's motion for a directed verdict, the trial court then asked both parties if they had any charge requests. (R. 269-70). The State requested the court charge all elements of the trafficking in illegal drug statute. (R. 270). The court responded it would charge only the relevant portion of the statute and asked for a proposed charge including the relevant portions. (R. 270-73). Petitioner asked the trial court to charge criminal intent as knowledge and argued Petitioner must have knowledge that the drugs were

Oxycodone. (R. 273-74). The trial court disagreed, stating Petitioner merely needed to know the package contained illegal drugs. (R. 274).

During deliberations, the jury sent the trial court a note asking, "Does the State have to prove that the defendant knowingly brought into the state four grams or more of Oxycodone or just any amount of illegal drugs in order to consider this trafficking?" (R. 317). The trial court proposed responding the State only needed to prove Petitioner knew the package contained illegal drugs, not specifically Oxycodone because the required intent is to "possess, control, deliver, [or] move illegal drugs." (R. 317-19). Petitioner objected, arguing the legislature intended that a defendant must know the specific drug he is possessing. (R. 321-27). The court disagreed, noting under Petitioner's approach, the State would not be able to prosecute unless the defendant gave a statement implicating himself as knowing the particular illegal drug enumerated in Section 44-53-370(e)(3). (R. 322-27). The court ultimately responded to the jury,

> "[T]he law in South Carolina is the State does not have to prove that the Defendant knew that the drugs in the package were Oxycodone, just that he knew that the package contained illegal drugs. However, the State does have to prove beyond a reasonable doubt that the illegal drugs that were in the package was more than four grams of Oxycodone. So the State continues to carry that burden.
>
> Then your second question was, "Does the state have to prove that he intended to traffic?"
>
> And the law in South Carolina with regards to trafficking is this: The term traffic or trafficking under South Carolina law deals with or refers to the weight of the illegal drugs. To prove trafficking the State must prove that the amount of the illegal drugs was four grams or more. If it was less than four grams, then it's not trafficking. So trafficking deals with the weight, okay?

(R. 329-30). The jury then continued its deliberations, resulting in a verdict of guilt. (R. 335).

ARGUMENT

I. The Court of Appeals correctly found the trial court properly instructed the jury that the State only needed to prove Petitioner knew the package contained illegal drugs to convict him of trafficking in illegal drugs, where the jury asked the court during deliberations whether the State needed to prove Petitioner knew the package contained Oxycodone specifically or illegal drugs generally and the court properly and correctly responded to the jury's question.

Petitioner contends the trial court erred by instructing the jury the State did not need to prove Petitioner knew the drugs in the package were Oxycodone but only illegal drugs. Petitioner asserts the trial court's instructions were based on an erroneous and forced interpretation of S.C. Code Ann. §44-53-370(e)(3), as "the clear legislative intent" of South Carolina trafficking statutes is to "severely punish individuals who knowingly undertake a broad variety of activities involving certain amounts of specific drugs." (PWC 12). Petitioner avers that to be guilty of trafficking Oxycodone under §44-53-370(e)(3), the State must prove a defendant knowingly possessed Oxycodone specifically and therefore, the trial court's instructions were a reversible and incorrect statement of law. However, Petitioner's contentions are incorrect and the trial court properly charged the jury on all relevant law and then correctly re-instructed the jury on those matters necessary to answer its question. Petitioner's conviction should be affirmed.

During a trial, the law to be charged is determined by the evidence presented. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). When instructing the jury on the law, the trial court is required to charge only the current and correct law of South Carolina. State v. Buckner, 341 S.C. 241, 246, 534 S.E.2d 15, 18 (Ct. App. 2000). A trial court's jury instructions are appropriate if they are substantially correct and adequately cover the law applicable to the particular case. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately

covers the law."). Only the substance of the law must be charged to the jury, not any particular verbiage. State v. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002). When reviewing the jury charge, the appropriate test involves determining what a reasonable juror would have understood it to mean. Sheppard v. State, 357 S.C. 646, 664, 594 S.E.2d 462, 474 (2004).

"When a jury requests an additional charge, it is sufficient for the court to charge only those matters necessary to answer the jury's request." State v. Barksdale, 311 S.C. 210, 216, 428 S.E.2d 498, 502 (Ct. App. 1993). It is proper to limit a re-charge to simply answering the jury's questions. State v. Anderson, 322 S.C. 89, 94, 470 S.E.2d 103, 106 (1996); see In re McCracken, 346 S.C. 87, 96, 551 S.E.2d 235, 240 (2001) (ruling the trial judge did not improperly emphasize one portion of a jury charge over another during additional instructions given in response to a jury question when the judge merely reminded the jury about one element of an offense and then offered the statutory definition of another); State v. Nichols, 325 S.C. 111, 118-119, 481 S.E.2d 118, 122 (1997) (finding no error in the trial judge's failure to re-charge the law of self-defense when the jury did not specifically request clarification on that particular principle of law).

Pursuant to S.C. Code Ann. § 44-53-370(e)(3), "[a]ny person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210, or four grams or more of any mixture containing any of these substances, is guilty of a felony which is known as "trafficking in illegal drugs." The trafficking in illegal drugs statute, like all trafficking statutes in South Carolina, is broad-reaching and covers a multitude of behaviors as detailed in the statute, including: actual or constructive

possession, sale, manufacture, cultivation, purchase, giving of financial assistance or any type of aid, or the attempt or conspiracy to do any of the above.

At issue in the present case is the legislative intent behind the "knowingly" element of Section 44-53-370(e)(3). When interpreting a statute, a court's primary function is to ascertain the intention of the legislature. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 318 (1992) (citing Gilstrap v. S.C. Budget and Control Board, 310 S.C. 210, 423 S.E.2d 101 (1992)). The words used in a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Id. Here, the forbidden act is "knowingly" undertaking one of the specific acts with a certain substance as enumerated in the Section 44-53-370(e)(3). Under Section 44-53-370(e)(3), as well as the other trafficking statutory provisions, the "knowingly" element of the crime requires general, not specific intent. See State v. Attardo, 263 S.C. 546, 549, 211 S.E.2d 868, 869 (1975) ("This language evinces a legislative desire to fasten a general, but not a specific, criminal intent as an element of the offense."). Accordingly, to obtain a conviction for trafficking, the State must prove a defendant either: committed, attempted to commit, or conspired to commit one of the enumerated behaviors as listed in the statute to establish a person is guilty of trafficking. However, the State is not required to establish the defendant knew the specific controlled substance to obtain a conviction for trafficking. This is true for trafficking in illegal drugs as well as all other trafficking subsections. See S.C. Code Ann. § 44-53-370.

Additionally, it is well-settled under South Carolina law that "every one may be presumed to know what he has in his possession." State v. Freeland, 106 S.C. 220, 91 S.E. 3, 3 (1916); see State v. Attardo, 263 S.C. 546, 550, 211 S.E.2d 868, 869 (1975) ("Possession [of a controlled substance] . . . gives rise to an inference of the possessor's knowledge of the character of the substance."); State v. Gore, 318 S.C. 157, 163, 456 S.E.2d 419, 422 (Ct. App. 1995)

("Possession gives rise to an inference of the possessor's knowledge of the character of the substance."); State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995) ("Possession gives rise to an inference of the possessor's knowledge of the character of the substance.")

Here, the trial court's original jury instructions properly covered all relevant portions of the law, including what the State must prove to convict Petitioner of trafficking in illegal drugs pursuant to Section 44-53-370(e)(3). Following the court's charge, the jury requested clarification as to whether the State must prove that Petitioner knew the package contained Oxycodone or any illegal drug. (R. 317). The trial court suggested responding that the State only needed to prove Petitioner knew the package contained illegal drugs, not specifically Oxycodone. The trial court noted the required intent for trafficking in illegal drugs is to "possess, control, deliver, [or] move illegal drugs." (R. 317-19). Petitioner objected, averring the legislature intended that a defendant must know the specific illegal drug he is possessing. (R. 321-27). The trial court disagreed, noting if it was to adopt Petitioner's approach, the State would not be able to prosecute unless the defendant gave an incriminating statement indicating he knew the particular drug. (R. 322-27). The trial court then re-charged the jury as follows, "[T]he law in South Carolina is the State does not have to prove that the Defendant knew that the drugs in the package were Oxycodone, just that he knew that the package contained illegal drugs. However, the State does have to prove beyond a reasonable doubt that the illegal drugs that were in the package was more than four grams of Oxycodone." (R. 329-30). The trial court properly instructed the jury that the State only needed to prove Petitioner knew the package contained illegal drugs in response to the jury's question.

Petitioner contends the trial court's re-charge was reversible error because a plain reading of Section 44-53-370(e) requires the State to prove that Petitioner knew he was possessing Oxycodone. Petitioner argues a review of the seven other subsections of Section 44-53-370

demonstrate the legislature clearly intended the "knowingly" requirement to encompass not only the criminal act, but a defendant's specific knowledge of the exact controlled substance being trafficked. Petitioner avers the trial court's interpretation of "knowingly" would lead to an absurd result where the State would be required to prove the defendant knew of the specific substance he was trafficking for every other subsection other than illegal drugs, effectively making it easier for the State to prosecute trafficking in illegal drugs compared to trafficking of other substances. This argument is misguided, as the "knowingly" element for all trafficking offenses, including trafficking in illegal drugs, requires general intent, not specific intent. See Attardo, 263 S.C. at 549, 211 S.E.2d at 869 ("This language evinces a legislative desire to fasten a general, but not a specific, criminal intent as an element of the offense.").

Additionally, as the trial court noted, adopting Petitioner's interpretation of "knowingly" would lead to the absurd result where the State would be essentially unable to prosecute a defendant for trafficking in illegal drugs unless the defendant gave a statement implicating himself as knowing the particular illegal drug enumerated in Section 44-53-370(e)(3). This clearly could not have been the legislature's intention as it would render the State unable to prosecute pursuant to Section 44-53-370(e)(3) in all but rare situations where the defendant has provided a statement implicating himself in knowing the specific illegal drug he is trafficking. See State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (internal citations omitted) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous."). This interpretation would also lead to an absurd result where drug traffickers and the drug mules they employ would have an unfettered ability to conduct their criminal enterprise and move large quantities of controlled substances without punishment so

long as the mules knowingly engaged in the transportation of drugs **but** intentionally remained ignorant as to the exact type of drug they possessed. Simply put, adopting Petitioner's interpretation of "knowingly" would lead to absurd results the legislature could not have intended when drafting and enacting Section 44-53-370.

Alternatively, assuming Petitioner's interpretation of "knowing" was correct, the trial court's instructions would still be appropriate in this case because Petitioner was willfully ignorant of the specific illegal drug he possessed. Petitioner's deliberate and willful ignorance of the specific substance he was possessing, despite knowing it was illegal, amounts to guilty knowledge. See State v. Freeland, 106 S.C. 220, 91 S.E. 3, 4 (1916) (holding culpable ignorance is not an excuse to relieve liability from criminal acts). See also United States v. Giovannetti, 919 F.2d 1223, 1228 (7th Cir. 1990) (finding a "deliberate effort to avoid guilty knowledge is all the guilty knowledge the law requires"); United States v. Jewell, 532 F.2d 697, 700 (9th Cir. 1976), cert. denied, 426 U.S. 951 (1976) ("[D]eliberate ignorance and positive knowledge are equally culpable"). Here, Petitioner admitted multiple times he knew he possessed illegal drugs, yet intentionally avoided knowledge as to the specific controlled substance. This intentional, deliberate ignorance amounts to guilty knowledge and the trial court's instructions were a correct and proper statement of the law. See Turner v. United States, 396 U.S. 398 (1970) (holding the jury was entitled to rely on instructions that it could infer from accused's unexplained possession of heroin that he knew that heroin he possessed had been unlawfully imported, in prosecution for receiving, concealing and facilitating transportation and concealment of heroin while knowing that the heroin had been unlawfully imported into United States).

Petitioner argues the trial court's instruction allows the jury to convict Petitioner invalidly based on a lesser standard of culpable negligence rather than "knowingly," citing to State v Taylor. 323 S.C. 162, 473 S.E.2d 817 (Ct. App. 1996). However, this case is readily

distinguishable from Taylor. In Taylor, the trial court instructed the jury that it could convict the defendant of trafficking in methamphetamine if she was at least criminal negligent. Id. This Court reversed Taylor's conviction, holding a defendant could not be convicted of trafficking in methamphetamine if she was criminally negligent, as the statute specifically required the defendant act "knowingly." Id. Here, the trial court's instructions did not inform the jury it could convict Petitioner based on criminal negligence, but rather, used the correct "knowingly" standard. Furthermore, there is a significant difference between criminal negligence and a willful or intentionally lack of knowledge, which is the equivalent of actual knowledge and sufficient to prove the knowledge element of a criminal offense. Compare BLACK'S LAW DICTIONARY 1134 (9th ed. 2009) (defining "criminal negligence" as "[g]ross negligence so extreme that it is punishable as a crime" and defining "culpable negligence" as "[n]egligent conduct that, while not intentional, involves a disregard of the consequences likely to result from one's actions") with Giovannetti, 919 F.2d at 1228 (finding a "deliberate effort to avoid guilty knowledge is all the guilty knowledge the law requires") and Jewell, 532 F.2d at 700 ("[D]eliberate ignorance and positive knowledge are equally culpable"). The trial court's instructions to the jury charged the correct standard of law. Petitioner's conviction should be affirmed.

II. The Court of Appeals correctly found the trial court properly admitted Petitioner's statements to law enforcement into evidence.

On appeal, Petitioner contends the trial court erred in admitting his statements to law enforcement prior to and after he was administered Miranda warnings. Petitioner argues his pre-Miranda statements were unconstitutionally taken while he was in custody and therefore are inadmissible. However, Petitioner fails to make any argument challenging the trial court's ruling that defense counsel opened the door to these statements through his cross-examination of Edmonson, and therefore, has waived this issue on appeal. Additionally, Petitioner avers his

post-Miranda statements were inadmissible because they were tainted by the initial violation and the product of an involuntary waiver. Petitioner argues both statements therefore should have been suppressed and the trial court's refusal to do so is reversible error. To the contrary, Petitioner's post-Miranda statements were made following a knowingly, voluntarily, and intelligently waiver and Petitioner's pre-Miranda statements were admissible after Petitioner opened the door. Accordingly, the trial court properly admitted the statements into evidence during trial and his ruling was fully supported by the evidence and testimony presented during trial. Petitioner's convictions should be affirmed.

A. The trial court's ruling that Petitioner's pre-Miranda statements were admissible once the door was opened is not challenged on appeal and, therefore, is now the law of the case and not preserved for review. Regardless, the trial court did not abuse its discretion in admitting into evidence Petitioner's initial statements to law enforcement regarding his knowledge that the package contained illegal drugs because defense counsel opened to door to such testimony.

Following the Denno hearing, the State conceded Petitioner's pre-Miranda statements were inadmissible and that it would not seek to introduce them during its case in chief. However, following Edmonson's cross-examination, the State argued defense counsel had opened the door by questioning Edmonson as to whether Petitioner had denied knowing the package's contents initially. After allowing the State to proffer its intended line of questioning, the trial court allowed the State to elicit testimony from Edmonson that Petitioner knew the package contained illegal drugs and was picking it up for payment, ruling defense counsel had opened the door.

i. The trial court's ruling that Petitioner's pre-Miranda statements were admissible once the door was opened is not challenged on appeal and therefore, is now the law of the case and not preserved for review.

On appeal, Petitioner argues the trial court erred in admitting his statements to law enforcement prior to receiving his Miranda warnings because he was "clearly in custody based upon the totality of the circumstances." (App. Br. 28). However, he fails to make any argument

as to the trial court's ruling that the door had been opened. Because he has failed to present any argument as to why the trial court erred in ruling the door was opened, but instead, presents argument on a different alleged error, the trial court's ruling is the law of the case and this issue is not preserved for appellate review. See State v. Fripp, 396 S.C. 434, 441-42, 721 S.E.2d 465, 468-69 (Ct. App. 2012) (finding Fripp's argument not preserved for appellate review and the trial court's ruling was the law of the case where Fripp did not dispute the correctness of the trial court's ruling that he opened the door to Officer Heany's hearsay testimony, but challenged it on other grounds); Burton v. Cnty. of Abbeville, 312 S.C. 359, 363, 440 S.E.2d 396, 398 (Ct. App. 1994) (stating the Petitioner's failure to challenge the trial court's ruling in the appellate brief renders the unchallenged ruling the law of the case). See also State v. McCray, 332 S.C. 536, 542, 506 S.E.2d 301, 303 (1998) (finding where an appellate argument differs from the argument made at trial, the argument is unpreserved for appeal). Because Petitioner did not dispute the correctness of the trial court's ruling that he opened the door to his initial statements to law enforcement before he received Miranda warnings, this ruling is the law of the case and not preserved for this Court's review.

ii. Regardless, the trial court did not abuse its discretion in admitting Petitioner's initial statements to law enforcement regarding his knowledge that the package contained illegal drugs into evidence after defense counsel opened to door to such testimony.

Assuming this issue was preserved for appellate review, the trial court properly admitted Petitioner's initial statements to law enforcement regarding his knowledge that the package contained illegal drugs into evidence after defense counsel opened to door to such testimony.

It is firmly established that otherwise inadmissible evidence can be properly admitted after opposing counsel opens the door to that evidence. Page, 378 S.C. at 482, 663 S.E.2d at 359. "[W]hen a party introduces evidence about a particular matter, the other party is entitled to

explain it or rebut it, even if the latter evidence would have been incompetent or irrelevant had it been offered initially." State v. Beam, 336 S.C. 45, 52, 518 S.E.2d 297, 301 (Ct. App. 1999); see State v. Young, 364 S.C. 476, 485, 613 S.E.2d 386, 391 (Ct. App. 2005) ("The jurisprudence of this State contains a plethora of enlightening cases establishing and explicating the proposition that a defendant may open the door to what would otherwise be improper evidence."). "[A]n Petitioner cannot complain of prejudice resulting from the admission of evidence to which she opened the door." State v. Rice, 375 S.C. 302, 329, 652 S.E.2d 409, 422 (Ct. App. 2007).

During trial, Petitioner's counsel questioned Edmonson if Petitioner initially denied knowing what was in the package. (R. 123). Following cross-examination, the State argued Petitioner had opened the door to allow it to question Petitioner on his pre-Miranda statements to law enforcement by questioning Edmonson if Petitioner initially denied knowing the package's contents. (R. 146-49). The trial court allowed the State to proffer its intended line of questioning, which was intended to elicit testimony regarding Petitioner's recent release from prison, his inability to find employment, and his previous involvement picking up packages he knew contained illegal drugs. (R. 148-56). After argument from both parties, the trial court ruled the preferred testimony was more prejudicial than probative, but did allow the State to elicit testimony from Edmonson that Petitioner knew the package contained illegal drugs and was picking it up for payment based on a finding that Petitioner had opened the door based on his cross-examination of Edmonson. (R. 152-63, 169-70).

By asking Edmonson about whether Petitioner initially denied knowing what was in the box, Petitioner opened the door for the solicitor to inquire into his initial statements to law enforcement before he was read his Miranda rights. Petitioner was not permitted to introduce only the portion of his initial statement beneficial to himself and then bar the State from presenting a full and complete explanation of all of the details of those statements. See State v.

Kennedy, 143 S.C. 318, 321-322, 141 S.E. 559, 560 (1928) (finding previously inadmissible testimony elicited during redirect examination was properly admitted in response to questioning by the Petitioner of the same witness along similar lines during cross-examination). The additional testimony related to Petitioner's initial statement to law enforcement was necessary for a complete presentation of the context of his statements and was merely offered to explain the testimony elicited by Petitioner. Therefore, the trial court did not abuse his discretion in admitting the previously inadmissible testimony regarding Petitioner's initial pre-Miranda statement. See State v. Curtis, 356 S.C. 622, 632, 591 S.E.2d 600, 605 (2004) ("Given that [the defendants] maintained that PPS did not allow pornographic materials or links on the website, it is patent that they opened the door to this line of inquiry.").

B. The trial court properly admitted Petitioner's post-Miranda statements into evidence after determining the statements were knowingly, intelligently, and voluntarily made under the totality of the circumstances and because the trial court's ruling was supported by the undisputed testimony and evidence presented during trial establishing Petitioner knowingly, intelligently, and voluntarily waived his rights before making his statements.

Petitioner argues the trial court erred in finding his oral and written statements made after he received Miranda warnings were voluntary and admissible because they were tainted by the initial violation where Edmonson questioned Petitioner prior to advising him of his rights. In support of his argument, Petitioner cites to Missouri v. Seibert, 542 U.S. 600 (2004) and State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010), both of which he asserts are factually similar to his case. However, this is unpersuasive, as Petitioner's case is readily distinguishable from both Seibert and Navy. The trial court properly admitted Petitioner's post-Miranda statements into evidence after determining the statements were knowingly, intelligently, and voluntarily made under the totality of the circumstances. Petitioner's conviction should be affirmed.

Under Miranda v. Arizona, 384 U.S. 436, 444 (1966), prior to custodial interrogation, a suspect must be warned he has a right to remain silent, any of his statements may be used against him, and he has a right to an attorney. A defendant can waive these constitutional rights with a knowing and voluntary waiver. Id. A confession or statement by a defendant is not admissible unless voluntarily made. State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). If a defendant is advised of his constitutional rights and then chooses to make a statement, the burden is on the State to prove by a preponderance of the evidence the defendant voluntarily waived his rights. State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990). When considering the admissibility of a defendant's statements, the trial judge should examine the totality of the circumstances surrounding the incident to determine whether the State has met its burden of proof. State v. Rabon, 275 S.C. 459, 461, 272 S.E.2d 634, 635 (1980). On appeal, the trial judge's decision as to the voluntariness of a statement will not be reversed unless the ruling constituted an abuse of discretion. State v. Simmons, 384 S.C. 145, 162, 682 S.E.2d 19, 28 (Ct. App. 2009).

In Missouri v. Seibert, 542 U.S. 600, 604 (2004), the United States Supreme Court determined incriminating statements elicited prior to the recitation of the required warnings were not admissible even if the statements were repeated after the appropriate warnings. In Seibert, the police arrested Seibert at 3:00 a.m. and took her to the police station for an interview. Seibert at 604. The arresting officer deliberately refrained from providing Miranda warnings and left Seibert alone in an interview room. Id. After fifteen to twenty minutes, a different officer arrived and questioned Seibert for thirty to forty minutes while squeezing her arm and encouraging her to admit her role in the crime. Id. at 604-605. After Seibert finally admitted her guilt, she was permitted a twenty-minute coffee and smoke break. Id. Following this break, the officer turned on a tape recorder, gave Seibert her Miranda warnings, and obtained a signed waiver of those

rights. Id. He then resumed questioning by confronting Seibert with the incriminating statements she made prior to the break and rehashed all of the same information. Id. The United States Supreme Court held that the "question-first" procedure employed by the police in Seibert's case was constitutionally infirm because the "midstream recitation of warnings after interrogation and unwarned confession could not effectively comply with Miranda's constitutional requirement." Id. at 604. In so concluding, the Court pointed out the following relevant factors that bear upon whether "midstream" Miranda warnings could be effective enough to accomplish their object:

> (1) The completeness and detail of the questions and answers in the first round of interrogation;
> (2) The overlapping content of the two statements;
> (3) The timing and setting of the first and the second rounds of interrogation;
> (4) The continuity of police personnel; and
> (5) The degree to which the interrogator's questions treated the second round as continuous with the first.

Id. at 615. In Seibert's case, the unwarned interrogation occurred in the station house, and the questioning was "systematic, exhaustive, and managed with psychological skill." Id. In fact, when the police were finished with this first round, "there was little, if anything, of incriminating potential left to be said." Id. at 616. The warned phase of the questioning proceeded after only a short break and took place in the same location. Id. The same officer conducted the first and second rounds of questioning. Id. The officer did not advise Seibert that her prior statement might be inadmissible in court and in fact made the second round of questioning seem-like two sessions that were parts of a "continuum"; under these circumstances it would be "unnatural" to refuse to repeat during the second round what had already been said before. Id. at 616-17. Accordingly, the Court found that a statement repeated after Miranda warnings in such circumstances is inadmissible. Id. at 617.

In 2010, our Supreme Court analyzed Seibert in State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010). In the case, Navy's son was rushed to the hospital after being found unresponsive in

his crib. After the death of his son, Navy gave a statement to law enforcement while he was still at the hospital, but because he was "so upset and distraught," officers thought the statement was incomplete. Officers later learned from the pathologist who performed the autopsy that the cause of death was smothering or suffocation. Id. at 297, 688 S.E.2d at 839. The following day, officers went to Navy's home with the intent of transporting him to the sheriff's office for further questioning. Thereafter, Navy gave a statement in which he described noticing the child having breathing problems and his subsequent panic. Id. at 297-298, 688 S.E.2d at 839. Thereafter, officers informed Navy his son had suffocated and there was evidence of broken ribs. Navy asked if he was under arrest and was told he was not. The officers then engaged in follow-up questioning. "At this juncture, the nature of the interrogation and [Navy]'s status changed, and what had begun as a voluntary question and answer session matured into custodial interrogation." In this first statement, Navy admitted to popping the child on the back and possibly patting the child on the mouth. After this statement, Navy received another smoke break. Id. at 298-299, 688 S.E.2d at 840.

Officers then advised Navy of his Miranda warnings. Afterward, Navy gave his second statement, which was his first in writing. This statement echoed his previous oral statement except Navy admitted to placing his hand over his son's mouth to stop his crying, including possibly covering his nose area as well, popping him on the back causing the child to cry out loudly, and feeling frustrated because the child was crying. Id. at 299-300, 688 S.E.2d at 840.

Following this second statement, officers contacted the pathologist, who told them the description provided by Navy in his second statement could not have caused the child's death. In response to this information, officers obtained a third written statement from Navy. Navy then admitted that he could have held his hand over his son's nose and mouth for longer than he first said, possibly for up to two minutes. Id. at 300, 688 S.E.2d at 840-841.

Our Supreme Court held Navy's first statement was admissible because the record contained evidence to support the trial court's finding Navy was not in custody. The Court noted was "debatable whether a reasonable person would have believed himself to be in custody at the time the first statement was given." Id. at 301, 688 S.E.2d 841. Conversely, the Court held Navy's second and third statements were obtained in violation of Seibert and were therefore inadmissible. The Court found:

> The officers began the questioning of respondent with knowledge that the child had been suffocated and with the intention of eliciting a confession. After respondent's first oral statement, the officers "sprang" the suffocation/healing rib fractures information on respondent, and began an unwarned custodial interrogation designed to elicit incriminating information, that is, questioning designed to have respondent admit to having hit the child and to having smothered him. Once those incriminating answers were given—i.e. after respondent admitted he had popped the child on the back and "patted" his mouth—respondent was permitted a supervised cigarette break, then given Miranda warnings, with interrogation by the same officer resuming immediately.

Navy, 386 S.C. at 303, 688 S.E.2d at 842. The Court concluded the Seibert factors were met and "none of the curative measures suggested by Justice Kennedy, i.e. an additional warning that the answers given after the first statement but before the administration of Miranda warnings may not be admissible, a substantial break in time, or change of circumstances, occurred here." Navy, 386 S.C. at 303, 688 S.E.2d at 842.

The present case is distinguishable from Seibert and Navy and a review of the five factors set forth in Seibert weigh in favor of admission of Petitioner's post-Miranda statements. Petitioner was approached by police while he had the package of Oxycodone in his possession and upon realization that he had been caught, he attempted to discard the package and find an escape route. (R. 19). At that time, Edmonson and Bass ordered Petitioner to the ground and handcuffed him. (R. 9-10). Edmonson asked Petitioner what was in the package and he initially denied knowing it contained contraband but quickly changed his story and admitted the package

contained illegal drugs. (R. 10, 20-21, 149-50). Edmonson then administered Miranda warnings to Petitioner and asked Petitioner if he would like to talk. (R. 10-11, 21). Petitioner acknowledged he understood his rights and agreed to waive them and talk to law enforcement. (R. 11-12). Petitioner admitted he knew the package contained illegal drugs, he was picking up the package for money because he could not find a job because he had recently been released from prison, and gave consent to open the box in this second oral statement. (R. 11-12, 21, 150). After a drug-sniffing canine made a positive identification, a search warrant was obtained, and Edmonson opened the box to discover the three hundred tablets of Oxycodone, Petitioner again indicated he would talk to law enforcement. (R. 12-13). Edmonson then re-administered Miranda warnings to Petitioner and Petitioner gave a written statement approximately forty-five minutes after first encountering police. (R. 12-15, 183).

Petitioner's initial statement to law enforcement was brief and consisted of him denying then quickly admitting he knew the package contained illegal drugs. He did not provide any detail about why he had picked up the box or his role in previous drug transactions. In contrast, his second and third statements were much more detailed and lengthy, with Petitioner again admitting to knowing the box contained illegal drugs, but also informing law enforcement he was acting as a mule to support his family due to trouble finding work. Additionally, Petitioner's final written statement was taken less than forty-five minutes after officers approached him and he gave his first oral statement. During this time, there was a significant break in questioning, where Edmonson called in a drug-sniffing canine that made a positive identification of drugs inside the box, obtained a search warrant from a magistrate, opened the box, and broke apart the candle to reveal the Oxycodone. These are all marked distinctions from Seibert and Navy and establish that Petitioner's second and third statements were admissible. Cf. Seibert, 542 U.S. at 616 ("The unwarned interrogation was conducted in the station house, and the questioning was

systematic, exhaustive, and managed with psychological skill. When the police were finished, there was little, if anything, of incriminating potential left unsaid."); Navy, 386 S.C. at 303, 688 S.E.2d at 842 ("Once the incriminating answers were given—i.e. after respondent admitted he had popped the child on the back and "patted" his mouth—respondent was permitted a supervised cigarette break, then given Miranda warnings, with interrogation by the same officer resuming immediately."). Furthermore, unlike the defendants in Seibert and Navy, Petitioner has a lengthy record and was familiar with law enforcement and the criminal justice system, thereby reducing the effect of taint from a failure to initially receive his Miranda warnings. Because Petitioner's second and third statements were voluntarily made after an informed waiver of rights, the trial court did not err in admitting the statements. See, e.g., Myers, 359 S.C. at 44, 596 S.E.2d at 490 ("The totality of the circumstances does not demonstrate that Petitioner's will was overborne by the police. As there is no evidence that the confession was not voluntary we therefore hold that the trial court did not err in admitting Petitioner's confession.").

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition be denied.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

December 13, 2017

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
DEC 13 2017
SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2017-002338

THE STATE,

Respondent,

vs.

LANCE LEON MILES,

Petitioner.

PROOF OF SERVICE

I, Destiny Blue, certify that I have served the within Return to Petition for a Writ of Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Lanelle Cantey Durant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 13th day of December, 2017.

Destiny Blue

DESTINY BLUE
Office of the Attorney General
Post Office Box 11549
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(803) 734-3737

ALAN WILSON
ATTORNEY GENERAL

December 13, 2017

Lanelle Cantey Durant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Lance Leon Miles
Appellate Case No. 2017-002338

Dear Ms. Durant:

I am enclosing two copies of the Return to Petition for Writ of Certiorari, along with proof of service, in the above-referenced case.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General
S.C. Bar No. 100108

MHJ/
Enclosure

cc: The Honorable Daniel E. Shearouse (original and six enclosed)
The Honorable Jenny A. Kitchings
Victim Advocacy Division