

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

OCT 24 2012

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOSE ROMERO,

APPELLANT

Appellate Case No. 2011-198668

RECORD ON APPEAL

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

Attorney for Appellant

ALAN WILSON
Attorney General

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

Attorneys for Respondent

INDEX

INDEX.....	i
TRIAL TRANSCRIPT DATED AUGUST 22-24, 2011	1
INDICTMENT AND SENTENCING SHEET	440
CERTIFICATE OF COUNSEL	443

State of South Carolina) Court of General Sessions
County of Anderson) 10th Judicial Circuit

State of South Carolina) Transcript of Record
) 2009-GS-04-02447
 V.)

Jose Manuel Olivares Romero,)
 Defendant.)

August 22-24, 2011

Anderson, South Carolina

B E F O R E:

The Honorable Lawton McIntosh, Judge; and a Jury.

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

Rame Campbell, Assistant Solicitor
Attorney for the State

Sarah Drawdy, Esquire
Attorney for the Defendant

Sharon L. Vizer-Hanks
Circuit Court Reporter

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

Jury Voir Dire	---7
Jury Selection	--35
Jackson V. Denno Hearing	--54

WITNESSES

(SW) Neal Bradley McGuire (IC):

Direct Examination by Mr. Campbell --56

Cross-Examination by Ms. Drawdy --69

(SW) Kevin Marsee (IC):

Direct Examination by Mr. Campbell --82

Cross-Examination by Ms. Drawdy --88

(SW) Jonathan Velez (IC):

Direct Examination by Mr. Campbell --91

Cross-Examination by Ms. Drawdy --97

Redirect Examination by Mr. Campbell -100

(DW) Jose Olivares (IC):

Direct Examination by Ms. Drawdy -102

Cross-Examination by Mr. Campbell -104

Opening Statement by Mr. Campbell -128

Opening Statement by Ms. Drawdy -133

I N D E XTuesday, August 23, 2011WITNESSES(SW) Michael Sloan:

Direct Examination by Mr. Campbell	-139
Cross-Examination by Ms. Drawdy	-201
Redirect Examination by Mr. Campbell	-219
Recross-Examination by Ms. Drawdy	-224

(SW) Neal Bradley McGuire:

Direct Examination by Mr. Campbell	-227
Cross-Examination by Ms. Drawdy	-250
Redirect Examination by Mr. Campbell	-265

(SW) Kevin Marsee:

Direct Examination by Mr. Campbell	-270
Cross-Examination by Ms. Drawdy	-277

(SW) Jonathan Velez:

Direct Examination by Mr. Campbell	-288
Cross-Examination by Ms. Drawdy	-297

(SW) Johnny Daryl Betsill:

Direct Examination by Mr. Campbell	-301
Cross-Examination by Ms. Drawdy	-307
Redirect Examination by Mr. Campbell	-312
Recross-Examination by Ms. Drawdy	-314

I N D E X(SW) Roger "Rusty" Scogins:

Direct Examination by Mr. Campbell	-316
Cross-Examination by Ms. Drawdy	-341
Redirect Examination by Mr. Campbell	-350
Motions following the State resting	-353

Wednesday, August 23, 2012

Closing Argument by Mr. Campbell	-384
Closing Argument by Ms. Drawdy	-397
Jury Charge	-407
Verdict	-432
Sentencing	-434
Certificate of Reporter	-439

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.

For the State:

1	- UPS Delivery Record		-146
2	- Consent to Search Form		-146
3	- Photograph of Delta Planer Box		-146
4	- Photograph of Address Label		-146
5	- Photograph of Inside of Box		-146
6	- Photograph of Marijuana		-146
7	- Photograph of Marijuana		-146
8	- Photograph of Marijuana		-146
9	- Photograph of Inside of Box		-146
10	- Photograph of Marijuana		-146
11	- Photograph of Marijuana		-146
12	- Photograph of Marijuana		-146
13	- Photograph of Inside of Apartment		-146
14	- Photograph of Delta Box and Label		-146
15	- Photograph of Box and Label		-146
16	- Drug Analysis		-146
17	- Drug Report		-146
18	- Box of Marijuana		-146

For the Defendant:

1	- Blank Advice of Rights Form	--73	
2	- Supplemental Report of McGuire	--75	

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.

For the Court:

1 -	Defense Request for Voir Dire	---	7
2 -	Note from Jury Appointing Foreperson	--	51
3 -	Note from Jury about Parking/Work Statements	-	135
4 -	Copy of Spanish Miranda Rights		

(Marked at the commencement of trial)

1 Monday, August 22, 2011

2 (WHEREUPON, Court's Exhibit Number 1, Defendant's
3 Voir Dire Request, was marked and made a part of the
4 record.)

5 THE COURT: Mr. Campbell, is the State ready to
6 proceed?

7 MR. CAMPBELL: Yes, Your Honor.

8 THE COURT: Would you stand up and announce the
9 next case, please.

10 MR. CAMPBELL: Your Honor, the State's ready in
11 indictment number 2009-GS-04-2447, the State vs. Jose
12 Manuel Olivares Romero, he goes by Jose Olivares, for
13 trafficking in marijuana between 10 and 100 pounds,
14 understands to be a trial.

15 THE COURT: All right. The State agree the strikes
16 are five and five?

17 MR. CAMPBELL: The strikes are five and five, Your
18 Honor.

19 MS. DRAWDY: Yes, Your Honor.

20 THE COURT: And I understand that there is a
21 request for one alternate; is that correct?

22 MR. CAMPBELL: Yes, Your Honor.

23 MS. DRAWDY: Yes.

24 THE COURT: Very good.

25 All right. Ladies and gentlemen, we're about to

1 start the case of the State vs. Jose Manuel Olivares
2 Romero who's charged with trafficking in marijuana
3 between 10 but less than 100 pounds. You'll hear more
4 about that. I have several questions that I need to go
5 over with each and every one of you in this case.

6 Before we do the jury selection, you are still
7 under oath. I'll remind you of that. But the first
8 question I have, has any member of the jury panel ever
9 been related by blood or marriage to Jose Manuel Olivares
10 Romero? If so would you please stand.

11 (There was no response.)

12 THE COURT: Now, let me say this, too. I know at
13 the first part when we were talking the general
14 information about you I did not require that you were to
15 stand up. I also gave you a chance to come forward at
16 the end. At this point, if a question applies to you and
17 you need to speak you have to stand up at this point.
18 I'm not going to let you come up in a private setting
19 because that's a matter of due process.

20 But that being stated, the next question, has
21 anyone ever had a close personal or social relationship
22 with Jose Manuel Olivares Romero? If so would you please
23 stand.

24 (There was no response.)

25 THE COURT: Ladies and gentlemen, I'm getting ready

1 to give you list of potential witnesses, and I emphasize
2 potential. They may or may not be called to participate
3 in this trial but the list contains 11 different names.
4 So if you would listen intently. If any of you do not
5 hear me or understand the names I give you would you
6 raise your hand so I can read them again and ensure that
7 you hear the questions.

8 But this is the list of potential witnesses in this
9 matter: Michael Sloan from SLED; Nate Cantrell,
10 Spartanburg County Sheriff's Office; David Baker,
11 Anderson County Sheriff's Office; Rusty Scogins, Anderson
12 County Sheriff's Office; Brad McGuire, Anderson County
13 Sheriff's Office; D. Betsill, B-e-t-s-i-l [sic], D.
14 Betsill from SLED; Carmen J. Tucker from SLED; Jonathan
15 Velez, Anderson County Sheriff's Office; Will Fletcher,
16 UPS, United Parcel Service; Concepcion Romero.

17 THE COURT: Yes, sir?

18 POTENTIAL JUROR: Will Fletcher, UPS, supervisor.

19 THE COURT: Okay, sir. First, would you give me
20 your jury number, please, sir.

21 POTENTIAL JUROR: One-twenty-four.

22 THE COURT: One-twenty-four? You are Mr. Smith?

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: Were you a UPS employee?

25 POTENTIAL JUROR: Yes, sir.

1 THE COURT: And do you know Mr. Fletcher other than
2 through work?

3 POTENTIAL JUROR: Yes.

4 THE COURT: You socialize with him?

5 POTENTIAL JUROR: I have.

6 THE COURT: Okay. And how long have you known him?

7 POTENTIAL JUROR: Approximately 15 years.

8 THE COURT: Now, would the fact that you and
9 Mr. Fletcher both work at UPS and that you socialize with
10 him and known him for 15 years prevent you from being
11 fair and impartial to both the State of South Carolina
12 and to the defense in this matter, making your decision
13 solely on the evidence presented here in this courtroom?
14 Can you be fair and impartial to both sides?

15 POTENTIAL JUROR: Yes, I can.

16 THE COURT: Now, would you believe Mr. Fletcher's
17 testimony above anyone else who may testify by virtue of
18 the fact that you work with him and know him outside of
19 work?

20 POTENTIAL JUROR: No, not necessarily.

21 THE COURT: Well, you have to be a little more
22 emphatic. Would you believe his testimony over anybody
23 else's just because you worked with him and know him?

24 POTENTIAL JUROR: No.

25 THE COURT: So you feel like you can be fair and

1 impartial to both the State and to the defendant?

2 POTENTIAL JUROR: Yes.

3 THE COURT: Any additional voir dire for the State?

4 MR. CAMPBELL: No, Your Honor.

5 THE COURT: Any additional voir dire for the
6 defense?

7 MS. DRAWDY: With this juror?

8 THE COURT: Yes, ma'am.

9 MS. DRAWDY: No.

10 THE COURT: Thank you very much.

11 Thank you, sir.

12 Anyone else?

13 (There was no response.)

14 THE COURT: Has anyone ever been related by blood
15 to any of the potential witnesses that I just read out to
16 you? If so would you please stand.

17 (There was no response.)

18 THE COURT: Other than the gentleman who just stood
19 up has anyone ever had a close personal or social
20 relationship --

21 MR. CAMPBELL: Your Honor, please the Court. You
22 left off two, number 11 and 12.

23 THE COURT: I didn't? Who? I didn't do Mark
24 Marsee?

25 MR. CAMPBELL: Marsee and Concepcion Ramirez.

1 THE COURT: I did do Concepcion, but I'll do him
2 again.

3 Excuse me, ladies and gentlemen, two other
4 potential witnesses, Concepcion Ramirez Lopez, and Kevin
5 Marsee, Anderson County Police Department.

6 Okay. Going back to my questions. Has anyone ever
7 been related by blood or marriage to any of the people
8 that I just listed for you? If so would you please
9 stand.

10 (There was no response.)

11 THE COURT: Has anyone ever had a close personal or
12 social relationship with any of the potential witnesses
13 that I just read out to you? If so would you please
14 stand, other than you, sir. I've got yours.

15 Okay?

16 POTENTIAL JUROR: Number 1, sir.

17 THE COURT: What is your number, please?

18 POTENTIAL JUROR. I'm juror number 1.

19 THE COURT: All right. You are Ms. Aiken?

20 POTENTIAL JUROR: Yes, I am.

21 THE COURT: Okay.

22 POTENTIAL JUROR: Mr. Brad McGuire, I believe you
23 called his name.

24 THE COURT: Yeah, Brad McGuire from Anderson County
25 Sheriff's Office.

1 POTENTIAL JUROR: Right. I've known him for many
2 years, since my childhood.

3 THE COURT: Okay. Is that somebody you just grew
4 up with?

5 POTENTIAL JUROR: Yeah. Yeah. In the area, that's
6 correct.

7 THE COURT: Do you socialize with Mr. McGuire?

8 POTENTIAL JUROR: No, sir.

9 THE COURT: And do you just know him from growing
10 up or in the area with him?

11 POTENTIAL JUROR: That's correct.

12 THE COURT: Would the fact that you grew up with
13 Mr. McGuire for a number of years prevent you from being
14 fair and impartial to both the State of South Carolina in
15 its case and the defendant in his case?

16 POTENTIAL JUROR: No.

17 THE COURT: Could you listen to the evidence and
18 base your decision based solely on the evidence presented
19 here in the courtroom?

20 POTENTIAL JUROR: Yes, sir.

21 THE COURT: Would you, based on your prior
22 knowledge of Mr. McGuire, believe his testimony over the
23 other witnesses just because of that relationship?

24 POTENTIAL JUROR: No, not necessarily.

25 THE COURT: Well, again --

1 POTENTIAL JUROR: Could you rephrase that? I'm
2 sorry.

3 THE COURT: Yeah. I'll be glad to. Would you,
4 just because you knew Mr. McGuire from a number of years,
5 believe his testimony over anyone else just because
6 you've known him for a number of years or known of him?

7 POTENTIAL JUROR: No.

8 THE COURT: Well, let me say this, and I know I'm
9 putting you on the spot. But actually, ladies and
10 gentlemen, you know, in criminal cases people are being
11 put on trial for their liberty, and so while I know you
12 are nervous but it's extremely important that we pick
13 jurors who are fair and impartial to both the State and
14 to the defendant, who don't bring bias or don't bring
15 prejudice into the courtroom. We want somebody who is
16 able to make a decision based solely on the evidence
17 presented in the courtroom and from no other evidence,
18 for no other basis, uninfluenced by any bias you may have
19 for or against somebody.

20 So going back to you, Ms. Aiken. If Mr. McGuire
21 were to testify would the mere fact that you knew
22 Mr. McGuire for a number of years, knew of him make you
23 believe his testimony over anyone else who testifies in
24 this trial?

25 POTENTIAL JUROR: No.

1 THE COURT: Are you sure?

2 POTENTIAL JUROR: Oh, yeah.

3 THE COURT: Okay. Any additional voir dire from
4 the State?

5 MR. CAMPBELL: No, Your Honor.

6 THE COURT: Any additional voir dire from the
7 defense?

8 MS. DRAWDY: No, Your Honor.

9 THE COURT: Thank you very much, Ms. Aiken.
10 Anyone else?

11 (There was no response.)

12 THE COURT: All right. Mr. Campbell, would you
13 stand up, introduce yourself --

14 Oh, thank you. Would you give me your juror
15 number.

16 POTENTIAL JUROR: Number 52.

17 THE COURT: Just one second. You are Mr. Gilliam?

18 POTENTIAL JUROR: Yes, sir.

19 THE COURT: Okay, Mr. Gilliam.

20 POTENTIAL JUROR: Mr. McGuire and his son and my
21 son have been in scouts together and elementary school.

22 THE COURT: Did you have any other relationship
23 with him other than having the shared interest of Boy
24 Scouts?

25 POTENTIAL JUROR: I've seen him on occasions

1 because as my sons got older and stuff, just routinely
2 traffic stops and stuff like that.

3 THE COURT: Okay. Well, based on your interactions
4 with Mr. McGuire, either through the Boy Scouts or
5 subsequent to that time, would you be able to listen to
6 the testimony in this case and be fair and impartial to
7 both the State and to the defendant, making your decision
8 only on the evidence presented in this case?

9 POTENTIAL JUROR: Yes, sir.

10 THE COURT: You sure?

11 POTENTIAL JUROR: (Nodded).

12 THE COURT: You have to give me a verbal response,
13 please.

14 POTENTIAL JUROR: Yes, sir.

15 THE COURT: Would you believe Mr. McGuire over
16 anyone else simply because of the relationship you've had
17 with him in the past?

18 POTENTIAL JUROR: No, sir.

19 THE COURT: Do you feel like you can be totally
20 fair and impartial to both sides of this case?

21 POTENTIAL JUROR: Yes, sir.

22 THE COURT: Any additional voir dire from the
23 State?

24 MR. CAMPBELL: No, Your Honor.

25 THE COURT: From the defense?

1 MS. DRAWDY: No, Your Honor.

2 THE COURT: Thank you, Mr. Gilliam.

3 Anybody else?

4 (There was no response.)

5 THE COURT: Now, Mr. Campbell, would you stand up
6 and introduce yourself, please, and your office.

7 MR. CAMPBELL: My name is Rame Campbell. I am the
8 assistant solicitor here in Anderson County who will be
9 trying this case. I work for Solicitor Chrissy Adams.

10 THE COURT: All right. Ms. Drawdy, would you stand
11 up and introduce yourself and your firm, please, ma'am.

12 MS. DRAWDY: Thank you, Your Honor.

13 My name is Sarah Drawdy and I work at the Drawdy
14 Law Firm. I have an associate with me. His name is
15 Hunter Blouin. I also have another associate at that
16 firm. His name is Harper Collins, and we practice law
17 here in Anderson County, and we represent Mr. Jose
18 Olivares. Thank you.

19 THE COURT: Now, just for the record, and I know
20 that there's been several different nicknames, but the
21 full name for the defendant is Jose Manuel Olivares
22 Romero; is that correct?

23 MR. CAMPBELL: Yes, sir, Your Honor. That's the
24 name we have, his official name, but we all call him Jose
25 Olivares.

1 THE COURT: Ms. Drawdy, would you agree that is his
2 official name?

3 MS. DRAWDY: I would agree that's the name they
4 have and we do go by Jose Olivares.

5 Your Honor, may we approach briefly, please?

6 THE COURT: Yes, ma'am.

7 MS. DRAWDY: Thank you.

8 (WHEREUPON, a bench conference was had.)

9 THE COURT: Ladies and gentlemen, has any member of
10 the jury panel ever been represented by Mr. Campbell, any
11 member of the solicitor's office, or by Ms. Drawdy or any
12 member of her law firm? If so would you please stand.

13 (There was no response.)

14 THE COURT: Has any member of the jury panel ever
15 been related by blood or marriage to Mr. Campbell or any
16 member of the solicitor's office, or Ms. Drawdy or any
17 member of her firm, or have you had a close personal or
18 social relationship with either of these attorneys or any
19 members of their firm? If so would you please stand.

20 (There was no response.)

21 THE COURT: Has any member of the jury panel formed
22 or expressed an opinion about the case of the State of
23 South Carolina vs. Jose Manuel Olivares Romero? If so
24 would you please stand.

25 (There was no response.)

1 THE COURT: Is there any member of the jury panel
2 that is aware of any bias or prejudice that they may have
3 either against the State of South Carolina or the
4 defendant in this matter? If so would you please stand.

5 (There was no response.)

6 THE COURT: Is there any member of the jury panel
7 that was a member of the Anderson County Grand Jury that
8 issued the indictment in this case? If so would you
9 please stand.

10 (There was no response.)

11 THE COURT: All right. Ladies and gentlemen, is
12 there any member of the jury panel who is a member of or
13 contributor to any group which has as its primary concern
14 the promotion of law enforcement or victims' rights?
15 These groups can include but are not necessarily limited
16 to the following: MADD, SADD, or CAVE. If you are a
17 member of or a contributor to any of these groups or any
18 group which has as its primary concern the promotion of
19 the law enforcement or victims' rights would you please
20 stand.

21 (There was no response.)

22 THE COURT: Does any member of the jury panel know
23 of any reason whatsoever why he or she should not be
24 selected to serve on the jury in this matter with
25 particular emphasis being placed on your ability to be

1 fair and impartial to both the State of South Carolina
2 and to the defendant in this matter? If you know of any
3 reason why you should not serve, would you please stand.

4 (There was no response.)

5 THE COURT: Is there any member of the jury panel
6 or their family that is now or in the past ever involved
7 -- ever employed in law enforcement, with the fire
8 department, or the solicitor's office, or this
9 courthouse? If so would you please stand.

10 Okay, sir.

11 POTENTIAL JUROR: Number 32.

12 THE COURT: Just one second. What number?

13 POTENTIAL JUROR: Number 32, sir.

14 THE COURT: Mr. Collins?

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: Okay. Where were you employed?

17 POTENTIAL JUROR: I'm a volunteer with the Hopewell
18 Fire Department.

19 THE COURT: Okay. You currently are?

20 POTENTIAL JUROR: Yes, sir.

21 THE COURT: Would the fact that you currently
22 volunteer with Hopewell prevent you from listening to
23 both sides of this matter and being fair and impartial to
24 the State and to the defendant in this matter?

25 POTENTIAL JUROR: No, sir.

1 THE COURT: Any question about it in your mind?

2 POTENTIAL JUROR: No, sir.

3 THE COURT: Any additional voir dire from the
4 State?

5 MR. CAMPBELL: No, Your Honor.

6 THE COURT: From the defense?

7 MS. DRAWDY: No, Your Honor.

8 THE COURT: Thank you, Mr. Collins.

9 Yes, ma'am?

10 POTENTIAL JUROR: Number 13.

11 THE COURT: One-thirteen?

12 POTENTIAL JUROR: No, 13.

13 THE COURT: Thirteen. You are Ms. Brock. Okay.

14 POTENTIAL JUROR: Did you say family, also?

15 THE COURT: Yes, ma'am.

16 POTENTIAL JUROR: My husband worked for Greenville
17 County Sheriff's Department as undercover narcotics for
18 14 years.

19 THE COURT: For about 14 years?

20 POTENTIAL JUROR: Yeah. He's left there now.

21 THE COURT: Okay. How long has he been gone
22 from -- did you say Oconee County Sheriff's?

23 POTENTIAL JUROR: Greenville County.

24 THE COURT: Greenville. If you can't tell, I'm
25 hard of hearing and this courtroom is awful on the

1 acoustics. But how long has he been gone from Greenville
2 County?

3 POTENTIAL JUROR: Ten years..

4 THE COURT: Ten. Would the fact that your husband
5 was previously employed by Greenville County Sheriff's
6 Office prevent you from being fair and impartial to the
7 State and the defendant in this matter?

8 POTENTIAL JUROR: No.

9 THE COURT: You sure?

10 POTENTIAL JUROR: Yes.

11 THE COURT: Any additional void dire from the
12 State?

13 MR. CAMPBELL: No, Your Honor.

14 THE COURT: From the defense?

15 MS. DRAWDY: No, Your Honor.

16 THE COURT: Thank you very much. Thank you.

17 POTENTIAL JUROR: Number 1, sir.

18 THE COURT: All right, Ms. Aiken.

19 POTENTIAL JUROR: My husband is a volunteer fireman
20 and a first responder with Center Rock Fire Department.

21 THE COURT: Does he currently still do that?

22 POTENTIAL JUROR: Yes, sir.

23 THE COURT: Would the fact that your husband is a
24 volunteer firearm and a first responder prevent you from
25 listening to all the evidence in this case and being fair

1 and impartial to both the State and to the defense?

2 POTENTIAL JUROR: No.

3 THE COURT: You sure?

4 POTENTIAL JUROR: Yes.

5 THE COURT: Any additional voir dire from either
6 the State or the defense?

7 MR. CAMPBELL: No, Your Honor.

8 MS. DRAWDY: No, Your Honor.

9 THE COURT: Thank you, Ms. Aiken.

10 Anyone else?

11 (There was no response.)

12 THE COURT: Does every member of the jury panel
13 agree with the legal principle that a person charged with
14 a crime is presumed innocent and remains innocent until
15 the State proves their guilt with proof beyond a
16 reasonable doubt? If you do not agree with that
17 proposition would you please stand.

18 (There was no response.)

19 THE COURT: Is there any member of the jury panel
20 that would believe the testimony of a law enforcement
21 officer over the testimony of an ordinary citizen just
22 because they are employed with law enforcement? If you
23 would believe a law enforcement officer's testimony over
24 an ordinary citizen just because of the nature of their
25 employment would you please stand.

1 (There was no response.)

2 THE COURT: Has any member of the jury panel or
3 your family been charged with committing a crime? If so
4 would you please stand. Not necessarily convicted but
5 charged.

6 Okay. What I'm going to do, I'm going to ask you
7 to come forward at the turn buckle. I'm not going to
8 make you stand up in court. If you'll come forward to
9 the turn buckle we'll go over each one of them.

10 Everyone who needs to speak with me just come
11 forward at this point.

12 (WHEREUPON, the following side bar was reported.)

13 POTENTIAL JUROR: Number 74, Robert Holcombe.

14 THE COURT: Okay, sir, Mr. Holcombe.

15 POTENTIAL JUROR: My daughter, Jennifer Denise
16 Burnett, will be here in court in September for criminal
17 domestic violence.

18 THE COURT: He's number 74, Mr. Holcombe, and his
19 daughter, Kimberly Denise Burnett --

20 POTENTIAL JUROR: Jennifer Denise Burnett.

21 THE COURT: Jennifer Denise Burnett will be here in
22 the courtroom in September.

23 POTENTIAL JUROR: I think for criminal domestic
24 violence. Also she's presently under -- I'm not sure
25 what, in Pickens County, where she moved from.

1 THE COURT: She's off on bond or --

2 POTENTIAL JUROR: She's off on bond. She's off on
3 bond for assault.

4 THE COURT: Okay. Now, would that prevent you from
5 listening to all the evidence in this case and being fair
6 and impartial to both the State and the defendant?

7 POTENTIAL JUROR: No. No problem, sir.

8 THE COURT: Okay. Now, Mr. Campbell, do you have
9 any additional questions?

10 MR. CAMPBELL: No, sir.

11 THE COURT: Ms. Drawdy?

12 MS. DRAWDY: No. Thank you.

13 THE COURT: Thank you, sir.

14 (WHEREUPON, Juror Holcombe returned to his seat,
15 and then Juror George approached for a sidebar.)

16 POTENTIAL JUROR: I'm juror 51.

17 THE COURT: Number 51. You're Mr. George?

18 POTENTIAL JUROR: Yes, sir.

19 THE COURT: Okay, sir.

20 POTENTIAL JUROR: I have an uncle who was
21 incarcerated for armed robbery, father for bank robbery,
22 and a sister for drugs.

23 THE COURT: Was that here in Anderson or --

24 POTENTIAL JUROR: My sister was.

25 THE COURT: Now, would the fact that your uncle was

1 charged and I guess convicted prevent you from being fair
2 and impartial to the State and to the defense in this
3 matter?

4 POTENTIAL JUROR: No sir, wouldn't affect me.

5 THE COURT: Can you listen to all the evidence and
6 be fair to both sides?

7 POTENTIAL JUROR: Yes, sir.

8 THE COURT: Any questions from either one of you?

9 MR. CAMPBELL: No, sir.

10 THE COURT: Thank you, sir.

11 (WHEREUPON, Juror George returned to his seat, and
12 then Juror Overfelt approached for a sidebar.)

13 THE COURT: If you all have a question you all just
14 make sure you ask and I'll be glad to let you have them,
15 within reason.

16 POTENTIAL JUROR: Number 102, Beth Overfelt.

17 THE COURT: You are Ms. Overfelt?

18 POTENTIAL JUROR: Uh-huh.

19 THE COURT: Okay. Tell me what --

20 POTENTIAL JUROR: My granddaughter was charged with
21 felony DUI and possession of marijuana.

22 THE COURT: Was that here in Anderson County?

23 POTENTIAL JUROR: No, Pickens County.

24 THE COURT: Okay. And how long ago has that been?

25 POTENTIAL JUROR: Seven years ago. She graduated

1 last Saturday with honors from Clemson.

2 THE COURT: Ma'am?

3 POTENTIAL JUROR: She graduated last Saturday --

4 THE COURT: Oh, did she? Good for her.

5 POTENTIAL JUROR: -- with honors from Clemson.

6 THE COURT: Well, would the fact that your

7 daughter-in-law was convicted --

8 POTENTIAL JUROR: My granddaughter.

9 THE COURT: Granddaughter had a felony DUI charge
10 out of Pickens prevent you from being fair and impartial
11 to both the State and the defendant?

12 POTENTIAL JUROR: No, not at all.

13 THE COURT: You sure?

14 POTENTIAL JUROR: I'm positive.

15 THE COURT: Any questions from either side?

16 MR. CAMPBELL: No, sir.

17 MS. DRAWDY: No.

18 THE COURT: Thank you, Ms. Overfelt.

19 (WHEREUPON, Juror Overfelt returned to her seat,
20 and then Juror Brock approached for a sidebar.)

21 THE COURT: All right.

22 POTENTIAL JUROR: Thirteen.

23 THE COURT: Thirteen. So you are Ms. Brock. Hey,
24 Ms. Brock.

25 POTENTIAL JUROR: My 16-year-old son is on

1 probation with DJJ for alcohol.

2 THE COURT: What was he charged with?

3 POTENTIAL JUROR: Alcohol and drug possession. I
4 had him charged.

5 THE COURT: You did?

6 POTENTIAL JUROR: Uh-huh.

7 THE COURT: So would that prevent you from being
8 fair and impartial to both sides in this matter?

9 POTENTIAL JUROR: No.

10 THE COURT: You sure?

11 POTENTIAL JUROR: Uh-huh.

12 THE COURT: Either one of you have any questions?

13 MR. CAMPBELL: No, sir.

14 MS. DRAWDY: No, Your Honor.

15 THE COURT: Thank you, Ms. Brock.

16 (WHEREUPON, Juror Brock returned to her seat, and
17 then Juror Fountain approached for a sidebar.)

18 THE COURT: Hey, what juror number are you?

19 POTENTIAL JUROR: Forty-seven.

20 THE COURT: You are Ms. Fountain?

21 POTENTIAL JUROR: Yes. You said family member?

22 THE COURT: Yes, ma'am.

23 POTENTIAL JUROR: My husband has a DUI.

24 THE COURT: Who is it?

25 POTENTIAL JUROR: My husband.

1 THE COURT: He has a pending DUI?

2 POTENTIAL JUROR: It's pending. I guess he hasn't
3 been convicted yet.

4 THE COURT: Is this here in Anderson?

5 POTENTIAL JUROR: Yes.

6 THE COURT: Would the fact that your husband has a
7 pending DUI charge prevent you from listening to all the
8 evidence and being fair and impartial to the State and to
9 the defendant in this matter?

10 POTENTIAL JUROR: No.

11 THE COURT: Anybody have any questions?

12 MS. DRAWDY: No, sir.

13 MR. CAMPBELL: What agency was he charged with?

14 POTENTIAL JUROR: Agency?

15 MR. CAMPBELL: Like sheriff's office, city police
16 department.

17 POTENTIAL JUROR: Anderson County is all...

18 THE COURT: Any additional questions?

19 MS. DRAWDY: No.

20 THE COURT: Thank you, Ms. Fountain.

21 (WHEREUPON, Juror Fountain returned to her seat,
22 and then Juror Smith approached for a sidebar.)

23 POTENTIAL JUROR: One-twenty-four.

24 THE COURT: Mr. Smith, right?

25 POTENTIAL JUROR: Yes, sir.

1 THE COURT: Okay.

2 POTENTIAL JUROR: I have a brother -- and I don't
3 know exactly what all charges he's been but different
4 drug charges. He spent a couple -- three weeks in jail
5 at different times but I don't know --

6 THE COURT: Was he charged here in Anderson County?

7 POTENTIAL JUROR: Yes, sir.

8 THE COURT: Which agency charged him?

9 POTENTIAL JUROR: I guess Anderson County
10 Sheriff's.

11 THE COURT: And would the fact that you had a
12 brother who's charged, I guess, and convicted, or spent
13 some time in jail prevent you from being fair and
14 impartial to both the State and to the defense?

15 POTENTIAL JUROR: No, it would not.

16 THE COURT: Any questions from either side?

17 MR. CAMPBELL: No, Your Honor.

18 MS. DRAWDY: No, sir.

19 THE COURT: Thank you, sir.

20 POTENTIAL JUROR: I also have an uncle that's
21 serving, I guess a life sentence for murder.

22 THE COURT: Okay. Now, would that prevent you from
23 being fair and impartial to both sides in this case?

24 POTENTIAL JUROR: No, it would not.

25 THE COURT: Mr. Smith, the real concern that we

1 have is that you're able to listen to all the evidence
2 and that you don't prejudge anything, that you make your
3 decision based solely on the evidence without having a
4 bias or having impartiality for one side or the other.

5 POTENTIAL JUROR: Okay.

6 THE COURT: Can you do that?

7 POTENTIAL JUROR: Yes, I can.

8 THE COURT: Thank you, sir.

9 (WHEREUPON, Juror Smith returned to his seat, and
10 then Juror Vitanza approached for a sidebar.)

11 THE COURT: Hey. What's your jury number?

12 POTENTIAL JUROR: (Held a document up).

13 THE COURT: One-thirty-seven. Okay. You're Louise
14 Vitanza?

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: Okay. Do you have a family member who
17 was arrested at some point, or you?

18 POTENTIAL JUROR: A family member and myself.

19 THE COURT: Okay. And I assume that you were not
20 convicted on yours?

21 POTENTIAL JUROR: I was.

22 THE COURT: You were? And what was it?

23 POTENTIAL JUROR: A DUI.

24 THE COURT: Okay. And how about your family
25 member?

1 POTENTIAL JUROR: It was my deceased spouse for
2 domestic violence.

3 THE COURT: Domestic violence. Was he convicted?

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: Now, would the fact that you were
6 arrested and convicted of DUI or your former husband was
7 convicted of criminal domestic violence would that
8 prevent you from listening to both sides in this case and
9 being fair and impartial to both the State and the
10 defense in this matter? You understand my question?

11 In other words, can you give the State a fair and
12 impartial trial, and the defense a fair and impartial
13 trial?

14 POTENTIAL JUROR: Yes.

15 THE COURT: Are you sure?

16 POTENTIAL JUROR: Yes, sir.

17 THE COURT: Uninfluenced by those prior charges to
18 you or your former husband?

19 POTENTIAL JUROR: Yes, sir.

20 THE COURT: Sure?

21 POTENTIAL JUROR: Yes, sir.

22 THE COURT: Any additional questions from the
23 State?

24 MR. CAMPBELL: No.

25 THE COURT: From the defense?

1 MS. DRAWDY: No.

2 THE COURT: Thank you.

3 (WHEREUPON, Juror Vitanza returned to her seat, and
4 then Juror Williams approached for a sidebar.)

5 POTENTIAL JUROR: One-forty-four.

6 THE COURT: One-forty-four. You are Ms. Williams?

7 POTENTIAL JUROR: Yes, I am. It's two members of
8 my family. One was my husband, and way back in '67, I
9 think, yes, for marijuana up in Montreal.

10 THE COURT: Up in what?

11 POTENTIAL JUROR: Montreal.

12 THE COURT: Okay.

13 POTENTIAL JUROR: And one was my brother.

14 THE COURT: And what was his charge?

15 POTENTIAL JUROR: You know, I don't really
16 remember.

17 THE COURT: Was it a drug charge?

18 POTENTIAL JUROR: No.

19 THE COURT: Drinking charge?

20 POTENTIAL JUROR: No. My brother is paranoid
21 schizophrenic, very bad, a lot of guns in the house.
22 SWAT team surrounded the house. It was a real fiasco.

23 MR. CAMPBELL: Yes, I can imagine.

24 THE COURT: Well, would either one of those events
25 prevent you from being fair and impartial to both the

1 State and the defense in this matter?

2 POTENTIAL JUROR: No.

3 THE COURT: Are you sure?

4 POTENTIAL JUROR: Yes.

5 THE COURT: So, in other words, you can listen to
6 the State's case and listen to all the evidence in this
7 matter and be fair to both the defendant and the State?

8 POTENTIAL JUROR: Yes, sir.

9 THE COURT: Any additional questions?

10 MR. CAMPBELL: No.

11 MS. DRAWDY: No. Thank you.

12 THE COURT: Thank you.

13 (WHEREUPON, Juror Williams returned to her seat and
14 the sidebar was concluded.)

15 THE COURT: Is there any additional voir dire from
16 the State?

17 MR. CAMPBELL: No, Your Honor.

18 THE COURT: Ms. Drawdy, does the defense have any
19 additional voir dire?

20 MS. DRAWDY: No, Your Honor.

21 THE COURT: All right. Ladies and gentlemen, as I
22 explained somewhat earlier, in just a minute we're going
23 to start picking a jury in this case. If your name is
24 called I'm going to ask that you pick up any personal
25 belonging that you may have with you, come through the

1 turn buckle and stand basically at this little gap in
2 between Mr. Shirley and the clerk of court and face the
3 defense and the State.

4 They will make a decision as to whether or not
5 you'll be selected on the next case we're about to hear.
6 If you are selected then you'll come around here to sit
7 in the jury box. If you are not you'll return back to
8 the audience, okay.

9 Is everybody ready to proceed?

10 MR. CAMPBELL: The State is ready, Your Honor.

11 THE COURT: Ms. Drawdy, you ready to proceed?

12 MS. DRAWDY: Yes, Your Honor.

13 THE CLERK OF COURT: The first juror called is
14 number 4, Richard A. Anderson.

15 (A white male came forward.)

16 THE CLERK OF COURT: What say you?

17 MR. CAMPBELL: Please present Mr. Anderson.

18 MS. DRAWDY: Please excuse the juror.

19 THE CLERK OF COURT: Please have a seat.

20 The next juror is number 78, Kerri A. Hutchison.

21 (A white female came forward.)

22 MS. DRAWDY: What was that number again?

23 THE CLERK OF COURT: Seventy-eight, Kerri A.
24 Hutchison.

25 What say the State?

1 MR. CAMPBELL: Please present Ms. Hutchison.

2 THE CLERK OF COURT: What say the defendant?

3 MS. DRAWDY: Please seat the juror.

4 THE CLERK OF COURT: The next juror is number 66,

5 Kelli F. Harrison.

6 (A white female came forward.)

7 THE CLERK OF COURT: What say you for the State?

8 MR. CAMPBELL: Please present Ms. Harrison.

9 THE CLERK OF COURT: What say you for the defense?

10 MS. DRAWDY: Please excuse the juror.

11 THE CLERK OF COURT: The next juror is number 16,

12 Johnny Bublow, Jr.

13 (A white male came forward.)

14 THE CLERK OF COURT: What say you for the State?

15 MR. CAMPBELL: Please present Mr. Bublow.

16 MS. DRAWDY: What is the number again?

17 THE CLERK OF COURT: Sixteen.

18 MS. DRAWDY: Please seat the juror.

19 THE CLERK OF COURT: The next juror is number 57,

20 Danielle D. Greene.

21 (A white female came forward.)

22 THE CLERK OF COURT: What say you for the State?

23 MR. CAMPBELL: Please present Ms. Greene.

24 THE CLERK OF COURT: What say you for the defense?

25 MS. DRAWDY: Please seat the juror.

1 THE CLERK OF COURT: The next juror is number 19,
2 John B. Burns.
3 (A white male came forward.)
4 THE CLERK OF COURT: What say you for the State?
5 MR. CAMPBELL: Please present Mr. Burns.
6 THE CLERK OF COURT: What say you for the defense?
7 MS. DRAWDY: Please seat the juror.
8 THE CLERK OF COURT: The next juror is number 85,
9 Laurie J. King.
10 (A white female came forward.)
11 THE CLERK OF COURT: What say you for the State?
12 MR. CAMPBELL: Please present Ms. King.
13 THE CLERK OF COURT: What say you for the defense?
14 MS. DRAWDY: Please excuse the juror.
15 THE CLERK OF COURT: Have a seat Ms. King. Thank
16 you.
17 The next juror is number 132, Gennise Thomas.
18 (A black female came forward.)
19 THE CLERK OF COURT: What say you for the State?
20 MS. DRAWDY: Can we approach, Your Honor?
21 THE COURT: Yes, ma'am.
22 (WHEREUPON, a bench conference was had.)
23 THE COURT: Ms. Thomas?
24 POTENTIAL JUROR: Yes.
25 THE COURT: Do you mind telling us again where you

1 retired from, please.

2 POTENTIAL JUROR: New York City.

3 THE COURT: And what agency did you work for?

4 POTENTIAL JUROR: Correction.

5 THE COURT: Department of correction?

6 POTENTIAL JUROR: Yes.

7 THE COURT: Thank you, ma'am.

8 (WHEREUPON, a bench conference was had.)

9 THE COURT: Ms. Thomas, thank you. I'm going to
10 ask you to be seated, please, ma'am.

11 THE CLERK OF COURT: The next juror is number 92,
12 John M. Lewis.

13 (A white male came forward.)

14 THE CLERK OF COURT: What say you for the State?

15 MR. CAMPBELL: Please excuse Mr. Lewis.

16 THE CLERK OF COURT: Thank you, sir. Have a seat.

17 The next juror number 45, Donald L. Farrior.

18 (A white male came forward.)

19 THE CLERK OF COURT: What say you for the State?

20 MR. CAMPBELL: Please present Mr. Farrior.

21 THE CLERK OF COURT: What say you for the defense?

22 MS. DRAWDY: Please excuse the juror.

23 THE CLERK OF COURT: Next juror is number 30,
24 Kimberly E. Cochran.

25 (A white female came forward.)

1 THE CLERK OF COURT: What say you for the State?

2 MR. CAMPBELL: Please present Ms. Cochran.

3 THE CLERK OF COURT: And what say you for the
4 defense?

5 MS. DRAWDY: Please seat the juror.

6 THE CLERK OF COURT: Juror number 113, Jamey K.
7 Roberts.

8 (A white male came forward.)

9 THE CLERK OF COURT: What say you for the State?

10 MR. CAMPBELL: Please present Mr. Roberts.

11 THE CLERK OF COURT: What say you for the defense?

12 MS. DRAWDY: Please seat the juror.

13 THE CLERK OF COURT: Juror 117, Frank W. Rosensky.

14 (A white male came forward.)

15 THE CLERK OF COURT: What say you for the State?

16 MR. CAMPBELL: Please present Mr. Rosensky.

17 THE CLERK OF COURT: What say you for the defense?

18 MS. DRAWDY: Please seat this juror.

19 THE CLERK OF COURT: The next juror is number 63,
20 Chyral A. Hankins.

21 (A white female came forward.)

22 THE CLERK OF COURT: What say you for the State?

23 MR. CAMPBELL: Please present Ms. Hankins.

24 THE CLERK OF COURT: What say you for the
25 defendant?

1 MS. DRAWDY: Please seat this juror.

2 THE CLERK OF COURT: Next juror is 98, Brad J.
3 Merritt.

4 (A white male came forward.)

5 THE CLERK OF COURT: What say you for the State?

6 MR. CAMPBELL: Please present Mr. Merritt.

7 THE CLERK OF COURT: And what say you for the
8 defense?

9 MS. DRAWDY: Please seat this juror.

10 THE CLERK OF COURT: Next juror is number 109,
11 Lauren E. Reasner.

12 (A white female came forward.)

13 THE CLERK OF COURT: What say you for the State?

14 MR. CAMPBELL: Please present Ms. Reasner.

15 THE CLERK OF COURT: And what say you for the
16 defense?

17 MS. DRAWDY: Please seat the juror.

18 THE CLERK OF COURT: Next juror is number 106, Todd
19 W. Powell.

20 (A white male came forward.)

21 THE CLERK OF COURT: What say you for the State?

22 MR. CAMPBELL: Please present Mr. Powell.

23 THE CLERK OF COURT: What say you for the defense?

24 MS. DRAWDY: Please seat the juror.

25 THE CLERK OF COURT: The next juror is number 42,

1 Jonell S. Ellis.

2 (A black female came forward.)

3 THE CLERK OF COURT: What say you for the State?

4 MR. CAMPBELL: Please present Ms. Ellis.

5 THE CLERK OF COURT: And what say you for the
6 defense?

7 MS. DRAWDY: Please seat this juror.

8 THE COURT: All right. Would you all pick one
9 alternate. The defense gets two, the State one.

10 THE CLERK OF COURT: First juror, number 13, Kathy
11 J. Brock:

12 (A white female came forward.)

13 MS. DRAWDY: Your Honor, may we approach?

14 THE COURT: Yes, ma'am.

15 (WHEREUPON, a bench conference was had.)

16 THE COURT: Ms. Brock, I'm going to ask you to be
17 seated, please, ma'am.

18 THE CLERK OF COURT: The next juror is number 28,
19 Patrice L. Clinkscapes.

20 (A black female came forward.)

21 THE CLERK OF COURT: What say you for the State?

22 MR. CAMPBELL: Present Ms. Clinkscapes.

23 THE CLERK OF COURT: And what say you for the
24 defense?

25 MS. DRAWDY: Please seat this juror.

1 THE COURT: Very good.

2 THE CLERK OF COURT: Your Honor, that's 12 jurors
3 and one alternate.

4 THE COURT: All right. From the State, is there
5 any motions towards jury selection process?

6 MR. CAMPBELL: No, Your Honor.

7 THE COURT: From the defense?

8 MS. DRAWDY: None, Your Honor.

9 THE COURT: Very good. Let me see the solicitor
10 and the defense up here, please.

11 (WHEREUPON, a bench conference was had.)

12 THE COURT: Those of you who were not selected I
13 can look at your faces and see the looks of
14 disappointment on each and every one of you out there,
15 but if you would, I'm going to excuse you at this time.
16 And actually, we have a couple matters we'll be doing in
17 the courtroom, so you can't stick around. We need you to
18 clear the courtroom.

19 But, Mr. Shirley, do you have those numbers to give
20 out to everyone?

21 THE CLERK OF COURT: Yes, sir.

22 THE COURT: If all of you would call in after six
23 o'clock tomorrow morning there will be a message on the
24 message machine or the tape recorder saying whether or
25 not and when you are to return. But for each and every

1 one of you we thank you for being here and you are.
2 excused for the day.

3 (WHEREUPON, the jury venire was excused.)

4 THE COURT: Ms. Clinkscales?

5 JUROR CLINKSCALES: Yes.

6 THE COURT: You are the alternate in this case, and
7 I'm sure Buck has told you because he runs all of us with
8 an iron fist, but if you would stay in that chair
9 throughout the course of the trial, okay?

10 JUROR CLINKSCALES: Okay.

11 THE COURT: Now, I am going to send all of you back
12 to your jury room right now. I want you to select a
13 foreperson who will be the spokesperson for the jury
14 during the course of this trial and also be the person
15 that presides over the deliberations at the end of the
16 case when I tell you, instruct you that it is now proper
17 and okay for you to begin your deliberations.

18 Everybody gets to vote in the process as to who
19 they want to be foreperson. It does not have to be
20 unanimous. It just could be a simple majority.

21 However, Ms. Clinkscales, since you are an
22 alternate you are not allowed to serve as the foreperson.
23 But you do get to have a right to vote on that, whoever
24 you want to be the foreperson in this matter.

25 But if you would, at this time follow the bailiff

1 and once you pick the foreperson write their name down
2 and give it to the bailiff and we'll receive that back
3 here in the courtroom in just a few minutes.

4 (WHEREUPON, the juror leave the courtroom at
5 approximately 11:40 a.m., except for Juror 109.)

6 JUROR REASNER: I've got a question for someone,
7 anyone. I'm actually no longer a resident of Anderson
8 County, and I'm sure I should have brought this up
9 earlier.

10 THE COURT: Yeah, you should have.

11 JUROR REASNER: I did not know when the appropriate
12 time would be. I was nervous. I'm shy. But if I can
13 bring tomorrow proof of address change would it be
14 possible --

15 THE COURT: No. You have to do it right now before
16 we get the jury --

17 JUROR REASNER: I just didn't know when to --

18 THE COURT: Bring the jury back out here, please.
19 You should have absolutely brought that up before.

20 JUROR REASNER: I'm so sorry. I didn't know. It
21 wasn't specified.

22 THE COURT: When I ask you to speak up that's when
23 you're supposed to do it.

24 JUROR REASNER: Okay. I understand.

25 THE COURT: Well, obviously you didn't, but let me

1 see. Where do you live?

2 JUROR REASNER: I live in Simpsonville.

3 THE COURT: Simpsonville?

4 JUROR REASNER: Uh-huh.

5 THE COURT: How long have you lived in

6 Simpsonville?

7 JUROR REASNER: Six weeks.

8 THE COURT: Six weeks?

9 JUROR REASNER: Uh-huh. I wasn't sure if I was

10 going to stay there or not but I am.

11 THE COURT: Let me see the lawyers up here.

12 (WHEREUPON, a bench conference was had.)

13 (WHEREUPON, the jury enters the courtroom at

14 approximately 11:43 a.m.)

15 THE COURT: We just selected a jury and went

16 through all the qualifications and exemptions and other

17 special voir dire, and it just was brought to my

18 attention by one of the jurors that she actually is not a

19 residence here in Anderson County but has recently moved

20 to Simpsonville, which would make her not qualified.

21 What was your jury number, please?

22 JUROR REASNER: It's 109.

23 THE COURT: Okay, 109. You are Ms. Reasner?

24 JUROR REASNER: Yes, sir.

25 THE COURT: All right. Ms. Reasner, what I am

1 going to do is -- because state law requires, I'm going
2 to find that you are not qualified to sit on this jury or
3 any other ones in Anderson County but you mentioned to me
4 earlier that you could bring me proof, and tomorrow we're
5 going to begin court at nine o'clock. If you'd come in
6 at nine o'clock, and not later than nine o'clock, and
7 bring me proof that you are actually a resident of
8 Simpsonville. But at this time I'm going to excuse you
9 because you are not qualified to sit on this jury.

10 JUROR REASNER: Thank you.

11 THE COURT: Yes, ma'am.

12 (WHEREUPON, Juror number 109 leaves the courtroom.)

13 THE COURT: That means, Ms. Clinkscales, that you
14 have graduated from being an alternate to a regular juror
15 in this matter, okay?

16 JUROR CLINKSCALES: Okay.

17 THE COURT: And just for the record, I have during
18 the jury selection process -- I'm not sure if it was
19 clear, but the Court struck two potential jurors, juror
20 number 132 and juror number 13 from the process. That
21 means that we have no alternate in this case, and so
22 we'll go with 12.

23 MR. CAMPBELL: That's my understanding.

24 THE COURT: All right. Now, at this point,
25 Ms. Clinkscales, you may sit as the foreperson if you are

1 selected. Anybody may serve as foreperson but I'm going
2 to ask you now to go back and make your selection and
3 send us back in writing the name of the person you so
4 selected.

5 (WHEREUPON, the jury leaves the courtroom at
6 approximately 11:45 a.m.)

7 THE COURT: Is there anyone in the courtroom who
8 was on the jury panel today? If so would you let me
9 know.

10 (There was no response.)

11 THE COURT: All right. Ms. Drawdy, you want to go
12 ahead. I understand you have a motion at this stage?

13 MS. DRAWDY: We do. I think Mr. Campbell would
14 like to approach.

15 THE COURT: Okay.

16 (WHEREUPON, a bench conference was had.)

17 THE COURT: Ms. Drawdy, I understand that you have
18 on behalf of the defendant a motion in limine; is that
19 correct?

20 MS. DRAWDY: Yes, Your Honor. I have served the
21 State with a copy of it. We would just ask that
22 throughout this trial my client, Jose Olivares, is -- his
23 residence status not be referred to over the course of
24 this trial. He is an illegal alien here. He's been in
25 this country for years.

1 The motion I filed just says that his status is not
2 illegal to the charge with which he's here for. It's not
3 relevant to any of the elements that the State has to
4 prove, and so we think under Rule 403 it is much more
5 prejudicial for that to come out than not. It's not
6 relevant, and so we would ask that over the course of
7 this trial the defendant not be referred to in any way,
8 shape or form his residency status or lack thereof.

9 THE COURT: Mr. Campbell, what is your position on
10 that?

11 MR. CAMPBELL: Dealing with the defendant, being
12 he's the one charged with the crime, it is not an
13 element, I don't have any plans on going into it.

14 THE COURT: Okay. And if you would, just make sure
15 that you instruct all your witnesses before they get on
16 the stand that they are not to refer to his illegal
17 status. I agree with Ms. Drawdy that it's not relevant
18 to any issue in this case, and certainly the probative
19 value is outweighed by the prejudicial impact; and
20 therefore, under 403 I'm going to exclude it.

21 Have you, just for the record, Ms. Drawdy,
22 explained to your client the potential for his
23 deportation?

24 MS. DRAWDY: Yes, we have discussed that. Yes.

25 THE COURT: Okay. All right.

1 MR. CAMPBELL: My understanding, Your Honor, is ICE
2 has a hold on him.

3 THE COURT: They do? Okay. I just want to make
4 sure on the record that's been explained to your client.

5 MS. DRAWDY: Yes, Your Honor, and I guess one -- I
6 don't know if this is the time to take up, but they do
7 have a hold on him, ICE does, because he has an attorney
8 on that angle and has that worked out. Clearly, they've
9 released him. He's not been in the jail, and so we would
10 just ask throughout this trial that he be able to leave
11 and come back.

12 THE COURT: Has he been out on bond?

13 MS. DRAWDY: Yes.

14 MR. CAMPBELL: Yes, sir. He has been out on bond
15 and he has shown up when I have carded him, and
16 Ms. Drawdy has been in contact with me regarding the
17 status. In fact, when he showed up she has showed up.

18 THE COURT: So you don't object to him being out,
19 remaining out on bond?

20 MR. CAMPBELL: He showed up today so...

21 THE COURT: Okay. Mr. Romero, would you please
22 stand. Your attorney advises me that you are out on bond
23 and that also that the federal government, ICE, has a
24 hold on you but that you have an attorney on that matter
25 and you've been out on whatever bond they may have set or

1 if there's such one set in that matter.

2 Your attorney has requested that I allow you to
3 remain out on bond throughout the course of this trial
4 and any breaks in this trial, and I'm going to grant that
5 motion. Now, what that means is the terms and conditions
6 of the bond set for this trial that you are standing here
7 today for will remain in affect. And if you violate any
8 of those terms or conditions you will be remanded to the
9 Anderson County Detention Center.

10 Also, just to let you know, if for some reason you
11 do not reappear at a scheduled court time that the trial
12 will proceed in your absence. In other words, just
13 because you are not here the case will not stop. It will
14 go forward. Do you understand?

15 THE INTERPRETER: Yes.

16 THE COURT: Do you have any questions that you'd
17 like to ask me or your attorney?

18 THE INTERPRETER: No.

19 THE COURT: Ms. Drawdy, anything further in regard
20 to anything I've told him thus far?

21 MS. DRAWDY: No, Your Honor. Thank you.

22 THE COURT: So, guys, we'll be back here at two
23 o'clock for a Jackson Denno hearing.

24 MR. CAMPBELL: One other thing, we brought this up,
25 is that Robert Luna is the interpreter. Ms. Drawdy and I

1 had agreed to use him. The State has used him before and
2 I know the defense -- the local defense bar has used him
3 before. I'm not opposed to having him as our
4 interpreter.

5 THE COURT: Very good. Can you swear him in,
6 Mr. Clerk.

7 (WHEREUPON, Gilberto de Luna, the Interpreter, was
8 given the interpreter's oath.)

9 THE COURT: If you all just hold tight so we can
10 find out who the foreman is then be excused until two
11 o'clock.

12 MS. DRAWDY: Thank you, Your Honor.

13 THE COURT: Would you bring the jury back in.

14 All right. John Brian Burns is the juror
15 foreperson, number 19.

16 MR. CAMPBELL: What number, Your Honor?

17 MS. DRAWDY: What number?

18 THE COURT: Number 19, John Brian Burns.

19 THE CLERK OF COURT: Byron. John Byron Burns.

20 THE COURT: Byron. Excuse me.

21 (WHEREUPON, Court's Exhibit No. 2, a Note From the
22 Jury, was marked and made a part of record.)

23 (WHEREUPON, the jury enters the courtroom at
24 approximately 11:55 a.m.)

25 THE COURT: All right. Mr. Burns?

1 THE FOREMAN: Yes, sir.

2 THE COURT: I don't know if they told you or Buck
3 told you but throughout the course of this trial I'm
4 going to ask that you sit in that chair any time we come
5 in and out.

6 And, Ms. Clinkscales, I told you you had to sit in
7 that chair but since you graduated up you can sit
8 wherever you want to.

9 And like the rest of you, you can sit wherever you
10 want to coming in and out of here, but keeping you there
11 keeps me on top of what administrative function I have to
12 take care of.

13 Okay. Now, let me say this. What we're getting
14 ready to do is send you out. I'm going to ask you to be
15 back here by 2:55. We're going to start the trial at
16 three o'clock. We have several administrative things we
17 need to take care of prior to that time, and so we need
18 this time now to deal with those. But I'd anticipate
19 starting promptly at three o'clock today.

20 Before we start you will be sworn. I'm not going
21 to swear you until right before we get ready to start our
22 trial. I'm going to remind you, however, that -- and
23 I'll remind you again that until such times as the end of
24 the case and I tell you that it is okay and proper to
25 begin your deliberations, you will have no qualms or

1 questions about when that's okay, you are not discuss
2 this case in any form or fashion. That means that during
3 breaks, right now or any other time you are not to
4 discuss, even amongst yourselves, this case, and
5 attorneys, the charges, anything about this case.

6 Likewise, when you go home this evening, and I'll
7 remind you again, if you are like my spouse she'd be
8 giving me 20 questions about what the case is about and
9 then ask me to fill her in.

10 You are not allowed to do any -- have any
11 conversations with anyone about this case in your role as
12 juror, whether it be direct face-to-face conversations,
13 e-mails, twitter, any other type of communication process
14 is just not allowed. And the reason being is that we
15 want you to be able to listen to the entire case and be
16 instructed on the law before you begin your
17 communications about the case, and any communications
18 prior to that time would be premature and you'd be basing
19 your discussions on information that is not totally
20 developed at that point. So I just give you warning.

21 But I'm going to excuse you at this time and ask
22 that you to be back in your jury room no later than 2:55
23 today and we'll begin the trial of this matter.

24 Mr. Burns, if you would take your jury on out and
25 we'll excuse you at this point.

1 (WHEREUPON, the jury leaves the courtroom at
2 approximately 11:58 a.m.)

3 THE COURT: All right. We are at recess at this
4 time.

5 Mr. Romero, as I told you, your bond terms and
6 conditions stay in affect. We'll begin back at three
7 o'clock today. Well, actually, you all be back at two
8 o'clock.

9 Thank you. We're in recess.

10 (WHEREUPON, the trial of this case was recessed for
11 the morning.)

12 THE COURT: All right. This is a Jackson Denno
13 matter; is that correct?

14 MS. DRAWDY: Yes, Your Honor.

15 THE COURT: Are you ready to proceed, Mr. Campbell?

16 MR. CAMPBELL: The State is ready, Your Honor.

17 MS. DRAWDY: Your Honor, at this time we would just
18 ask that the witnesses be sequestered.

19 THE COURT: Okay.

20 MS. DRAWDY: And I don't know what order
21 Mr. Campbell plans to call his witnesses in but if indeed
22 he does choose to call Agent Sloan we would ask that he
23 be first, since he's sitting here throughout the trial.

24 THE COURT: You want me to tell him what order to
25 call his witnesses in? I'm not going to do that. I'm

1 going to let him sequester his witnesses but I'm not
2 going to tell him which order to call his witnesses.

3 MS. DRAWDY: Just if I could put on the record,
4 just for fairness, Your Honor, say, because then Agent
5 Sloan, if he is going to testify via Jackson V. Denno, he
6 will have heard all the other witnesses and it would be
7 our position to be able to --

8 THE COURT: I understand. The investigating
9 officer has a right to be in the courtroom during trial.
10 I'm not going to grant that motion.

11 MS. DRAWDY: Thank you, Your Honor.

12 THE COURT: Yes, ma'am.

13 All right. Now, as to the other witnesses, would
14 you raise your hand if you think you're going to be a
15 witness in this case or potentially a witness.

16 All right, gentlemen. You know the drill. I am
17 going to grant the motion to sequester you. I'm going to
18 ask that you step out in the lobby and stay close by so
19 we can reach you, but do not go in the courtroom until
20 you've been summoned to testify, and then after you
21 testify that's fine.

22 But as you know, you're not allowed to speak
23 amongst yourselves once you testify about what happened
24 in the courtroom. Just let everybody testify first. But
25 at this point, I'm going to ask you to step back --

1 unless you have one of these guys who are going to go
2 first.

3 MR. CAMPBELL: Brad McGuire is going to go first.

4 THE COURT: Mr. McGuire, you may stay.

5 You ready?

6 MR. CAMPBELL: Yes, sir, Your Honor.

7 THE COURT: Go ahead and call your witness, please.

8 MR. CAMPBELL: Your Honor, the State calls Brad
9 McGuire to the stand.

10 NEAL BRADLEY MCGUIRE, after having been duly
11 sworn, testified as follows:

12 THE CLERK OF COURT: If you would have a seat and
13 state your name and spell your last name for the record,
14 please.

15 THE WITNESS: Neal Bradley McGuire, M-c-G-u-i-r-e.

16 DIRECT EXAMINATION

17 BY MR. CAMPBELL:

18 Q. Mr. McGuire, where are you employed?

19 A. Anderson County Sheriff's Office.

20 Q. How long have you been employed in law enforcement?

21 A. Since 1993, so I'm beginning my 19th year.

22 Q. Has all that been with the sheriff's office?

23 A. Yes, sir.

24 Q. And what kind of duties and positions have you held
25 at the sheriff's office?

NEAL BRADLEY MCGUIRE (IC) - DIRECT BY MR. CAMPBELL 57

1 A. I began as a reserve officer in 1993. In 1994, I
2 was hired as a full-time deputy. I worked as a deputy
3 until 1996 when I was promoted to rank of investigator.
4 Somewhere a few years later I was again advanced to
5 senior investigator status and I've been in one form or
6 another an investigator or senior investigator at the
7 sheriff's office in narcotics ever since 1996. I'm
8 currently assigned as asset forfeiture coordinator for
9 the sheriff's office.

10 Q. Now, on June 5th, 2009 were you in your position as
11 a narcotics investigator with sheriff's office?

12 A. Yes, sir.

13 Q. On that day did you have an occasion to assist SLED
14 Agent Sloan regarding a control delivery of a package of
15 marijuana?

16 A. Yes, sir.

17 Q. And can you please describe basically what your job
18 was during this investigation.

19 A. The operation was a controlled delivery of several
20 pounds of marijuana to an apartment complex in the City
21 of Anderson. My job was to surveil and make sure there
22 was no problems with the control delivery as well as
23 attempt to observe who was, you know, coming and going in
24 the operation, being involved in the operation.

25 Q. And when you were doing this surveillance were you

1 in a marked car or unmarked car?

2 A. I was in an unmarked car, sir.

3 Q. Were you in uniform?

4 A. No, sir.

5 Q. A Class-A uniform?

6 A. No, sir.

7 Q. At this point where did you go in this

8 investigation in Anderson?

9 A. My particular assignment was to surveil the Miracle
10 Mile side of Clemson Boulevard near a Citgo store and a
11 Break Time restaurant and bar-type thing. That was where
12 I was actually sitting to observe what was happening.

13 Q. And that's in the City Limits of Anderson?

14 A. Yes, sir.

15 Q. Now, while you were there what if anything did you
16 observe?

17 A. I observed -- at different times I observed Agent
18 Sloan in a vehicle, you know, moving around in the --
19 there was a couple of businesses up there, a lawnmower
20 and fabric store. There's several different places in
21 there. I observed a red Ford Ranger that was sitting in
22 the parking lot of a fabric store. I forget the name of
23 the fabric store but it used to be Plej's at one time.

24 As Agent Sloan would move to a different place you
25 could see there was two people in that vehicle moving

NEAL BRADLEY MCGUIRE (IC) - DIRECT BY MR. CAMPBELL 59

1 about. I observed that when Agent Sloan went to the
2 apartment complex, which was not in my view, the red or
3 maroon Ranger followed him down there and a few minutes
4 later the Ranger came back out and there was only one
5 subject in it at that time.

6 Another few minutes passed then the Ranger pulled
7 into a Citgo store at the corner of Clemson Boulevard,
8 and I believe that's Miracle Mile Road, and that's where
9 I was directed to apprehend, that the control delivery
10 had been completed and I was told to apprehend the
11 suspect in the Ranger.

12 Q. Now, were you by yourself while you're conducting
13 surveillance?

14 A. No, sir.

15 Q. Who else was with you?

16 A. It would be Special Agent Daryl Betsill, and we had
17 two marked uniforms, one of which being Sergeant Hamby,
18 and I'm not exactly sure which other officer in the
19 uniform was there.

20 Q. Now, when you went to the Citgo station what was
21 the purpose of you going there?

22 A. To apprehend the suspect driving the Ranger because
23 the control delivery had already been completed and it
24 was believed that that vehicle was involved in the -- you
25 know, the control deal.

1 Q. And is the person who was driving that vehicle in
2 the courtroom today?

3 A. Yes, sir.

4 Q. Please identify him.

5 A. It's the gentleman sitting to the right side of
6 Ms. Drawdy.

7 MR. CAMPBELL: Let the record reflect he's
8 referring to the defendant in this case, please.

9 BY MR. CAMPBELL:

10 Q. Now, at that point when you approached him what if
11 anything did you say to him?

12 A. I told him that we were the Anderson County
13 Sheriff's Office, that he was going to be detained and
14 under arrest for, you know, an incident that happened.
15 We did secure him at that location and move him and his
16 vehicle out to keep from being any other people involved
17 in it or any other possible counter surveillance being
18 able to detect that we apprehended him. So we moved him
19 back to Break Times, along with his vehicle.

20 Q. At that point did you speak to him?

21 A. Yes, sir. I basically told him who we were and
22 what we were doing, that I would explain the situation in
23 a few minutes. We sat at that location at Break Times
24 for a short time then we were directed to go ahead and go
25 down to the apartment complex where the controlled

NEAL BRADLEY MCGUIRE (IC) - DIRECT BY MR. CAMPBELL 61

1 delivery had occurred.

2 Q. And at what point -- did you finally get
3 identification who this individual was?

4 A. Yes, sir. When we moved everyone to the apartment
5 complex I was able to learn his identification. At that
6 point I gave him Miranda warnings and explained to him,
7 you know, why he was being detained or arrested and
8 that -- you know, I gave him his Miranda warnings.

9 Q. And when you say you gave him his Miranda warnings,
10 did you give them to him in English or in Spanish?

11 A. I asked him if he understood English and he said he
12 did. I gave him Miranda warnings and I felt like he
13 understood what the Miranda warnings were in English.

14 Q. And at the time you were giving him the Miranda
15 warnings did he appear to be under the influence of any
16 alcohol or drugs?

17 A. No, sir, he did not. He appeared to, you know,
18 comprehend what I was saying. He was, you know,
19 naturally extremely nervous and, you know, he made the
20 comment after the Miranda that he quoted he had to make
21 pee pee, which sort of made me think that to make sure
22 that he understood that he was under arrest that I may
23 ought to get a Hispanic interpreter to explain his
24 Miranda warnings in Spanish, and at that time I contacted
25 Captain Marsee.

1 Q. Now, when you were giving him his Miranda warning
2 in English did he appear to have any mental deficiencies
3 or anything prohibiting him from understanding what you
4 were telling him?

5 A. No, sir.

6 Q. And what exactly -- can you please just tell the
7 Court exactly what you said to him regarding his Miranda
8 warnings or rights?

9 A. You want me to read them?

10 Q. Yes, sir.

11 A. Okay. I told him that he was being detained and
12 under arrest. I told him that, You have the right to
13 remain silent. Anything you say can be used against you
14 in a court of law. You have a right to talk with an
15 attorney and have him or her present with you while you
16 are being questioned. If you cannot afford to hire an
17 attorney one will be appointed to represent you before
18 any questioning, if you wish. If you decide at any time
19 to exercise these rights and not answer any questions or
20 make any statements you understand -- do you understand
21 each of these rights I have explained to you? Having
22 these rights in mind do you wish to talk now?

23 After each of the six -- or each of the seven
24 statements that I made to him I would stop and make sure
25 that he understood.

NEAL BRADLEY MCGUIRE (IC) - DIRECT BY MR. CAMPBELL

63

1 Q. And to the best of your ability did -- in your
2 opinion, did he appear to understand what you were
3 saying?

4 A. Yes, sir.

5 THE COURT: And that's after the English version?

6 Q. Yes, sir.

7 A. Yes, sir.

8 Q. And at that point was he speaking to you in English
9 or Spanish?

10 A. He was speaking to me in English.

11 Q. And did he eventually agree to talk to you?

12 A. Yes, sir. It was not eventually it was immediately
13 that he wanted to start cooperating and he wanted to
14 start talking, and that's when I had to make sure that he
15 understood his Miranda.

16 Q. And what if anything did he tell you?

17 A. After the Miranda there, really, didn't get into a
18 lot of questioning until Captain Marsee arrived just a
19 few minutes later. He gave him Miranda in Spanish. I
20 was there along with special Agent Daryl Betsill. I
21 observed him and he kept -- if I remember correctly, he
22 kept interrupting Captain Marsee and telling him he
23 understood, he understood, and he was actually talking in
24 English when Captain Marsee was giving him Spanish
25 Miranda.

1 Q. And was he Mirandized any other time?

2 A. Yes, sir. Agent Scogins with the sheriff's office
3 was assisting the special agent that was in charge,
4 Sloan, and he had contacted Deputy Velez that works with
5 us and he arrived a short time after. He actually gave
6 him Miranda in Spanish and in English, and again he would
7 interrupt Deputy Velez and tell him that he understood,
8 he understood, in English, and that was pretty much the
9 whole time that Captain Marsee with the City of Anderson
10 gave him Miranda, as well as when Deputy Velez did.

11 Q. And all this was done in your presence?

12 A. Yes, sir.

13 Q. Now, at this point in time, if I get this
14 correctly, he had been Mirandized twice in English and
15 twice in Spanish?

16 A. Yes, sir.

17 Q. After he was given these Miranda rights to him did
18 he agree to talk to you all?

19 A. Yes, sir.

20 Q. And what if anything did he tell you regarding what
21 incident just took place?

22 A. A series of questions began naturally trying to
23 figure out where the marijuana came from, where it was
24 going, who all was involved. Some of the preliminary
25 questions was, you know, did you know what was in the

NEAL BRADLEY MCGUIRE (IC) - DIRECT BY MR. CAMPBELL

65

1 package, and, you know, he stated that he did. When he
2 said, Yes, and he dropped his head. I asked him, you
3 know, basically what was in that package, and he said,
4 Marijuana.

5 I asked him if he had -- you know, what he got for
6 receiving these packages, and he said he got \$500. And I
7 said, Is this your first time.

8 And he said, No, a week or so before he had gotten
9 another package.

10 And I said, Why are you doing this.

11 And he said, My work is slow. Because he was
12 installing some kind of satellites or something at that
13 time and he said work was slow and he had been approached
14 by someone that said they could pay him a certain amount
15 of money for receiving packages, and he said that was his
16 second package and that, you know, possibly more coming.

17 Q. And at this point was he willing to cooperate?

18 A. Yes, sir.

19 Q. And what if anything did you all do regarding that,
20 his willingness to cooperate?

21 A. At that point we were in contact with Agent Sloan
22 which was, you know, in another part of the investigation
23 along with other people trying to determine how we were
24 going to set the operation up to deliver this package to
25 the next person that was waiting on the package, and it

1 was determined it was in Greenville County, so we were --
2 you know, some of the agents were on the phone talking
3 with Greenville County. The SLED agents were doing
4 some -- you know, talking about how they were going to
5 conduct this operation. So we were putting a plan
6 together in a pretty good size -- in a hurry because time
7 was of essence.

8 Q. And why would you say time was of the essence?

9 A. Over the last 17 years as a narcotics investigator
10 I've been a part of at least 40 controlled deliveries and
11 usually from what my experience has shown me that the
12 person that's receiving that package is not the intended
13 person. That's usually someone that's just receiving
14 that package for, you know, a monetary amount. They are
15 getting paid for it but they are not where it's destined
16 for, and the longer that we wait in getting in touch with
17 that person the less chance we're going to have to
18 deliver it to where it's truly going to.

19 Q. So he was being monitored, also? He was being
20 monitored by people he's delivering the package to?

21 A. Yes, sir. Through my experience I found that if
22 you have someone going to receive a package they are in
23 constant contact or they'll have counter surveillance, or
24 they'll have both monitoring that person and that package
25 to make sure that law enforcement don't intercept that

1 package.

2 Q. Now, were these Miranda warnings that he was given
3 in Spanish and English, were they given orally or were
4 they reduced down to writing?

5 A. They were given orally.

6 Q. And why were they not put in writing?

7 A. When we were literally on the side of the road or
8 at that apartment complex in the parking lot and when he
9 decided he wanted to cooperate we did not carry him back
10 to our office and sit down with written Miranda. That
11 would have taken even a -- an extreme amount of time to
12 get that done, and our window of opportunity to continue
13 this operation was, you know, growing closer and closer.

14 Q. Now, when he was talking to you all and gave you
15 the information you just recited to the Court was he
16 forced or threatened to give this information?

17 A. No, sir.

18 Q. Was he coerced or any promises given to him or held
19 out to him in order to get him to speak to you all?

20 A. No, sir.

21 Q. At any point did he ask for an attorney?

22 A. No, sir.

23 Q. And do you feel to the best of your knowledge that
24 he understood what was told to him, his Miranda warnings
25 in English and Spanish?

1 A. Without a doubt in my mind he was given it by
2 three -- you know, three different people that he
3 understood his Miranda warnings, both in Spanish and in
4 English.

5 Q. And when he spoke to you was he speaking to you in
6 Spanish through one of your interpreters or was he
7 speaking to you in English?

8 A. He spoke with me in English and I debriefed the
9 defendant in English, totally, because I don't speak
10 Spanish.

11 Q. At any point did he ever stop, change his mind and
12 say he didn't want to speak to you all?

13 A. No, sir.

14 Q. Did you all attempt to deliver the package back to
15 Greenville?

16 A. We did attempt to. We were -- like I say, we were
17 running on a tight window of opportunity to continue
18 that, you know, operation. We did attempt to make a
19 phone conversation that was recorded to a subject in
20 Greenville. At that time we got no answer, and we had
21 decided we were not going to be able to do a controlled
22 delivery.

23 MR. CAMPBELL: Mr. McGuire, that's all questions I
24 have. Please answer any questions Ms. Drawdy may have.

25 THE COURT: All right, Ms. Drawdy.

1

2

4

6

8

15

19

22

23

25

1 stated he understood his Miranda warnings and stated
2 about that time he had to make pee pee. Investigator
3 McGuire asked him what that meant.

4 So according to your report you didn't understand
5 that universal phrase that he communicated to you, he
6 needed to make pee pee, correct?

7 A. Yes, ma'am. I understand what that means though.

8 Q. Now?

9 A. No, I did then, too.

10 Q. So that's a misrepresentation in your report?

11 A. No, ma'am. That's an investigative technique that
12 I use.

13 Q. Okay. This controlled buy, when you set up
14 controlled buys did this one involve audio, audio
15 equipment?

16 A. I'm sorry?

17 Q. Was there audio equipment involved in this
18 controlled buy?

19 A. In reference to the one that -- where the
20 controlled delivery happened?

21 Q. Miracle Mile?

22 A. Yes, ma'am.

23 Q. Was there?

24 A. Yes, ma'am.

25 Q. There was audio equipment?

- 1 A. Yes, ma'am.
- 2 Q. It was being used that day?
- 3 A. Yes, ma'am. I was not able to monitor it but, yes,
- 4 ma'am, there was audio equipment being used.
- 5 Q. And that audio equipment, it could have been used
- 6 to record the Miranda warnings, given to Mr. Olivares?
- 7 A. No, ma'am, it couldn't of because the audio
- 8 equipment was placed on the undercover agent which was
- 9 Agent Sloan, and he was not with me when I had detained
- 10 the defendant.
- 11 Q. But later on when Mr. Olivares helps you with this
- 12 reversal in Greenville he is wired with the audio, is he
- 13 not?
- 14 A. Yes, ma'am.
- 15 Q. And when he is wired with the audio you could have
- 16 recorded Miranda warnings to him, couldn't you?
- 17 A. At that point he had already received his Miranda
- 18 warnings and that equipment was not with me when he was
- 19 given the Miranda warnings the three times he was given
- 20 it to.
- 21 Q. But if what you say is true and he was given three
- 22 Miranda warnings out of an abundance of caution you could
- 23 have recorded one, couldn't you?
- 24 A. If I had a recorder in my presence I could have.
- 25 Q. Was there video surveillance at this controlled

1 buy?

2 A. Not to my knowledge.

3 Q. You were in an undercover car, your undercover car,
4 did it have a Miranda form in it?

5 A. No, ma'am.

6 Q. It did not. How many officers were involved in
7 this?

8 A. Approximately eight or nine.

9 Q. And none of the eight or nine had a Miranda warning
10 form?

11 A. Ma'am, I was with the defendant. I wasn't with the
12 other people. The people that was with me during the
13 actual -- when I took him out of the Citgo store was
14 myself, Agent Betsill, Sergeant Hamby, and there was one
15 other officer, and I did not ask them if they had a
16 written Miranda form. I did not.

17 Q. And I think you testified on direct that the reason
18 you didn't reduce it to writing, his Miranda warnings,
19 was because that would have taken an extreme amount of
20 time.

21 A. It would have taken an additional amount of time
22 because we would have had to went back to the office and
23 got it or either had to wait for someone to bring it
24 there, and with him saying he wanted to cooperate and
25 there was several other people that witnessed his Miranda

1 warnings, and we were all believing that he understood
2 what his Miranda was and he wanted to cooperate, that we
3 felt like that we would not be able to continue the
4 operation if we got that Miranda form or took the time
5 for it to be delivered. That was the reasoning for that.

6 MS. DRAWDY: Your Honor, may I approach the
7 witness?

8 THE COURT: Yes, ma'am.

9 (WHEREUPON, Defendant's Exhibit No. 1, a Document,
10 was marked for identification only.)

11 BY MS. DRAWDY:

12 Q. I'm going to show you what's been marked
13 Defendant's Exhibit 1 for identification purposes only.
14 Do you recognize it?

15 A. It's our form that we use for advising Miranda
16 warnings. Yes, ma'am.

17 Q. This is one that the Anderson County Sheriff's
18 Office uses?

19 A. Yes, ma'am.

20 Q. It's one you would use?

21 A. Yes, ma'am.

22 Q. It's one that could have been used in this
23 instance?

24 A. Yes, ma'am.

25 MS. DRAWDY: At that point I'd like to -- well,

1 I've got it marked as an exhibit.

2 THE COURT: You want to just go ahead and admit it?

3 MR. CAMPBELL: For the purpose of this hearing
4 only?

5 THE COURT: Right.

6 MS. DRAWDY: Thank you.

7 (WHEREUPON, Defendant's Exhibit 1, a Document, was
8 admitted into evidence for this hearing.)

9 BY MS. DRAWDY:

10 Q. It's only one page, correct?

11 A. Yes, ma'am.

12 Q. Just a few quick questions and then it would be
13 witnessed and signed?

14 A. Yes, ma'am. It takes approximately five, eight
15 minutes to do it. With no interruptions it takes five to
16 eight minutes to go through it and get it initialled and
17 talk about each one of them because when I give a written
18 Miranda I go through it verbally and written and I get
19 the person to read it back to me, if they are capable to.

20 Q. Moving on from the Miranda warnings themselves, the
21 statement you said he made, I think you said on direct
22 that Mr. Olivares said he knew there was marijuana in the
23 package. That's not in your incident report, is it?

24 A. I don't have my incident report. I mean --

25 Q. I have a copy, if you'd like.

- 1 A. Please.
- 2 (WHEREUPON, a document was handed to the witness.)
- 3 A. No, ma'am. I don't see it in the report.
- 4 Q. Thank you. I want to show you -- by the way, on
- 5 that report I handed up to you who is the officer you
- 6 claim read Mr. Olivares his Miranda rights in Spanish?
- 7 A. The first one was Captain Marsee with Anderson City
- 8 Police Department.
- 9 Q. That's what it has on that incident report?
- 10 A. Captain Marsee, yes, ma'am.
- 11 Q. Captain Marsee. All right.
- 12 MS. DRAWDY: I'd like to, Your Honor, if I may, go
- 13 ahead and have this marked as an exhibit, the incident
- 14 report.
- 15 THE COURT: Certainly.
- 16 Do you have an objection to that Mr. Campbell?
- 17 MR. CAMPBELL: No, Your Honor.
- 18 THE COURT: And all this is for purposes of this
- 19 hearing?
- 20 MR. CAMPBELL: That's correct.
- 21 MS. DRAWDY: Yes, Your Honor.
- 22 (WHEREUPON, Defendant's Exhibit No. 2, a Document,
- 23 was marked for identification only.)
- 24 BY MS. DRAWDY:
- 25 Q. I want to show you another incident report. Do you

1 recognize this incident report?

2 A. Yes, ma'am.

3 Q. Okay. Is it the same incident report?

4 A. It's the same case number. There is a reason there
5 was some confusion, you know, with this and I think I can
6 explain that. I hope I can.

7 Q. Well, let me just ask you. In this report, is this
8 report yours as well?

9 A. Yes, ma'am.

10 Q. And this report at the bottom though it says it's
11 by an Officer Meder (ph)?

12 A. Yes, ma'am.

13 Q. And in this report by Officer Meder, that's indeed
14 your report, it says Deputy Velez gave Mr. Olivares his
15 Miranda warnings, correct?

16 A. Yes, ma'am.

17 Q. And just to be fair, this is not an amended report
18 this is a quasi duplicate of the one we've already
19 entered?

20 A. This is -- what had happened is when I had written
21 the report there's a drop box that you enter the person's
22 name in what they call the administrative side of it and
23 you put the first initial or the last initial in and then
24 continue on. What happened was I put -- you know, my
25 name is McGuire and Meders is next to McGuire, and I hit

1 the send button on it and it just put his name in there.
2 I'm the administrator on the top of P. D. Manager we use
3 so I can approve reports or write reports, and what had
4 happened is I'd put his name instead of mine in there,
5 and it's by accident.

6 Q. And that may explain indeed what happen at the
7 bottom, Meders, McGuire, but the reports are the same,
8 are they not, and the only difference is that one reads a
9 few minutes later we moved Mr. Olivares to near the
10 apartment where Captain Marsee of Anderson City spoke
11 with Mr. Olivares in Spanish, and the other one reads the
12 same thing but substitutes Deputy Velez. So one of these
13 reports is false.

14 A. No, ma'am, neither one of them are false. It's
15 just when -- you know, it's not a duplicated it's when I
16 went back and -- you know, I had to rewrite it because I
17 couldn't find it in my name. So I rewrote the report.
18 So both of these are my reports and both of them are
19 actual but I didn't put the same names in there, which
20 both of those officers did give Miranda.

21 Q. It's your testimony that both of those officers,
22 Deputy Velez and Captain Marsee, gave Miranda to
23 Mr. Olivares in Spanish at the exact same time, at the
24 exact same location?

25 A. Not at the exact same time, within a few minutes

1 apart because Captain Marsee arrived and within five or
2 ten minutes Mr. Velez arrived and then he had been asked
3 to come over by Agent Scogins. I didn't realize he had
4 asked him but when he got there we went ahead and let him
5 do it as well, in English and in Spanish, but all three
6 of us gave him Miranda.

7 Q. You testified earlier that you didn't take the time
8 to have my client sign a simple one-page waiver because
9 it was -- because of the time that it would take, and
10 this was an extreme situation.

11 A. Yes, ma'am.

12 Q. Yet the investigators took the time, did they not,
13 to get the guy where they found the dope to sign a
14 consent to search the apartment, correct?

15 A. I can't testify to that. I wasn't at that
16 particular part of the investigation, so I don't know.

17 Q. But you never just up and left and took off with
18 Mr. Olivares to Greenville, did you?

19 A. I'm --

20 Q. Just immediately by yourself?

21 A. No, ma'am. Within just a short period of time we
22 determined that we needed to start going toward
23 Greenville. So we were not there very long.

24 Q. With the statement itself or with what you have in
25 your two different incident reports that my client said,

1 or you say he said, did you -- you didn't get any of that
2 reduced to writing, did you?

3 A. He did not make any written statements to me, no,
4 ma'am.

5 Q. And even though as you testified you had two
6 Spanish speaking officers with you, you did not -- you
7 chose not to reduce any statement to writing, correct?
8 At that time or any time?

9 A. At that time I explained the reason for the urgency
10 of continuing the drug deal, and I did not later go back
11 and re-interview him or take anything. It was actually a
12 SLED case that we were assisting them.

13 Q. All right. You did say to him if you cooperate it
14 will be to your benefit, or something along those lines,
15 didn't you?

16 A. No, ma'am. That's not what I say.

17 Q. But you did ask him if he wanted to cooperate?

18 A. Yes, ma'am.

19 Q. Detective McGuire, you testified, I think, on
20 direct that it took maybe five to ten minutes for one of
21 the Spanish speaking officers to get there?

22 A. From the time we arrested the defendant to the time
23 Captain Marsee got there was, you know, five to ten
24 minutes. A very short time, maybe another five
25 additional minutes, maybe not even that long Officer

1 Velez came in and --

2 Q. And by your own testimony it takes about, you,
3 eight minutes to fill out the Miranda warnings form?

4 A. If I had one, yes, ma'am.

5 Q. You also had -- did you have access to audio in
6 your vehicle?

7 A. No, ma'am, I didn't.

8 Q. You had no radio, no way to radio or phone call
9 anybody?

10 A. Yes, ma'am. I had phone service and I had a radio,
11 yes, ma'am.

12 Q. In that incident report where you said you made a
13 mistake on the first one and just typed in the other
14 Spanish speaking officer's name on the second one, why
15 didn't you have both names on both reports?

16 A. Ma'am, I couldn't -- I really don't know why that
17 happened. I'll be honest, I just don't know.

18 Q. And how long did you sit at Break Times after you
19 arrested Mr. Olivares? How long were you sitting there
20 waiting to go into the apartment?

21 A. Approximately three to five minutes. The only
22 thing we did, when we arrested the defendant we moved him
23 out of the parking lot to avoid any other detection of
24 counter surveillance. We sat across the street for a
25 couple of moments, up to five, and then we moved to the

1 apartment.

2 MS. DRAWDY: Beg the Court's indulgence.

3 (PAUSE)

4 MS. DRAWDY: Detective McGuire, thank you. I have
5 no more questions.

6 THE COURT: Any redirect?

7 MR. CAMPBELL: No, Your Honor.

8 THE COURT: You may step down.

9 THE WITNESS: Step out?

10 THE COURT: You can stay in.

11 Any objection to him staying in since he's
12 testified?

13 MS. DRAWDY: No.

14 THE COURT: Until we start the trial, if we go
15 forward.

16 MS. DRAWDY: Right. Yes, that would be it. And
17 can Mr. Campbell and I approach real quick?

18 THE COURT: Yes, ma'am.

19 MS. DRAWDY: I don't need to. There's no jury
20 here. Yes, I was going to ask for an instruction that
21 since they have testified and they are witnesses again
22 today and tomorrow about the same stuff that the
23 witnesses not be able to talk to the -- as if their
24 testimony is open and not be able to brief with the
25 solicitor and talk anymore about their case.

1 THE COURT: That's appropriate.

2 Mr. McGuire, do you understand that -- you've been
3 through this process before. This is precursory to the
4 trial. You can't testify -- you're not finished
5 testifying yet so you can't speak with anybody else about
6 what you testified to today; do you understand that?

7 OFFICER MCGUIRE: Yes, sir.

8 THE COURT: All right. Thank you, sir.

9 You can call your next witness.

10 MR. CAMPBELL: Your Honor, the State calls Kevin
11 Marsee to the stand.

12 KEVIN MARSEE, after having been duly sworn,
13 testified as follows:

14 THE CLERK OF COURT: If you would have a seat on
15 the witness stand and state your name and spell your last
16 name for the record, please.

17 THE WITNESS: My name is Kevin Marsee. First name
18 is spelled K-e-v-i-n. Last name is spelled M-a-r-s-e-e.

19 DIRECT EXAMINATION

20 BY MR. CAMPBELL:

21 Q. Mr. Marsee, where are you employed?

22 A. I'm employed as a captain with the Anderson Police
23 Department.

24 Q. How long you have you been in law enforcement?

25 A. This February will be 28 years.

1 Q. And as part of your law enforcement career have you
2 ever dealt with narcotics?

3 A. I was assigned to narcotics division for 21 years,
4 and I spent 13 years as commander of that unit.

5 Q. And during your law enforcement career have you
6 ever had the opportunity to come into contact with
7 Hispanic speaking people?

8 A. Yes, I have. I worked many cases that involved
9 Hispanic suspects.

10 Q. Now, do you have the ability to speak in Spanish?

11 A. I have been specially trained to be able to use a
12 certain amount of the Spanish vocabulary to communicate
13 and to give commands in Spanish.

14 Q. And talking now just for your formal education,
15 because I'm assuming English is your first language.

16 A. English is my first language.

17 Q. Now, then with your formal education to the Spanish
18 language what type of training and experience have you
19 had?

20 A. I was trained by the federal law enforcement
21 training center out of Artesia, New Mexico. I was
22 trained in what is called tactical Spanish, that is to
23 give commands. I was also trained by the Atlanta HIDTA,
24 is the High Intensity Drug Trafficking Area. I was
25 placed through what they call Spanish immersion, which is

1 the same class that they put the boarder patrol through
2 to learn how to speak Spanish, and I was also trained in
3 Meridian, Mississippi through a command Spanish class
4 that I attended there as well. So all in all I've got
5 about eight weeks total training in Spanish.

6 Q. Now, besides your formal education is there any
7 other reason why you know the Spanish language?

8 A. My wife is Hispanic from the Country of Colombia.

9 Q. And is she fluent in Spanish?

10 A. She is.

11 Q. And do you speak to her in Spanish on a regular
12 basis?

13 A. Seventy-five percent, yes.

14 Q. Now, in the past have you been called upon by other
15 law enforcement agencies to speak to Hispanic suspects?

16 A. Yes. I've been called by the sheriff's office,
17 Oconee County. I worked in West Virginia as a trainer
18 for U. S. Attorney's Office to teach command Spanish. So
19 I've assisted numerous agencies with cases involving
20 Hispanic suspects.

21 Q. And when you deal with Hispanic suspects have you
22 had the opportunity to Mirandize them in Spanish?

23 A. Yes, I have.

24 Q. Now, on June 5th -- well, approximately how many
25 times have you done that? Do you know?

1 A. Mirandize, it's more than a dozen times.

2 Q. Now, on June 5th, 2009, did you have an occasion to
3 speak with Mr. Jose Olivares?

4 A. Yes.

5 Q. Is he in the courtroom today?

6 A. Yes, he is.

7 Q. Can you please identify him, sir.

8 A. Seated at the table beside the defense attorney.

9 Q. And how did you get involved or come about speaking
10 to him?

11 A. I was called by Brad McGuire. I was on light duty
12 at the time. I had a broken wrist. I was driving
13 around, I received a call from Brad that said that they
14 were doing some type of drug deal at Cobblestone
15 Apartments and that he had an individual there that I
16 needed to Mirandize in Spanish. He said that he had
17 spoken to the guy in English but he wanted me to
18 Mirandize him in Spanish.

19 Q. And did you go to this location?

20 A. I did.

21 Q. And how long did it take you to get there; do you
22 recall?

23 A. Not even five or ten minutes. It wasn't long.

24 Q. And when you got there where exactly did you meet
25 Mr. Olivares?

1 A. It was in the parking lot of Cobblestone
2 Apartments. The defendant was in the backseat of a
3 marked patrol car.

4 Q. And when you approached yourself, you identified
5 yourself?

6 A. I did.

7 Q. And at that point did you speak to him?

8 A. Yes, I did. I told him I was a police officer and
9 there to speak to him.

10 Q. Did you speak to him in Spanish or in English?

11 A. In Spanish.

12 Q. And did he reply back to you in Spanish or English?

13 A. English. He said, Okay.

14 Q. And at this point did he appear to be under the
15 influence of any alcohol or drugs that prohibited his
16 ability to talk to you or comprehend what you were saying
17 to him?

18 A. No, he did not.

19 Q. At this point, did you Mirandize him or did you get
20 any information from him before you Mirandized him?

21 A. No. I opened the back of the car and I told him I
22 needed to explain his rights to him, that he had rights
23 in this country. I have a piece of paper in my wallet
24 that I always carry. I pulled it out, I read his rights
25 to him. And I asked him if he understood, and he cut me

1 off two or three times during the time I was reading him
2 his rights and said, It's okay. I understand. But he
3 was saying that in English.

4 But I continued to read the rights to him and
5 afterwards I told him that he did not need to talk to the
6 police officers without a lawyer.

7 Q. And why would you tell him he didn't need to talk
8 to them?

9 A. Because I just wanted to make sure that he
10 understood each and every word that I said. It's been my
11 experience that a lot of Hispanic people maybe don't have
12 beyond a third or fourth grade educational level. So I
13 wanted to make sure that he understood in plain language
14 that he did not need to speak with them without a lawyer.

15 Q. And that's on a level all people can understand.
16 Did he appear to understand his rights?

17 A. He did. He was speaking to me in English.

18 Q. And at any point did you force him or threaten him
19 or coerce him to speak?

20 A. No, I did not.

21 Q. Were any promises held out to him or any benefits
22 said he would get if he would cooperate with law
23 enforcement?

24 A. No. No promises were made.

25 Q. And at any point did he ask for an attorney when he

1 was speaking?

2 A. No, he did not.

3 Q. At that point did he speak to law enforcement?

4 A. At that time I turned him back over to Brad and he
5 wanted to speak with Brad, and I hung around for about
6 five or ten minutes and I left the area.

7 Q. And when he was speaking back to you was it Spanish
8 or English?

9 A. English.

10 Q. After that part, giving him the Miranda, did you
11 have any other role or part to play regarding this
12 investigation?

13 A. No, I did not.

14 MR. CAMPBELL: I have no further questions. Please
15 answer any questions Ms. Drawdy may have.

16 CROSS-EXAMINATION

17 BY MS. DRAWDY:

18 Q. Captain Marsee, did you do an incident report with
19 this?

20 A. No, I did not.

21 Q. Not a supplemental?

22 A. No.

23 Q. When you were called to the scene did you go in a
24 marked car?

25 A. No. I was in an unmarked car.

- 1 Q. Did you have -- you work with the city, right?
- 2 A. Yes.
- 3 Q. You had Miranda warning forms, too?
- 4 A. Yes.
- 5 Q. You didn't have him sign one?
- 6 A. No, I did not.
- 7 Q. You were called in because you speak Spanish?
- 8 A. Yes.
- 9 Q. You didn't get anything recorded with audio?
- 10 A. No.
- 11 Q. You didn't get anything recorded with video?
- 12 A. No.
- 13 Q. You didn't get anything checked off on a Miranda
- 14 form?
- 15 A. Yeah.
- 16 Q. And you didn't stick around to write down whatever
- 17 Mr. Olivares may or may not have said, get it reduced to
- 18 writing, did you?
- 19 A. No, I did not.
- 20 Q. You didn't even hear any statement, did you?
- 21 A. No, I did not.
- 22 Q. But you were there somewhere, I think you testified
- 23 within five to ten minute and you hung around for about
- 24 ten minutes?
- 25 A. Correct. I was on light duty. There was nothing

1 that I could do. My job and responsibility at that time
2 was to read Miranda to the defendant, but he was
3 communicating in English and there really was no need for
4 me to be involved any further, nor could I because I was
5 on light duty.

6 Q. So were you there when a Deputy Velez was there?

7 A. Deputy Velez arrived later, to my recollection, but
8 I don't recall seeing him at the scene when I was there.

9 MS. DRAWDY: Beg the Court's indulgence one moment.

10 (PAUSE)

11 MS. DRAWDY: Thank you. I have no more questions.

12 THE COURT: Any redirect?

13 MR. CAMPBELL: No, Your Honor.

14 THE COURT: All right, sir. You may step down.

15 And, Officer Marsee, I just need to remind you that
16 although you are finished with this aspect of your
17 testimony your testimony is not over, so you cannot speak
18 with anybody about your testimony today or tomorrow,
19 whatever the case may be.

20 Any other witnesses?

21 MR. CAMPBELL: I have one more, Your Honor.

22 THE COURT: Okay, sir.

23 MR. CAMPBELL: Your Honor, the State calls Jonathan
24 Velez.

25 JONATHAN VELEZ, after having been duly

1 sworn, testified as follows:

2 THE CLERK OF COURT: If you would have a seat on
3 the witness stand. State your name and spell your last
4 name for the record, please.

5 THE WITNESS: My name is Jonathan Velez. Velez,
6 V-e-l-e-z. I work for Anderson County Sheriff's Office.

7 DIRECT EXAMINATION

8 BY MR. CAMPBELL:

9 Q. Detective Velez, you're employed by Anderson County
10 Sheriff's Office?

11 A. That's correct.

12 Q. How long have you been in law enforcement?

13 A. I'm going on four years.

14 Q. And how long have you been employed with the
15 Anderson County Sheriff's Office?

16 A. Approximately three years.

17 Q. Now, I'll just get right to the point. You have
18 the ability to speak Spanish; is that correct?

19 A. That's correct.

20 Q. And why is that?

21 A. I was born in Puerto Rico. I lived there at an
22 early age of my life, and I've grown up in a Hispanic
23 home.

24 Q. And was the Spanish language your first language?

25 A. It was, yes.

1 Q. And you have the ability to read and write in
2 Spanish?

3 A. Yes. I read and I'm pretty bad at writing it, but,
4 yes, I can.

5 Q. And you can communicate and hold a conversation in
6 Spanish?

7 A. That's correct.

8 Q. And do you have the ability to translate from
9 English to Spanish, and Spanish to English?

10 A. That's correct.

11 Q. Now, on June 5th, 2009, did you have an occasion to
12 come into contact with Mr. Jose Olivares?

13 A. I did.

14 Q. And where was that?

15 A. That was on Miracle Mile Drive assisting SLED with
16 their investigation.

17 Q. And how did you come into respond or go to this
18 incident location?

19 A. I was notified by Mr. Rusty Scrogins or Scogins. I
20 can't pronounce his last name, but he notified me asking
21 to assist in the matter due to the fact that the subject
22 was Hispanic.

23 Q. And the fact you speak fluent Spanish have you been
24 called upon in the past by deputies of the sheriff's
25 office to come speak to any type of Hispanic subject or

- 1 suspect they may have?
- 2 A. That's correct.
- 3 Q. And about how many times has that happened in your
- 4 career?
- 5 A. Countless, multiple agencies; highway patrol, SLED,
- 6 Anderson County, Pickens County, Pickens City, Liberty.
- 7 Multiple agencies.
- 8 Q. So a lot of the agencies around here use you for
- 9 your ability to speak Spanish and talk to --
- 10 A. That's correct. Yes, sir.
- 11 Q. And on June 5th, 2009, you did meet Mr. Olivares?
- 12 A. I did, yes, sir.
- 13 Q. Is he in the courtroom today?
- 14 A. Yes, sir. He's sitting over there.
- 15 Q. Sitting next to the defense?
- 16 A. In the white T-shirt, yes, sir. The white shirt.
- 17 Q. The white shirt?
- 18 A. Yes, sir. I'm sorry. In the burgundy shirt. My
- 19 apologies.
- 20 Q. All right. When you met him where was he?
- 21 A. He was in the vehicle that the narcotics agencies
- 22 had using their stakeout.
- 23 Q. And to your knowledge, at this time was he have
- 24 under arrest?
- 25 A. I didn't know. I wasn't involved in the

1 investigation aspect of it. I was just making sure that
2 Mr. Jose understand what was going on, for the most part.

3 Q. And when you approached him were you in a uniform
4 like you're wearing today?

5 A. That's correct.

6 Q. Were you in a marked patrol car?

7 A. I was.

8 Q. And what if anything did you talk to him about?

9 A. Pretty much I Mirandized him, A, and also any
10 conversations that were being spoken upon him if he had
11 any tough time understanding he would direct any
12 questions towards me and I would advise him.

13 Q. And how did you advise him of his Miranda warnings?

14 A. I read it to him.

15 Q. Do you have the card on you? Is that what you do?

16 A. I do. I do have it right here.

17 Q. Now, do you read it to him in Spanish and also in
18 English?

19 A. Both, yes, sir.

20 Q. And what did you do in this case?

21 A. I read to him in Spanish and Jose understood
22 everything I was saying in Spanish and actually started
23 answering me in English.

24 Q. And at that point when he started to speak to you
25 in English what did you do?

- 1 A. He just conversed and any questions he had -- if he
2 had any trouble understanding anything in English he
3 would actually just ask me and I would tell him in
4 Spanish.
- 5 Q. And did you also Mirandize him in English?
- 6 A. I did.
- 7 Q. And what was the purpose of that if you already
8 Mirandized him in Spanish?
- 9 A. It's just -- it's out of habit. I Mirandize people
10 in English and in Spanish if they are Hispanic.
- 11 Q. That's just part of your procedure you do with
12 every suspect?
- 13 A. Correct.
- 14 Q. Subject or suspect?
- 15 A. Correct.
- 16 Q. And in this case when you were speaking to him did
17 he appear to be under the influence of any alcohol or
18 drugs?
- 19 A. No, sir.
- 20 Q. And was he forced, or threatened, or given any
21 promises in order to get him to speak to law enforcement?
- 22 A. No, sir.
- 23 Q. Was any benefit held out to him in order to get him
24 to speak?
- 25 A. No, sir.

1 Q. And based upon your firsthand observations did he
2 appear willing to cooperate?

3 A. Very much so. Yes, sir.

4 Q. At any point when you were questioning him did he
5 stop and ask for an attorney?

6 A. No, sir.

7 Q. Did he ever ask for an attorney to be present?

8 A. No, sir.

9 Q. Now, the warnings that you gave were only given to
10 him orally; is that correct?

11 A. That's correct.

12 Q. And at any point did you reduce these to writing?

13 A. No, sir.

14 Q. Now, after that did you have any other part in this
15 case?

16 A. Just standing by and assisting him with any
17 questions that he actually had. Pretty much just making
18 him feel comfortable during the duration of the
19 investigation.

20 Q. At any point did he ever ask you any questions that
21 he didn't understand or communicate to you?

22 A. Nothing involving the case. I mean, it was just,
23 you know, if somebody was joking around he would just
24 say, What was the joke, he didn't understand or
25 something. He was actually very cooperative to me, and

1 he conversed.

2 Q. And did you feel that his English, his ability to
3 comprehend and speak the English language, what is your
4 opinion on his ability to do that?

5 A. With most of the Hispanics I deal with in my
6 day-to-day work he spoke very good English.

7 MR. CAMPBELL: I have no further questions, Deputy
8 Velez. Please answer any questions Ms. Drawdy may have.

9 CROSS-EXAMINATION

10 BY MS. DRAWDY:

11 Q. Deputy Velez, how long did you shoot the breeze
12 with my client?

13 A. A couple hours, I would say.

14 Q. A couple hours? And you were specifically called
15 over -- your testimony is to Mirandize my client?

16 A. Yes.

17 Q. Are you familiar with the Miranda form, Miranda
18 warning form? Does your agency have one?

19 A. Correct.

20 Q. How long is it?

21 A. The form?

22 Q. Uh-huh.

23 A. It's one page, I believe.

24 Q. One page. And have you had them filled out with --
25 have you filled them out before?

1 A. Yes, I have.

2 Q. And it takes you how long to fill one of those out?

3 A. Depending. On this circumstance it probably would
4 have took a little bit longer, a couple minutes, about
5 ten minutes.

6 Q. Now, if I have this right, you were -- Mr. Olivares
7 -- did you do an incident report or a supplemental
8 report?

9 A. No, ma'am.

10 Q. So you didn't write down the content of any of this
11 conversation --

12 A. No, ma'am.

13 Q. -- that you had with Mr. Olivares at all?

14 A. No.

15 Q. Anything Mr. Olivares said, did you reduce it to
16 any kind of written instrument?

17 A. No.

18 Q. Did anyone ask you or did you think to write down
19 what Mr. Olivares was doing, to writing? Did you think
20 to reduce it to writing?

21 A. No, ma'am. There was a lot going on at the time,
22 due to the case.

23 Q. Were you privy to any of the -- or I should say you
24 weren't privy, I think is how I take it from your direct
25 testimony. You weren't privy to any of the conversations

1 Mr. Olivares had with Detective McGuire?

2 A. Restate the question. I'm making sure I want to
3 understand what you are saying.

4 Q. You weren't a participant in the conversations --

5 A. I wasn't investigating. I was just standing by and
6 if they would have to say something to him he did not
7 understand in English I would just pretty much translate
8 it for him.

9 Q. So you are unaware -- okay. That's all I need to
10 ask.

11 MS. DRAWDY: Beg the Court's indulgence, Your
12 Honor.

13 (PAUSE)

14 BY MS. DRAWDY:

15 Q. Where did you have this two-hour conversation with
16 Mr. Olivares?

17 A. It varied from different locations due to the fact
18 of the course of the investigation.

19 Q. Where did it start?

20 A. It started in Miracle Mile Drive at the apartment
21 complex in back of a van.

22 Q. Okay. And the bulk of it was --

23 A. My conversations with him, just family life. It
24 did not pertain --

25 Q. But where did the bulk of it -- I mean, were you on

1 the road to Greenville?

2 A. Yeah, pretty much.

3 Q. And were you aware that they were trying to do a
4 controlled buy in Greenville?

5 A. I was not -- you know, I was not involved in all
6 that matter. My, strictly job, was to speak with him.

7 Q. Were you aware that there was some audio equipment?

8 A. No.

9 Q. Were you there when they wired up Mr. Olivares?

10 A. I was, yes. Yes. When he was in the red pick-up
11 truck, yes. That was already in Greenville, I believe,
12 at that time.

13 MS. DRAWDY: I think that's it. Beg the Court's
14 indulgence just one moment.

15 (PAUSE)

16 MS. DRAWDY: Thank you.

17 THE COURT: Redirect?

18 MR. CAMPBELL: Just a couple questions.

19 REDIRECT EXAMINATION

20 BY MR. CAMPBELL:

21 Q. Deputy Velez, when you said -- you were indicating
22 that you were involved in this case for about two hours.
23 Does that include from the time you gave Miranda that you
24 go with him to Greenville?

25 A. It was a little over a year ago. I mean, I

1 couldn't give you a full timetable. That was just a
2 guesstimation from the time I arrived. I was actually
3 working the road and I was on my way to court at the time
4 and when I arrived he was already detained, and I believe
5 they spoke with him but they wanted to make sure he
6 understood everything due to the fact he's Hispanic.

7 Q. So the officers doing the investigation asked you
8 to go with them to Greenville?

9 A. Correct.

10 Q. And that's what you're also referring to, you're
11 including that time frame; is that correct?

12 A. That's correct.

13 Q. And is there anything, any department policy that
14 says you have to have Miranda written down?

15 A. No. No.

16 MR. CAMPBELL: I have no further questions.

17 MS. DRAWDY: Nothing further. Thank you.

18 THE COURT: All right. Officer Velez, you may step
19 down. I'll remind you that you are not to still --
20 continue not to speak to any other officers about your
21 testimony today.

22 OFFICER VELEZ: Yes, sir.

23 THE COURT: Thank you, sir.

24 MR. CAMPBELL: Your Honor, can this witness be
25 excused? I don't need him any more for today. He has

1 actually court at three o'clock.

2 THE COURT: Any objection to that?

3 MS. DRAWDY: None, Your Honor.

4 THE COURT: Certainly. You may be excused.

5 Anything further?

6 MR. CAMPBELL: Not for this hearing, Your Honor.

7 MS. DRAWDY: We call Jose Olivares.

8 THE COURT: Come around, please, sir. I assume
9 this is for the limited purpose of the Jackson Denno
10 hearing without waiving his Fifth Amendment protection;
11 is that correct?

12 MS. DRAWDY: You assumed correctly. Yes, Your
13 Honor.

14 JOSE OLIVARES, after having been duly sworn,
15 testified through his interpreter, as follows:

16 THE CLERK OF COURT: Have a seat. State your name
17 and spell your last name for the record.

18 THE INTERPRETER: My name is Jose Olivares, J-o-s-e
19 O-l-v-i-a-r-e-s.

20 DIRECT EXAMINATION

21 BY MS. DRAWDY:

22 Q. Mr. Olivares, back in June 2009, I'm going to start
23 you at the Citgo station, were you at a Citgo station?
24 What happened when you came out of the Citgo station?

25 A. When I got out of the gas station I was headed

JOSE OLIVARES (IC) - DIRECT BY MS. DRAWDY

103

1 toward my car and I met two officials that approached me.
2 One of them showed me an I. D. and he requested that I
3 give him permission to search my vehicle, my truck, I
4 said, Go ahead. He got in. He reached in and pulled out
5 a paper and he -- this is him.

6 Q. What happened next?

7 A. After that I was handcuffed, sit me in a patrol car
8 and they took me across the avenue. One of the officers
9 told me, Tell me where is it going and whose is it, this
10 box?

11 I asked him, What box?

12 One of them told me, If you help me we will help
13 you, okay?

14 Then I said, Okay.

15 Q. Mr. Olivares, had you been at that point Mirandized
16 or read your rights?

17 A. No, because everything happened real fast.

18 Q. Were you read your rights at any time?

19 A. No.

20 Q. Did you sign a Miranda warning form?

21 A. No.

22 Q. Did you give a written statement?

23 A. No.

24 Q. Did you have someone else write a statement on your
25 behalf?

1 A. No.

2 Q. And after you heard the statement, If you help us

3 we'll help you, did you help?

4 A. Yes.

5 Q. Thank you, Mr. Olivares.

6 A. You're welcome.

7 MS. DRAWDY: One moment, please.

8 BY MS. DRAWDY:

9 Q. And, Mr. Olivares, you are in a court of law and
10 you're to be honest. I know you have an interpreter here
11 but do you speak some English?

12 A. Yes.

13 MS. DRAWDY: Thank you. Now answer any questions
14 Mr. Campbell may have.

15 CROSS-EXAMINATION

16 BY MR. CAMPBELL:

17 Q. Mr. Olivares, how old are you?

18 A. Thirty-nine years.

19 Q. You were born in Mexico; is that right?

20 A. Yes, sir.

21 Q. And in fact you are not in the United States
22 legally, are you?

23 MS. DRAWDY: Objection.

24 THE COURT: Sustained. Not relevant. Go ahead.

25 BY MR. CAMPBELL:

1 Q. How long have you been in the United States?

2 A. Fifteen years.

3 Q. And during that 15 years has it always been that
4 you've lived in Greenville?

5 A. Yes.

6 Q. It is my understanding your employment is
7 installing satellites?

8 A. Yes.

9 Q. How long have you had that job?

10 A. Since '99.

11 Q. And when you install satellites it is strictly for
12 Hispanic speaking people?

13 A. No.

14 Q. The majority of it being English speaking people,
15 would it not?

16 A. That they speak English, no.

17 Q. I couldn't hear. I'm sorry.

18 A. You asked me if the majority are English speaking.

19 No.

20 Q. Now, in the 15 years you were here, you've been in
21 the United States, you understand and can speak the
22 English language?

23 A. Until the time that I was arrested I would say I'd
24 speak about 35 percent. I learn about 30 percent more
25 after the time that I spend in jail, but there's lots of

1 words that I do not understand.

2 Q. But you can speak English when the occasion calls
3 for it?

4 A. Kind of. I just try to make myself understood.

5 Q. Now, on this package that you were picking up, you
6 didn't actually get the package, did you?

7 A. No.

8 Q. Who sent you to pick up the package?

9 A. Nobody send me. Somebody asked me if I could do a
10 favor to someone.

11 Q. And the favor you are saying you were being paid
12 \$500 to do this favor; is that right?

13 MS. DRAWDY: Your Honor, I would object.

14 THE COURT: Sustained. The question is whether or
15 not he gave a voluntarily statement after being
16 Mirandized, voluntary under the totality of the
17 circumstances and that's not relevant to this inquiry.

18 MR. CAMPBELL: I'll leave it alone.

19 BY MR. CAMPBELL:

20 Q. Mr. Olivares, you were arrested on June 5th, 2009;
21 is that right?

22 A. Yes.

23 Q. And you were arrested at the Citgo gas station?

24 A. Yes.

25 Q. And at the gas station you spoke to two

1 individuals; is that right?

2 A. Two agents, yes.

3 Q. And your testimony to this Court is that neither
4 one of them Mirandized you?

5 A. None of them.

6 Q. And do you remember seeing this man right here,
7 Agent McGuire?

8 A. Yes, sir.

9 Q. And do you remember seeing Captain Marsee that was
10 here?

11 A. The one that speaks Spanish?

12 Q. The one before that.

13 A. No.

14 Q. How about the individual that speaks Spanish?

15 A. Yes, sir.

16 Q. And you are saying to this Court that he also did
17 not give you Miranda warnings?

18 A. No. Mostly what we did among us, basically what we
19 ask among Hispanics; where are you from, how old are you,
20 how did you get here. We establish a conversation like
21 if we were two good old friends in Spanish. In reality
22 he didn't even know why they arrested me. He never asked
23 me either.

24 Q. So the first time you heard you were Mirandized is
25 when these three officers came into court today and told

1 you they Mirandized you?

2 A. Ain't nobody ever read anything.

3 Q. Had you met prior to June 5th, 2009, had you met
4 these officers before?

5 A. No.

6 Q. You had no contact or knowledge of them whatsoever?

7 A. No.

8 Q. You know a reason why they would come in here and
9 say -- what you are saying is they lied about them giving
10 you Miranda?

11 MS. DRAWDY: Objection.

12 THE COURT: Sustained. This calls for speculation.

13 BY MR. CAMPBELL:

14 Q. Now, Mr. Olivares, you also went to Greenville with
15 these officers, did you not?

16 A. Yes.

17 Q. And you attempted to deliver this package to the
18 person who sent you to get the package, did you not?

19 MS. DRAWDY: Outside the scope, Your Honor. I
20 would object.

21 THE COURT: Rephrase the question. What was the
22 question?

23 MR. CAMPBELL: That he attempted to help deliver
24 this package to the person who sent him to get the
25 package. It goes to voluntariness and cooperation.

1 THE COURT: I'll allow it.

2 A. Nobody send me, nobody ordered me. I came to
3 Anderson to do a job. When I arrived in Anderson
4 somebody asked me if I could please go pick up a package.
5 I agreed but I thought it would be a package like this
6 (indicated). I was surprised when I saw a big box.

7 Q. How did the agents know to go to Greenville?

8 A. I told them.

9 Q. Do you remember speaking to Detective Michael
10 Sloan? Yes?

11 A. Yes.

12 Q. And you recall you spoke to him in English, did you
13 not? You have to say it in English.

14 A. Yes.

15 Q. Did you normally work in Anderson?

16 A. No.

17 Q. So the only reason why you were in Anderson was to
18 pick up this package?

19 MS. DRAWDY: Objection, Your Honor.

20 THE COURT: I'll sustain that.

21 MR. CAMPBELL: I have no further questions.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MS. DRAWDY:

25 Q. Mr. Olivares --

1 MS. DRAWDY: Beg the Court's indulgence.

2 (PAUSE)

3 MS. DRAWDY: I have no questions of Mr. Olivares.
4 Thank you.

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

6 All right. Is there anything further?

7 MS. DRAWDY: Nothing further, Your Honor.

8 THE COURT: Okay. I'll be glad to hear from you,
9 Mr. Campbell, with regard to the admissibility of the
10 statements.

11 MR. CAMPBELL: Yes, Your Honor. Your Honor, the
12 main issue whether -- in the Jackson Denno hearing is
13 whether the confession or the statement given was
14 voluntarily and freely given.

15 In this case the State has produced witnesses who
16 repeatedly said he was given Miranda not once, twice but
17 three times. Twice in English, twice in Spanish even
18 though he's now denying he ever spoke to these officers.
19 Because of his cooperation and what he told them they
20 would not have known where to go in Greenville and set up
21 a controlled delivery to his person that sent him unless
22 he cooperated and freely and voluntarily spoke with them.

23 In this case, basically on his testimony, because
24 he gets up there and says, I had no knowledge, I just
25 went along with the flow, it comes down to the

1 believability of the officers, whether they did their job
2 or not, or the defendant, whether his version is correct.

3 In this case you're dealing with three different
4 agencies. You dealt with SLED, you dealt with the
5 sheriff's office, you dealt with Anderson City Police
6 Officers, and out of an abundance of caution, even though
7 he was speaking in English and conversed with them in
8 English, when the time suits him, he freely and
9 voluntarily spoke to them.

10 As the officer stated, he would interrupt them and
11 try to interject his points. Marsee said that. Velez
12 said that. And so I feel in this case that his
13 statements that he gave law enforcement were freely and
14 voluntarily given. There's nothing that states that
15 officers have to put these in writing.

16 And as the testimony was stated, because these
17 reversals are so time sensitive they didn't do a written
18 Miranda; however, he was given to by three different
19 officers, two different agencies, twice in English, and
20 twice in Spanish, and he freely cooperated. And as a
21 result, we feel that his statement should be allowed in
22 in the court and in the trial of this case, Your Honor.

23 THE COURT: Thank you, sir.

24 Ms. Drawdy?

25 MS. DRAWDY: Your Honor, we have a number of

1 problems with the statement, statements. I'll begin with
2 Detective McGuire. Number one, there are two identical
3 incident reports that have been admitted for the purpose
4 of this hearing and they are both dated the same day.
5 They are identical, with the exception of one is signed
6 by Detective McGuire and one is signed by some Meders
7 guy, and then one says Deputy Velez at this time, one
8 says Captain Marsee both gave those Miranda warnings in
9 Spanish. That didn't happen at the same time because
10 then we had Deputy Marsee -- or Captain Marsee take the
11 stand and say he did not recall Velez being there at the
12 same time.

13 There are serious problems with the one page quasi
14 identical incident reports submitted by Detective
15 McGuire. Detective McGuire on the one hand has
16 Mr. Olivares Mirandized in both English and Spanish out
17 of an abundance of caution but we are way too busy to
18 reduce this to writing on this in depth one-page checkoff
19 sheet that by his own testimony Detective McGuire, he's
20 there about five or ten minutes. He had time to do this
21 eight-minute report it takes for him to fill one of these
22 out with Mr. Olivares.

23 We heard from Captain Marsee. He would have been
24 able to bring one. It took him five to ten minutes to
25 get over there and then all he did, Detective Marsee, was

1 Mirandized, he says, in Spanish, my client, and then he
2 left. He didn't hear anything but he says he did this,
3 but he didn't have him sign anything. And if that's all
4 he was there for he certainly could have reduced that to
5 writing. This is just a Miranda.

6 Officer Velez comes in, and I have to point this
7 out to the Court because I'm sure the Court caught it, he
8 misidentifies my client. So he didn't identify even
9 correctly Mr. Olivares. Yet he somehow remembers in 2009
10 he did give Miranda warnings, so he said he gave Miranda
11 warnings in 2009. He testified he's with Mr. Olivares
12 for about two hours. So there now clearly is time to
13 reduce it to this checkoff one-page thing if we are
14 indeed going with an abundance of caution.

15 I have serious concerns when an officer
16 misidentifies a defendant in court if they can truly
17 remember whether or not they orally issued these Miranda
18 warnings. There is a reason they were reduced to a
19 one-page piece of paper, so that we'd absolutely be able
20 to prove that in court. It is very difficult from my
21 position to prove a negative, okay. That's why, even
22 though it might not be policy, as Mr. Campbell pointed
23 out, they have them. They have them to use.

24 All the officers, I believe Detective McGuire
25 testified he had a radio, had a phone, could have called

1 for one of these Miranda forms. Anyone could have
2 brought one. Certainly Deputy Velez had plenty of time
3 to get one. That's with the Miranda.

4 The statements that they say and why we have a
5 twofold problem with this is that some of the officers
6 say that my client said, Yes, I picked up the package.

7 The other interview notes, because nothing has been
8 reduced to writing, Detective McGuire's notes say package
9 of marijuana. That's a critical difference, whether he
10 was picking up just a package or picking up a package of
11 marijuana. At the preliminary hearing I think they even
12 referred to it as a package of drugs or marijuana, and
13 that's what's critical about this case, what did he
14 actually say, if he said anything, and they have nothing
15 reduced to writing.

16 Captain Marsee, Deputy Velez, neither of them
17 reduced their role in this to an incident report.
18 There's been no supplemental, nothing given to us.

19 And I have to say, Deputy Velez, his testimony that
20 he talked about mundane family things with my client,
21 Marsee testified he had no involvement, and it is
22 Detective McGuire who says in his incident report, which
23 has been submitted, he says he asked our client, and this
24 would be on the voluntariness of the statement, if indeed
25 one is given, that do you want to help yourself, would

1 you like to cooperate. You know, or I think the report
2 actually reads if he wanted to tell the truth and
3 cooperate. It just defies common sense that anyone
4 would, if they do indeed cooperate, not do that in
5 exchange for something, it not be for a promise, I agree
6 to help because.

7 So on one hand we don't believe -- and I have some
8 case law I'd like to pass up. I've got a copy for
9 Mr. Campbell. Our position that there is a heavy burden
10 rests upon the State -- may I approach, Your Honor.

11 THE COURT: Yes, you may.

12 MS. DRAWDY: A heavy burden rests with the State to
13 indeed prove, and it is by preponderance, but it's a
14 heavy burden. My client's liberty is at stake over this
15 statement and a heavy burden rests with them to prove
16 this.

17 THE COURT: Well, at this stage it's just a
18 preponderance of the evidence, you would agree?

19 MS. DRAWDY: It is a preponderance but nevertheless
20 that's a heavy burden, not to be taken lightly. But I
21 would agree that's the technical standard.

22 I think the two cases I passed up which show how
23 serious the Court takes this are State V. Pendergrass and
24 State V. Parker. I think I would just summarize, Your
25 Honor, that the gist here is that they say they did

1 everything out of an abundance of caution, nothing has
2 been corroborated here.

3 They did put the three witnesses up but there's not
4 a scintilla of a written sheet done, not a written
5 statement done. They had audio out there. On the
6 reversal they had my client wired with the audio. They
7 could have recorded it. They could have done anything a
8 number of times and yet they did not.

9 So again, we would just argue, number one, Miranda
10 wasn't issued; number two, my client's statements should
11 not be admitted. And I guess what we have here, Your
12 Honor, is -- and then we challenge the voluntariness of
13 it because we believe he was promised, and we think that
14 that came out and it's evident at the hearing. Thank
15 you, Your Honor.

16 THE COURT: Thank you.

17 As both you know and under the standard at this
18 time of Jackson V. Denno that all the State has to do is
19 standard of the burden of proof is by preponderance of
20 the evidence. They have to prove Miranda was given, that
21 there is a statement, that under the totality of the
22 circumstances that the statement was voluntary.

23 And if you look at State vs. Miller there is a
24 litany of various factors, all of which don't have to
25 apply but that you can look at which would include

1 coercion from the part of the police from the standpoint
2 of the defendant, the length of the interrogation, the
3 location of the interrogation, the maturity of the
4 defendant, the education of the defendant, the physical
5 condition and mental health of the defendant, the
6 defendant's experience, any misrepresentation on behalf
7 of a police or law enforcement, threats of violence of
8 promise or leniency that would be applicable to this
9 matter.

10 Now, I agree with Ms. Drawdy that there is a
11 question as to whether or not the defendant was
12 Mirandized in the first instance and also a question
13 whether there's a statement in the second instance but
14 that being said, considered from the totality of all the
15 circumstances I think that there is sufficient evidence
16 in the record where the State has met its burden of proof
17 by a preponderance of the evidence that there was in fact
18 Miranda given, that there was in fact a statement made
19 and that from -- you know, there's no evidence of
20 coercion. The length of the interrogation was really
21 fairly minimal. The location was on site or in the
22 police car, which it may have some coercion, but the
23 defendant was certainly mature.

24 I don't know anything about his education but he
25 was certainly experienced enough having been in the

1 United States for 15 years and having installed satellite
2 systems for various folks around the Upstate such that he
3 would speak with them in English.

4 I think there is a question as to whether or not he
5 understands English or not. That being said, although
6 some of the language used that was testified to may be
7 unfortunate I don't think it rises to the promise of
8 leniency and there's certainly no evidence of any threat
9 of violence towards this gentleman. So I think it's
10 admissible and will be up to the jury to determine by
11 preponderance -- I mean, beyond a reasonable doubt
12 whether the statement was made and whether it was
13 voluntary, okay.

14 So that being said, let's take a five minute break.
15 You all ready to go ahead and do opening statements?
16 Let's go ahead and do that and then we'll see where we
17 are as to continuing on with the testimony.

18 MR. CAMPBELL: Court's please. I would like to
19 just do the openings today. My truck is in the shop and
20 I need to get it so I have a ride to get here tomorrow,
21 if that's okay, for planing purposes, because it will
22 probably be after four by the time we get done and the
23 first witness is going to be a long witness. I need to
24 get it before the shop closes.

25 THE COURT: I understand. I'll take you to your

1 shop 'if you need to. We'll call for you. Mr. Allen over
2 there will be glad to call them down there and get it
3 done but let's go as far as we go, is what I'm saying,
4 but we'll make sure you get there, okay?

5 All right. We'll take a break. The witnesses are
6 again sequestered.

7 (WHEREUPON, a brief recess was taken.)

8 THE COURT: Mr. Campbell, the State ready to
9 proceed?

10 MR. CAMPBELL: The State is ready, Your Honor.

11 THE COURT: Ms. Drawdy, is the defense ready to
12 proceed?

13 MS. DRAWDY: Yes, Your Honor.

14 THE COURT: Very good.

15 Would you bring the jury in, please.

16 (WHEREUPON, the jury enters the courtroom at
17 approximately 3:45 p.m.)

18 THE COURT: Mr. Burns, thank you. Ladies and
19 gentlemen of the jury, I know that you've been there
20 being very patient waiting for us to finish up some of
21 the hearings we're having before trial getting started.
22 Thank you for your patience. But at this point I'm going
23 to ask our clerk of court to swear you in and then we'll
24 begin with opening statements in this matter.

25 (WHEREUPON, the jury was given their oath.)

1 THE COURT: Ladies and gentlemen, as you were
2 informed, this is the case of the State vs. Jose Manual
3 Olivares Romero. He is charged in this matter of
4 trafficking in marijuana between more than ten pounds but
5 less than a hundred pounds.

6 Let me tell you now that the fact this gentleman
7 was arrested and charged and indicted is not evidence of
8 guilt. It doesn't raise a presumption of guilt. It is
9 simply the formal mechanisms by which the State of South
10 Carolina brings charges before 12 folks such as
11 yourselves for a determination of guilt, okay.

12 You shall have no inference or presumption by the
13 fact that this gentleman was arrested, charged and
14 indicted for the charge before him. At all time, the
15 burden is on the State of South Carolina to prove each
16 and every element of the charge against Mr. Romero beyond
17 a reasonable doubt.

18 That being said, I don't know if any of you have
19 ever been involved in the criminal justice system before.
20 I would suspect, however, that each and every one of you
21 have watched some type of a show or a movie which
22 purports to show the criminal justice system or a trial.

23 Let me tell you that -- dispel you of any notions
24 you may have. This is not entertainment. What you'll
25 see on TV or in the movies is not like what you'll see

1 here in this courtroom. Trials are often very slow.
2 They are often very deliberate and they are methodical,
3 and they have to be. They are not entertainment but a
4 fundamental part of our democracy. What we are here
5 about today is a search for the truth because we are
6 interested in making sure that justice is done, and that
7 is your job.

8 Now, the plaintiff -- the State and the defense in
9 this matter are attorneys and advocates for their client.
10 They have a duty under the canons that lawyers swear to
11 when they become lawyers to zealously represent their
12 clients, their positions in the case. But that being
13 said, they are also officers of this Court; so therefore,
14 you should expect both these attorneys to be
15 professional, all these attorneys to be professional, to
16 be competent and to be ethical in their dealings with one
17 another but also their dealings with this Court.

18 Likewise, you have taken an oath just now that
19 you'd be fair and impartial and attempt to reach a true
20 and impartial verdict in this matter. That means that
21 the State and the defense, as well as the parties all
22 involved, have a right to expect that you will be fair,
23 that you will be impartial, and that you will be ethical
24 in your dealings in this matter.

25 If you recall, one of the things I told you earlier

1 is that you are not to speak with one another or anyone
2 else in any form or fashion throughout this trial.
3 That's a method of being ethical.

4 Now, what I'm telling you now is not the law that's
5 applicable to this case. At the end of this trial I will
6 charge you on the law that you must apply and I will let
7 you know in no uncertain terms when you are to begin your
8 deliberations. Until such time, no communication with
9 one another or anyone else. We want you to have open
10 minds until all the evidence has been presented and that
11 the only evidence that you consider is the information
12 that is brought forth in this courtroom by way of sworn
13 testimony and exhibits which are admitted into evidence.

14 Now, we are not going to take any testimony today.
15 Unfortunately, as things have a tendency to do in court,
16 we went over on some of the hearings that we had. We're
17 going to do opening statements. What that means,
18 Mr. Burns and ladies and gentlemen of the jury, I want
19 you to consider tomorrow when we begin the actual
20 testimony whether or not you want to have notepads. You
21 are free to take notes but you don't have to.

22 And if you would make that wish known, Mr. Burns,
23 to the bailiff in the morning. If anybody wants to have
24 pads and a pen to take notes we'll make those available
25 so you'll have them there. And one can take them and

1 others don't have to. It's just that this also, it is
2 there.

3 But let me again reiterate this. In this case the
4 defendant in this case has pled not guilty. That means
5 that the burden is on the State of South Carolina to
6 prove each and every element of the charge of trafficking
7 in marijuana between 10 and less than 100 pounds beyond a
8 reasonable doubt. They have to prove each and every
9 element beyond a reasonable doubt, and I'll tell you what
10 those elements are.

11 Now, some people, our jurors typically don't know
12 that the purpose for juries are to be fact finders. What
13 we say in the vernacular of the law is that you are the
14 sole judges of the facts. That means that if at any time
15 I make a suggestion, or comment, a gesture, or anything
16 that indicates to you that I have a preference how you
17 are supposed to find facts in this matter I'm going to
18 ask and I'm going to instruct you to disregard that.

19 I can assure you that I do not have a preference.
20 I learned about this case and the facts about it today.
21 Up until today I didn't know anything anymore than you
22 did about this case. I view my job as somewhat akin to
23 being a referee. I make sure that the process is
24 followed, that the principles of law are adhered to and
25 hopefully at the end of the day that justice was done

1 because people had a fair and impartial trial, and that's
2 all I'm concerned about.

3 Now, that leads you to the question, how do I find
4 facts? You are to determine the facts and from the
5 testimony and the evidence only in this courtroom. You
6 are not to be influenced by any outside opinions or
7 comments that you made inadvertently hear during the
8 course of this trial.

9 It is up to you to draw what inferences from the
10 facts that you hear and the testimony you hear in this
11 courtroom and apply it to the facts that are admitted
12 into evidence, but during the course of this trial it is
13 especially diligent that each and every one of you pay
14 close attention and do your job diligently.

15 It will be soon enough that you're being called
16 upon the make those findings of fact, and if you pay
17 close attention throughout this case, and it's not going
18 to be a very long case, you will be able to perform your
19 duties in an amicable and proper fashion.

20 Now, the law that makes you the finders of fact
21 makes me the instructor of the law, which means at the
22 end of this case when I tell you what the law is that you
23 have to apply it. You may not like it, you may disagree
24 with it, you may think that the law should be something
25 other than as I tell you. The only problem is I am the

1 judge of the law and you have to accept the law as I give
2 it to you.

3 Now, how you apply the facts and how you find the
4 facts, and the inference you draw by the facts that are
5 established into evidence and apply it to the law is up
6 to you, but you must accept the law as I give it to you.
7 I can't tell you how to find facts and you can't tell me
8 what the law is. We have mutually exclusive jobs in that
9 way.

10 Now, I'm not going to go back over with you about
11 deliberations before time or you are being told to get
12 into your deliberations, however one other thing I
13 haven't told you. Our Chief Justice, Jean Toal, of the
14 South Carolina Supreme Court has instructed all trial
15 lawyers -- trial judges, excuse me, to instruct our
16 juries that they are not to read, listen to, hear
17 anything about this case. What that simply means is if
18 it happens to be something about this case on TV or radio
19 or in the newspaper you are not to look at it, read it or
20 listen to it. Cut it off.

21 In addition, you are not allowed to engage in what
22 is called independent jury research. You are not to be
23 able to look up information about any attorney in here,
24 our clerk of court, me, anything on the internet or
25 through some other source. At the end of this case once

1 you perform your duties you can look up to your hearts
2 desire.

3 You are not to also look up about any issue that
4 you hear testified to in this case or you are not to look
5 up any issue that you think would be helpful. Again, the
6 whole idea behind that is we want you to be able to make
7 your decision solely from the evidence and the testimony
8 that's presented here in the courtroom uninfluenced by
9 any other outside factors.

10 Now, in just a minute the State is going to make
11 what is called an opening statement. They will tell you
12 what they think the issues and the facts in this case
13 are, the law is. The defendant may but is not required
14 to make an opening statement. One of the fundamental
15 parts of our constitution is that no one can be required
16 to testify against themselves. So he may or may not want
17 to have his attorney do an opening statement.

18 What these attorneys tell you, or the State tells
19 you, or whatever the case may be, is not evidence. What
20 these attorneys say is designed to help you understand
21 the case, what the issues are in this case, but it is not
22 evidence.

23 Again, and I'm going to tell you this until you get
24 blue in the face, the only evidence which is proper
25 evidence for consideration is the sworn testimony you

1 hear from this stand and the exhibits which I allow into
2 evidence in this matter. That is the only evidence. Any
3 statements and arguments of counsel is not evidence.
4 It's just designed to help you understand where you are.

5 Now, in any case in Circuit Court you have five
6 parts. You have an opening statement, you have the
7 presentation of the evidence, you then have the closing
8 arguments of the attorneys, you have the charge on the
9 law from me to you, and then you have your deliberations.
10 I tell you that so you'll generally know where you are at
11 any given time during the course of this trial.

12 Now, again, the burden of proof in South Carolina
13 is beyond a reasonable doubt. That burden is on the
14 State and remains on the State throughout the course of
15 this trial.

16 At this point what I'm going to do before we get
17 into opening statements, I'm going to let you step back
18 into your jury room in case I said something that I
19 should not have said or I neglected to tell you something
20 that I should have told you. It just won't take two
21 minutes. So, Mr. Burns, if you'd take the jury back
22 we'll get you right back for opening statements.

23 (WHEREUPON, the jury leaves the courtroom at
24 approximately 3:58 p.m.)

25 THE COURT: Any additions or exceptions from the

1 State?

2 MR. CAMPBELL: No, Your Honor.

3 THE COURT: From the defense?

4 MS. DRAWDY: None, Your Honor. Thank you.

5 THE COURT: Very good. All right. One other thing
6 I am going to tell them is I'm going to tell Mr. Burns if
7 any time they want to communicate with me, because I
8 don't think I told them that, just make a note, then
9 we'll let you go ahead and start.

10 You plan on doing opening?

11 MS. DRAWDY: A short one.

12 THE COURT: All right. Would you bring the jury
13 back out.

14 (WHEREUPON, the jury enters the courtroom at
15 approximately 4:02 p.m.)

16 THE COURT: Mr. Burns, before we get started with
17 statements or statement, if at any time the jury needs to
18 communicate with the Court or bailiff I'm going to ask
19 that you just write down the communication, sign your
20 name to it and date it, pass it to one of our bailiffs
21 and we'll deal with that. Okay, sir? Thank you very
22 much.

23 The State ready to proceed?

24 MR. CAMPBELL: Yes, Your Honor. Please the Court.

25 Ms. Drawdy.

1 Ladies and gentlemen of the jury, you know you read
2 about it in the newspapers, you watch TV news, you hear
3 about it. There's TV shows such as boarder wars that you
4 watch. What am I talking about? I'm talking about the
5 shadowy world of illegal drug trade, in this specific
6 case marijuana.

7 Now, you say to yourself, Well, that doesn't happen
8 here. It doesn't go on in my community here in Anderson.
9 But in this trial you're going to hear how it does go on
10 in your community, how drugs are brought into Anderson,
11 that it occurs in broad daylight out in the open at
12 places you shop at, places you are familiar at --
13 familiar with.

14 This case began on June 4th, 2009. SLED Agent
15 Michael Sloan here, sitting at the table with me, had
16 received a tip that a package was coming through UPS,
17 United Parcel Service.

18 On June 5th, he came to Anderson, and that package
19 had been brought from Spartanburg to Anderson. They had
20 a dog run by it, the dog alerted. They got a search
21 warrant. They opened the package up. There was three
22 big bundles about 10 pounds a piece. It turned out to be
23 marijuana. And this package was being shipped from Jesus
24 Ochoa in McAllen, Texas to [REDACTED]
25 [REDACTED] here in Anderson. It's right behind

1 Hancock Fabrics, the post office, Skin's Hot Dogs, that
2 apartment complex right there.

3 After they determined it was marijuana they set out
4 to do what they call a controlled delivery, in which in
5 this case Agent Sloan got a uniform of a UPS driver and
6 he tried to attempt to deliver this package two times.
7 The first time around 10:00, 10:15, no success. The
8 second time about 11:00, 11:15, no success.

9 And while they were sitting around, him and all the
10 other officers who were helping out, trying to figure out
11 what to do next, they got a call. And based upon that
12 information they received about there being another UPS
13 driver got flagged down by a Hispanic male driving a red
14 pick-up truck inquiring about a package going to
15 apartment [REDACTED] at this point they went and got,
16 actually, a van and got his surveillance team, which is
17 dealing with Anderson County narcotics officers, and they
18 set up at different points, from the Citgo station right
19 there on Clemson Boulevard back to the apartments.

20 Agent Sloan at that time then went over to where
21 Anderson Outdoor Power is and they attempted to make some
22 fake deliveries of boxes. What I mean by fake delivery,
23 they weren't intended for anybody but just so the person
24 that he's being seen by, in this case the defendant,
25 whose official name is Jose Manuel Olivares Romero, and

1 that's what you'll see on the indictment, we're all
2 calling him Jose Olivares, and I think the Judge
3 addressed that when we were calling this case for trial,
4 well, he was in that red pick-up truck doing counter
5 surveillance watching Agent Sloan deliver these boxes.
6 And as Agent Sloan went toward the apartment complex he
7 would move with him in his vehicle.

8 Now, he had someone with him, a Concepcion Ramirez.
9 Agent Sloan at that time went up to Apartment [REDACTED]
10 [REDACTED], delivered the package,
11 which you will see the box, it was a Delta planer box,
12 and left. And as he was leaving he could see the other
13 individual coming down to retrieve that package.

14 What the testimony will show is Mr. Olivares, who
15 was driving that red truck, at that point went to the
16 Citgo gas station, and when he came out he was met by two
17 officers and was placed under arrest. At that point,
18 they spoke to him. He agreed to cooperate, and what they
19 did was they try to call another -- a reversal, meaning
20 they were going to take this package and try to send it
21 to the person who sent him to pick it up.

22 See, he is not the main player. He is what you'd
23 call a courier. The dope is coming from Texas to a
24 person in Greenville but it's being shipped to Anderson,
25 and he was the one to go pick it up from Anderson and

1 bring it back to Greenville. As a result of this -- and
2 the reversal didn't happen. They got wind of it and were
3 gone.

4 Now, what he has been charged with, this indictment
5 shows, is trafficking in marijuana, he's a participant in
6 it, between 10 and 100 pounds. And His Honor stated I
7 have the burden of proof in proving the elements in this
8 case, and I contend to you that the elements of
9 trafficking in marijuana is this, that the substance,
10 one, is indeed marijuana; two, that the amount is between
11 10 pounds and 100 pounds; and three, that the defendant
12 had possession, either constructive or actual possession,
13 or he attempted to come into possession. And that's what
14 this case is about. He attempted. He never got his
15 hands on that box, and reason being is he was arrested
16 before he could do that.

17 So when you hear the elements what we are saying is
18 he attempted or he conspired with other individuals to
19 bring this marijuana in, to pick it up and deliver it,
20 and he attempted to become in actual or constructive
21 possession, and we must prove this to you beyond a
22 reasonable doubt. To do that you're going to hear the
23 officers who were involved in this case. You will have
24 an opportunity to judge them, hear their testimony,
25 determine their credibility and pass judgment.

1 And at the end of this case I'll have an
2 opportunity to speak to you again, and at that point you
3 will have an opportunity to render a verdict, and the
4 verdict in this case is a verdict that justice demands
5 and the truth dictates, and we're sure you'll pay
6 attention and you'll do the right thing. And I thank you
7 for your time and listening to us.

8 THE COURT: Ms. Drawdy, do you wish to make an
9 opening statement?

10 MS. DRAWDY: Please, Your Honor, yes. May it
11 please the Court.

12 Mr. Campbell.

13 Who knew what, when? My name is Sarah Drawdy and I
14 represent Mr. Jose Olivares, and with me is my associate,
15 Hunter Blouin. We'll be here today and tomorrow.

16 Who knew what, when? You just heard from the State
17 some of the elements, some of the elements they have to
18 prove, and that's what I'm asking you to do throughout
19 this trial, listen to everything, everything the State
20 presents because what Mr. Campbell did not tell you at
21 the beginning, and again the one who's going to tell you
22 about the law at the end is going to be the Judge, Judge
23 McIntosh, but I want to take the time right now to tell
24 you they must prove someone knowingly attempted,
25 conspired, got.

1 All I'm going to ask you to do throughout this
2 trial is listen. Witnesses are going to be presented up
3 there. Listen to everything they say. Look for all the
4 elements, and then at the end of this trial let us know
5 your verdict.

6 Like Judge Macintosh said, this isn't going to be
7 an exceptionally long trial but I promise you it's an
8 extremely important trial. It's not only important to
9 Mr. Olivares but it's important to us because this is our
10 system, and in this Country, in this State, in this
11 County the State must prove Mr. Olivares guilty of every
12 element, not some, not the ones they like but some beyond
13 a reasonable doubt.

14 I appreciate your time. I want to thank you for
15 being here today, and I want to thank you for your time
16 throughout this trial.

17 THE COURT: Mr. Burns, ladies and gentlemen of the
18 jury, I made the executive decision to break court at
19 this point. The reason being, we were going to have some
20 witness that could be rather lengthy. I'd rather you be
21 able to hear them from beginning to end instead of
22 breaking it up. So therefore, we're going to break down
23 this afternoon.

24 I'll remind you again not to speak amongst
25 yourselves about the case or with anyone else. I'm going

1 to resume court at nine o'clock in the morning. Tomorrow
2 morning we will start at nine o'clock, okay? So if you'd
3 be in your jury room at 8:55. I'll excuse you for the
4 evening. Thank you very much.

5 (WHEREUPON, the jury leaves the courtroom at
6 approximately 4:13 p.m.)

7 THE COURT: Anything further from the State before
8 we break for the afternoon?

9 MR. CAMPBELL: No, Your Honor.

10 THE COURT: From the defense?

11 MS. DRAWDY: No, Your Honor. Thank you.

12 THE COURT: Okay. Mr. Romero, as I told you
13 earlier, you are out on the same terms, conditions of
14 your existing bond for this charge. We will begin trial
15 tomorrow morning at nine a.m. sharp, and if you do not
16 appear the trial will go forward in your absence. I'm
17 sure you will be here, but see you in the morning.

18 (WHEREUPON, the trial of this case was recessed for
19 the day.)

20 Tuesday, August 23, 2011

21 (WHEREUPON, Court's Exhibit No. 3, a Note from the
22 Jury, was marked and made a part of the record.)

23 THE COURT: There was an issue raised, I think by
24 Ms. Drawdy, concerning the exhibits. My law clerk said
25 that she mentioned to him or questioned whether or not

1 those exhibits that I believe Rame introduced yesterday
2 were already admitted for purposes of the case in chief.
3 I mean, that's what I thought he asked.

4 MR. CAMPBELL: It was just from my understanding
5 for purposes limited just to the Jackson V. Denno
6 hearing. They are not actually admitted into the trial
7 of this case, at this point in time.

8 THE COURT: Okay. I just want to make sure
9 everybody is on the same page.

10 MR. CAMPBELL: We're on the same page.

11 THE COURT: Does that address the issue you were
12 raising?

13 MS. DRAWDY: It was, and I cannot hear a thing. So
14 it's my understanding, and I think Mr. Campbell agrees
15 with me, I think I did two exhibits yesterday but they
16 were just for the purposes of the Jackson V. Denno
17 hearing.

18 THE COURT: All exhibits yesterday were just for
19 that purpose.

20 MS. DRAWDY: Thank you.

21 THE COURT: Anything further from the State before
22 we proceed?

23 MR. CAMPBELL: No, Your Honor.

24 THE COURT: From the defense?

25 MS. DRAWDY: No, Your Honor. Thank you.

1 THE COURT: Everybody ready to roll?

2 MR. CAMPBELL: I think so.

3 THE COURT: Good. Bring the jury in.

4 (WHEREUPON, the jury enters the courtroom at
5 approximately 9:03 a.m.)

6 THE COURT: Good morning, Mr. Burns, ladies and
7 gentlemen of the jury. Did you have a nice evening?

8 THE FOREMAN: Yes, sir.

9 THE COURT: Is everybody ready to proceed?

10 THE FOREMAN: Yes, sir, we are.

11 THE COURT: Do you need anything at this point? If
12 you want water or anything you're more than welcome to
13 have it in here. My bailiffs get mad at me but you're
14 welcome to have it.

15 THE FOREMAN: I think we're fine.

16 THE COURT: Okay. Very good.

17 Mr. Campbell, the State ready to proceed?

18 MR. CAMPBELL: Yes, Your Honor. Your Honor, may
19 she and I approach just for one second?

20 THE COURT: Yes, sir.

21 (WHEREUPON, a bench conference was had.)

22 MR. CAMPBELL: Please the Court?

23 THE COURT: All right. Mr. Campbell, you have a
24 stipulation that you and Ms. Drawdy have entered into; is
25 that correct?

1 MR. CAMPBELL: Yes, Your Honor. Ms. Drawdy and I
2 had spoke yesterday regarding the admission of the drugs
3 into evidence in this case, which is going to be actually
4 State's Exhibit Number 18, in lieu of calling the chemist
5 and all the chain witnesses regarding the chain of
6 custody of the narcotics.

7 SLED chemist, Carmen Tucker, has analyzed it and
8 determined it's marijuana and that the weight on it was
9 13,754 grams or 485 grams [sic], which equates to 30.34
10 pounds. In such, in lieu of doing this we have both
11 agreed to stipulate and just enter the report in as
12 evidence.

13 THE COURT: Is that correct, Ms. Drawdy?

14 MS. DRAWDY: Yes, Your Honor, and I believe the
15 extent of the stipulation was that these were drugs but
16 my client is not admitting that they were his in any way.
17 We are just stipulating to the fact that 30.34 pounds of
18 marijuana was recovered.

19 MR. CAMPBELL: Yes, sir.

20 THE COURT: Ladies and gentlemen of the jury, what
21 that simply means is part of the State's case in chief is
22 they have to establish that the evidence is in fact
23 marijuana and they have to establish the weight and the
24 parties and attorneys in lieu of having to bring a bunch
25 of people down here from SLED to testify as to what it is

1 have stipulated that in fact the defense -- State's
2 Exhibit Number 18, you all correct me if I'm misstating
3 this, please, is in fact marijuana, that it weighs over
4 30 pounds, whatever the exact weight is, in lieu of
5 having to have that testimony, and so you are to take
6 that fact as established.

7 Now, further, while the defendant is acknowledging
8 this is marijuana weighing the stated weight he is
9 continuing to deny that it is his marijuana.

10 Is that correct, Ms. Drawdy?

11 MS. DRAWDY: That is, Your Honor. Thank you.

12 THE COURT: You ready to proceed?

13 MR. CAMPBELL: Yes, sir.

14 THE COURT: Go ahead.

15 MR. CAMPBELL: Please the Court. Your Honor, the
16 State calls Michael Sloan to the stand.

17 MICHAEL SLOAN, after having been duly sworn,
18 testified as follows:

19 THE CLERK OF COURT: If you would take the stand
20 and state your name for the record and spell your last
21 name for the reporter, please.

22 THE WITNESS: Michael Sloan, S-l-o-a-n.

23 DIRECT EXAMINATION

24 BY MR. CAMPBELL:

25 Q. Mr. Sloan, where are you currently employed?

1 A. South Carolina Law Enforcement Division or better
2 known as SLED.

3 Q. And how long have you been employed with SLED?

4 A. I've been employed with SLED, next month will be
5 four years.

6 Q. So on June 5th, 2009 you were working with SLED?

7 A. That's correct.

8 Q. Now, is that all your law enforcement experience?

9 A. No, sir. I'm currently attached to the U. S.
10 Marshal's Fugitive Task Force. Before SLED I was a
11 detective at the sheriff's office, and before I was a
12 detective I worked the road as a deputy.

13 Q. When you say the sheriff's office what agency are
14 you referring to?

15 A. Anderson County Sheriff's Office.

16 Q. And how long have you been in law enforcement then?

17 A. Going on ten years.

18 Q. And as part of your job with SLED what are your
19 current duties or present duties?

20 A. My present duties are I'm attached to the U. S.
21 Marshal's Task Force. At the time of this case I was a
22 criminal investigator with SLED.

23 Q. And as part of your job as a criminal investigator
24 what type of area do you cover?

25 A. We cover the entire Upstate. We go from Abbeville

1 to York County, all the counties in between, Anderson,
2 Oconee, Pickens, Spartanburg, Greenville, Cherokee. I
3 know I've leaving -- Newberry. I'm leaving some out, but
4 the Upstate counties.

5 Q. And as part of your duties as a SLED agent you have
6 jurisdiction in every county?

7 A. That's correct.

8 Q. Now, on what date did you first become involved in
9 this case?

10 A. On June 4th, 2009.

11 Q. And how were you brought into this case?

12 A. Investigator Cantrell of the Spartanburg County
13 Sheriff's Office contacted myself about a suspicious
14 package that they had at the UPS hub station in
15 Spartanburg, and he contacted me, told he it was --

16 MS. DRAWDY: Objection, Your Honor, hearsay.

17 THE COURT: Sustained.

18 BY MR. CAMPBELL:

19 Q. As a result of your conversation with Mr. Cantrell
20 what if anything did you do?

21 A. We had a package that was coming into Anderson
22 County to be delivered to an address at [REDACTED]
23 [REDACTED] and we planned on doing a
24 controlled delivery of that package.

25 Q. And when referring to a controlled delivery, what

1 exactly are you talking about?

2 A. A controlled delivery is after we learn that
3 something is in fact illegal we use whatever means we
4 have to deliver this package as an undercover where
5 myself or somebody else would do whatever means, whether
6 FedEx, in this case it was UPS, and we would actually
7 deliver the package to the address it was going to.

8 Q. And how in this case did you determine that the
9 substance was illegal?

10 A. When the package came into Anderson County we met
11 at the UPS building, which is on McGee Road, kind of
12 right behind the sheriff's office, right across from the
13 county fire control. We met there. Investigator
14 Cantrell from Spartanburg County had his K-9 IGOR there,
15 who was a drug detection dog.

16 From there we took the suspicious package and
17 several other packages, I believe it was around five, we
18 placed them in what we call package lineup. It's almost
19 like a photo lineup but it's packages and you place them
20 along the ground and the K-9 handler would in fact bring
21 his dogs through those packages which alerts on illegal
22 drugs, and as he did that the dog immediately sat down
23 beside the suspicious package and would not move.

24 Q. And as a result of this what next steps did you
25 take?

1 A. After the K-9 alerted on the package we took the
2 package back to the narcotics office at the sheriff's
3 office. We obtained a search warrant for that package.
4 The magistrate here in Anderson County signed a search
5 warrant. Once the search warrant was obtained we
6 actually physically went into the package to determine
7 what was in there.

8 Q. And what was the purpose of -- why did you get a
9 search warrant? Why didn't you just go ahead and open it
10 once the dog alerted it?

11 A. Well, we still have to go through the proper legal
12 procedure to actually obtain the package since it's not
13 our package and obtain a search warrant. We met that.

14 Q. Now, once you got to the sheriff's office can you
15 please describe your first impressions of dealing with
16 this package.

17 A. This package was a box about this big (indicated).
18 It was a blue and black box and it was actually a Delta
19 wood planer on the picture. So the package appeared to
20 be a Delta wood planer, and that would be a woodworking
21 tool you run a board through, I think, and it shaves some
22 off the board.

23 The package was real center heavy. It didn't feel
24 like you actually had a big power tool in there. The
25 seams up top were heavily glued. Most boxes in the store

1 you see, you know, you can reach down in there and you
2 can pop the box. The glue was all the way across the
3 seams of it. It was heavily glued and heavily taped.

4 Q. And did it have an address label and a person who
5 sent it listed on there?

6 A. It did. It had the -- I guess the shipper and the
7 receiver for the address also on it.

8 MR. CAMPBELL: Your Honor, for the Court's record,
9 State's Exhibit 18 had a piece of paper attached to it
10 that's from SLED. Since it's actually not part of the
11 exhibit we both removed it and I will give it to the
12 court reporter.

13 THE COURT: So noted.

14 BY MR. CAMPBELL:

15 Q. Agent Sloan, I'm going to show you what's been
16 marked State's Exhibit Number 18. Can you please
17 identify what this is, sir.

18 A. I can. That is the box that we got from UPS, the
19 dog alerted on and sat down beside and would not move,
20 and that's the box that we obtained the search warrant on
21 and actually went inside the box.

22 Q. And dealing with State's Exhibit Number 18, is this
23 actually how it appeared to you on June 5th, 2009?

24 A. That is not.

25 Q. What is different about it?

1 THE WITNESS: Can I step down there, Your Honor.

2 THE COURT: Yes, sir.

3 (The witness stepped down from the witness stand.)

4 A. All this tape here is SLED tape where they
5 repackaged it back up from evidence. None of this tape
6 here was actually on the box. The box was in actually
7 good physical shape, and all these seams here are taped
8 up and that's just because we opened the box and SLED has
9 sealed it back with evidence tape. So it's actually --
10 the box is the same except the tape on it from us.

11 (The witness returned to the witness stand.)

12 Q. I want to show you what's been marked State's
13 Exhibit 3 and 4. Agent Sloan, I'm going to show you
14 what's been marked as State's Exhibit 3 and 4. These
15 have already been --

16 I guess, Your Honor, I need put on the record...

17 MS. DRAWDY: Yes. We can go ahead and do that.

18 MR. CAMPBELL: Your Honor, just a housekeeping
19 matter. Ms. Drawdy and I went through the exhibits that
20 the State plans on introducing into evidence as 1 through
21 18. We both agreed to introduce them without having to
22 go through all the proper foundations and everything.

23 THE COURT: One through 18 are admitted without
24 objection; is that correct?

25 MS. DRAWDY: We do. We stipulate to those, that

1 the State may enter.

2 THE COURT: Exhibits 1 through 18 for the State
3 will be admitted without objection.

4 (WHEREUPON, State's Exhibit Numbers 1 through 18
5 were admitted into evidence.)

6 BY MR. CAMPBELL:

7 Q. Investigator Sloan, I'm going to show you what's
8 been marked State's Exhibit 3 and 4. First I'm going to
9 hand you up State's Exhibit 3. If you can please
10 identify what this is, sir.

11 A. Exhibit 3 is the box in the condition -- the box
12 you are looking at in the condition before we ever opened
13 it.

14 MR. CAMPBELL: Your Honor, permission to publish
15 these to the jury as I go through them?

16 THE COURT: Yes, sir.

17 BY MR. CAMPBELL:

18 Q. Detective Sloan, what I showed you was State's
19 Exhibit 3. Is this the condition of the box, this box,
20 State's Exhibit Number 18, as you first saw it on the
21 morning of June 5th, 2009?

22 A. That's correct. The picture that I just looked at
23 is the box before we ever opened it. That's the
24 condition and shape the box was in when we received it.

25 Q. I'm going to show you what's been marked State's

1 Exhibit 4. Can you please identify what this picture is,
2 sir.

3 A. Exhibit 4 is the shipping, the UPS shipping label
4 that was on the box.

5 Q. Is that a close up of this label right here that's
6 on State's Exhibit 18?

7 Your Honor, may the officer step off the stand?

8 (The witness stepped down from the witness stand.)

9 A. It is.

10 Q. Now, on this label does it give a tracking number
11 that coincides with this box?

12 A. Yes, sir.

13 Q. And what is that tracking number?

14 A. 1, Z as in zoolow, R as in Romeo, 0-4-7, E as in
15 echo, 5-0-3-4-3-6-3-4-2-4-7.

16 Q. And looking at this, who is the sender regarding
17 shipping this package?

18 A. Jesus Ochoa. I'm not sure how to pronounce it but
19 Ochoa out of McAllen, Texas.

20 Q. And does McAllen, Texas mean anything to you?

21 A. It does. As a criminal investigator and having to
22 work some of these narcotics cases McAllen, Texas is
23 known for drugs, specifically marijuana coming straight
24 out of McAllen, Texas into other parts of the United
25 States.

1 Q. And how close to the Mexican boarder is McAllen,
2 Texas?

3 A. If I'm not mistaken McAllen is right on the boarder
4 of it.

5 Q. And where is this package being shipped to?

6 A. Carlos Ochoa, however you pronounce it, [REDACTED]
7 [REDACTED] [REDACTED]

8 Q. So it's destined to be shipped here to Anderson,
9 South Carolina?

10 A. That's correct.

11 MR. CAMPBELL: Your Honor, if it's okay I'm going
12 to publish this?

13 THE COURT: Yes, sir.

14 BY MR. CAMPBELL:

15 Q. And initially the weight that this box was shipped
16 by UPS, how much did they put down as the weight on this
17 box?

18 A. Fifty-two pounds.

19 Q. And this is showing Jesus Ochoa the sender at [REDACTED]
20 [REDACTED] McAllen, Texas; shipped to Carlos Ochoa, [REDACTED]
21 [REDACTED] [REDACTED] Anderson, South
22 Carolina?

23 A. That's correct.

24 Q. Along with a tracking number; is that right?

25 A. Yes, sir.

1 Q. Now, you took this box back to the sheriff's
2 office; is that correct?

3 A. That's correct.

4 Q. And did you enlist the help of any deputies with
5 the sheriff's office to help regarding this
6 investigation?

7 A. I did. Before this ever happened, going to UPS I
8 already contacted Anderson County Sheriff's Office
9 Narcotics Division about assisting me with the
10 possibility of the controlled delivery. So they were
11 already aware and they were already waiting on me at UPS
12 in Anderson. Actually, I think I met them at the
13 sheriff's office before we went to UPS.

14 Q. And at this point when you arrived at the sheriff's
15 office had you already opened this box which is State's
16 Exhibit 18?

17 A. No, sir, not until after the search warrant was
18 obtained the box was never opened.

19 Q. Now, once you got the search warrant and you were
20 at the sheriff's office what if anything did you do next?

21 A. We opened the box very carefully because if in fact
22 what we believed it was from the K-9 alerting on it we
23 were going to attempt to do the controlled delivery. So
24 we very carefully opened the top seal that's heavily
25 taped right there. We opened that up, and when opening

1 it we found three big bundles, bales wrapped in Saran
2 wrap with peanuts, the Styrofoam peanuts all over.
3 That's what we had at that time.

4 Q. I want to show you what's been marked --

5 MR. CAMPBELL: Your Honor, would it be okay,
6 possible if I have the witness step off the stand because
7 I'm going to go through a series of pictures, let him
8 just explain them as we go through them?

9 THE COURT: Yes, sir.

10 (The witness stepped down from the witness stand.)

11 BY MR. CAMPBELL:

12 Q. I'm going to show you what's been marked State's
13 Exhibit 5, 6, 7, 8, 9, 10, 11, 12. If you could please
14 first look at these and see, do these look familiar to
15 you?

16 A. These are all the pictures that -- actually,
17 Anderson County Narcotics took the pictures for me, but
18 these are the pictures we took.

19 Q. And you were present when this was going on; is
20 that correct?

21 A. That's correct.

22 Q. And do these pictures fairly and accurately
23 represent what this box looked like when you opened it up
24 June 5th, 2009?

25 A. Every step of the way opening the box they

1 photographed it.

2 Q. So these are accurate?

3 A. These are accurate.

4 Q. If you would please -- as we go through it, I'm
5 going to show you what's marked as State's Exhibit 5. If
6 you will please just identify what this is as we go
7 through them for the ladies and gentlemen of the jury.

8 A. This is opening the package. This is the first
9 thing we saw when we opened the package, was the three
10 bales wrapped in Saran wrap with Styrofoam peanuts all
11 around it.

12 Those are the three bales removed from the package.

13 Q. That's State's Exhibit 6. State's Exhibit 7?

14 A. We just -- we label them A, B and C to keep up with
15 the weights and keep up with each package. That's just
16 us putting the lettering on them to keep up with them.

17 Q. State's Exhibit 8?

18 A. That's further into the packages. You can see a
19 little piece of the green Saran wrap on the left side
20 bottom. That's actually taking the blue Saran wrap off.
21 After we unwrapped, and unwrapped, and unwrapped we came
22 to another layer of green Saran wrap, which we unwrapped
23 and unwrapped and finally came to these packages here,
24 again.

25 Q. And we may have got ahead of ourselves but State's

1 Exhibit 9, what is this showing?

2 A. Yeah, we kind of put them in just a different
3 order. This is as we were taking the green Saran wrap
4 off to get the picture you just saw.

5 Q. And what is this right here, looking at it? It's
6 got a little indention in the side. What is that? Do
7 you recall?

8 A. You talking about that right there (indicated)?

9 Q. Yes, sir.

10 A. No, I don't.

11 Q. Okay.

12 A. Unless that's where it was busted, but I don't
13 know.

14 Q. State's Exhibit 10, what is this referring to or
15 depicting?

16 A. Under the levels of Saran wrap all that white
17 powder you see there is a type of washing powder. I
18 don't know what kind it is but it's a granular washing
19 powder. Each package was wrapped in layers of it, and
20 typically that's what is done to mask the smell of the
21 marijuana.

22 Q. And when you say washing powder you're referring to
23 something like a clothes detergent used in your washing
24 machine?

25 A. Yes, sir.

1 Q. State's Exhibit 11?

2 A. For you all, I do believe I know what the picture
3 you asked me about was, if you want me to go back to that
4 picture.

5 Q. Well, we're going to go back to State's Exhibit 9.

6 A. I believe this is where we actually cut a slit in
7 the package so we could view it without having to unwrap
8 the whole package before we took them out. We cut this
9 slit in there, and you can see we cut the Saran wrap. It
10 went through the washing powder directly down to a green
11 leafy plant-like substance that all of us knew to be
12 marijuana. That's what that is.

13 Q. And I'll get back into it in a second. Now,
14 State's Exhibit 11, what is that depicting?

15 A. That's another level of just opening the package
16 and actually seeing -- seeing the marijuana in the
17 package, just cutting it open.

18 Q. And what is the blue and green wrapping?

19 A. The blue was the first level of Saran wrap that was
20 wrapped around it, which was wrapped very tightly and
21 heavily. The green on the right side is the other levels
22 of Saran wrap that was wrapped around it just as tightly
23 and you can still see a little bit of washing powder down
24 there that was -- I believe the washing powder was up
25 under the green Saran wrap.

1 Q. And State's Exhibit 12?

2 A. That's just a better view of what was inside the
3 package.

4 Q. In you'll please take the stand.

5 A. (The witness complied).

6 Q. Now, when you were at the sheriff's office and you
7 all unwrapped everything how did you determine this was
8 marijuana?

9 A. Through my training and experience, through the
10 other narcotics training and experience we could look at
11 it, we could smell it. The smell, I can sit here now and
12 I can smell it now. The smell would literally knock you
13 down it was so strong. Through our training and
14 experience we knew it to be marijuana.

15 Q. Now, did you open up every bundle at that point in
16 time?

17 A. We did not at that point in time. We just wanted
18 to make sure that there was in fact marijuana in the
19 package, and after we attempted a control delivery we
20 would open the rest of the packages.

21 Q. So initially you just opened one package to confirm
22 the substance --

23 A. That's correct.

24 Q. -- was marijuana?

25 A. Uh-huh.

1 Q. Now, Agent Sloan, my understanding at this point in
2 time, you testified that you all were going to do a
3 controlled delivery?

4 A. That's correct.

5 Q. Can you please first go over for the ladies and
6 gentlemen of the jury what a controlled delivery is and
7 what steps and procedures you go about in conducting one.

8 A. I briefly told you what a controlled delivery is,
9 about taking the package and attempting to deliver it
10 where it's going, but before we do that we have to come
11 up with a quick OP's plan, which is operations plan.

12 For safety reasons we have to tell who's going to
13 be where for surveillance, who is going to do what part,
14 you know, what we do if this happens, and we came up with
15 a quick OP's plan.

16 In delivering these packages there is a time frame
17 we have to work on because people know, along with you
18 all, if you all have UPS packages you know what time
19 they're going to be there. Most of the time you know
20 what time your UPS man delivers.

21 So we were working on time frame, came up with a
22 quick OP's plan. We put everything together who was
23 going to go where, who was going to do surveillance, who
24 was going to deliver the package, and that's when we got
25 ready to attempt the first delivery.

1 Q. Now, prior to as a part of your OP's plan did you
2 attempt to determine if Carlos Ochoa was a real person
3 who lived at [REDACTED] [REDACTED]

4 A. We did.

5 Q. And what if anything did you learn about the name
6 Carlos Ochoa?

7 A. There's about, I believe around 15 Carlos Ochoas in
8 South Carolina. There was one in Anderson County. We
9 actually went out to the house, did some surveillance on
10 the house, and that also comes into the first delivery.
11 But at this time we had no reason to believe that the
12 actual Carlos Ochoa who lived on Cloverdale Drive in
13 Anderson had anything to do with this package.

14 Q. Is Cloverdale Drive even close to Miracle Mile
15 Drive?

16 A. No, sir. Cloverdale is back on the backside of the
17 airport. I'm pretty sure it's on the backside of the
18 airport, if I remember correct.

19 Q. That was basically the other side of town from
20 where you were going?

21 A. Yes, sir.

22 Q. And were you able to do a search also in the name
23 of Jesus Ochoa in McAllen, Texas?

24 A. Jesus Ochoa, if I remember correctly, there was
25 hundreds of them in the United States. It's just a

1 common Hispanic name, I guess. There's hundreds of them.

2 None in Anderson County.

3 Q. Now, after you assembled your team together
4 regarding the delivery of this package to the apartment
5 what role did you play or were going to play in this?

6 A. I was actually going to be the one and was the one
7 to act as undercover and be a UPS -- UPS man, and
8 actually deliver the package to the apartment.

9 Q. And what steps did you go about to fill this role?

10 A. On the first attempt -- controlled deliveries are
11 pretty normal for narcotics they actually have a uniform
12 that looks like UPS. I'm not sure if it's a real UPS
13 uniform or not but it looks just like a UPS uniform, from
14 black tennis shoes to the hat and everything. And we got
15 that together and I actually put all that on, acted as
16 the UPS man, and the first attempt I attempted to deliver
17 it in my pick-up truck.

18 Q. In your truck. This is your SLED issued vehicle?

19 A. That's correct.

20 Q. And about what time a day was this?

21 A. I believe the first one was around 10:15 in the
22 morning because that's when the actual delivery should
23 have been made, according to UPS, was somewhere in that
24 time frame.

25 Q. And then in fact do you go to [REDACTED] [REDACTED]

1 [REDACTED]?

2 A. I did. I actually drove -- had the package in my
3 truck and drove behind the apartment complex so that
4 whoever was in [REDACTED] wouldn't see me get a package out of
5 the back of a pick-up truck. I parked behind the
6 apartment complex, carried the package -- I actually
7 carried them on hand trucks because of the weight, to
8 [REDACTED], and was unsuccessful at delivering the package at
9 that time.

10 Q. Now, can you please just describe this area that
11 you were going to, this apartment complex, for the ladies
12 and gentlemen of the jury.

13 A. It's Cobblestone Apartments. It's on Miracle Mile
14 Drive, as you've heard. That's right behind Hancock's
15 Fabrics, Skin's Hot Dogs, the post office. You turn up
16 Miracle Mile Drive. It used to be the old Honda shop sat
17 on the right, and you turn left into Cobblestone
18 Apartments. It's one way in and one way out.

19 Q. So it's just a one-way street. There's only one
20 entrance, one exit?

21 A. One way in, one way out and, you know, the
22 complexes feed off that street.

23 Q. There's no back entrance or exit to this apartment
24 complex?

25 A. No, sir.

1 Q. Now, your first attempt you said you did about
2 10:15. I assume you went and knocked on the door, no
3 response; is that right?

4 A. That's correct.

5 Q. Did you do anything other -- else after that?

6 A. After that we actually went back to Carlos -- after
7 we were unsuccessful we went back to the address on
8 Cloverdale Drive, which was that Carlos Ochoa. We sat on
9 that -- we did surveillance on that residence. We sat
10 out in the road for a long time, down the road trying to
11 see if this Carlos Ochoa was going to in fact be leaving
12 this residence to go pick up a package. That's just the
13 only thing we had to go on since we were unsuccessful.
14 So we were just going to determine if somebody from this
15 residence was going to leave and try to pick up a
16 package.

17 Q. Did you attempt to make a second delivery?

18 A. I did. After we sat out there unsuccessful again
19 for a little bit we went back and did the same exact
20 thing in my pick-up truck. I drove again to the back of
21 the apartments thinking maybe somebody wasn't home the
22 first time. Put it on the hand trucks, went back to the
23 apartment and again was unsuccessful at delivering it.

24 Q. Now, after this second unsuccessful attempt did you
25 all leave the area to go back to the sheriff's office or

1 did you all stay there and continue conducting
2 surveillance of this apartment complex?

3 A. We actually left there and I believe went back to
4 Carlos Ochoa's residence on Cloverdale Drive again and
5 performed surveillance there hoping we were going to
6 catch someone leaving there to come pick up a package.
7 And somewhere around one o'clock I learned that two
8 Hispanic males in a red pick-up truck with a ladder rack
9 were flagging down a UPS driver right there at
10 Cobblestone Apartments checking on a package with the
11 same shipping address and tracking number as the package
12 we had.

13 Q. And was this information relayed to you?

14 A. It was.

15 Q. And as a result of this information that you
16 received what if anything did you do next?

17 A. Once we received this information we sent two
18 agents to that area to do surveillance while we tried to
19 figure out another quick OP's plan, how we were going to
20 do this, what was going to be the most successful way to
21 do it. And when the two surveillance agents got into
22 that area I think they were -- I don't remember exactly
23 where they sat, somewhere in the area of Hancock Fabrics
24 or Break Time, somewhere in there. They relayed to me
25 that there were two Hispanic males in a red pick-up truck

1 that was a Ford Ranger --

2 MS. DRAWDY: Objection, Your Honor, hearsay.

3 THE COURT: Sustained.

4 BY MR. CAMPBELL:

5 Q. As a result of this information that you received
6 did you do a new OP's plan to try to deliver this package
7 for a third time?

8 A. We did. We came up with a third OP's plan which
9 was fairly consistent with number one and two as far as
10 surveillance and security.

11 Q. What changed in the case?

12 A. In this case, we actually went and got a van, had
13 nothing to do with UPS. We just went and got a van, got
14 some empty boxes, put them in the back of the van and
15 actually went to -- I think it's Anderson -- it's where
16 the old Honda shop is. It's a lawnmower weed eater
17 place. I can't remember the name of it, Anderson Outdoor
18 Power Supply, something like that. I went into the old
19 Honda shop parking lot, if you're familiar with the area.
20 I went in the van.

21 Q. Well, first before we get to that. Before you
22 arrived at Anderson Outdoor Power was your surveillance
23 team already set up in this area?

24 A. They were. The surveillance team was already set
25 up. When I came in, in the van, they were already set

1 up.

2 Q. And this van that you are in, was it actually an
3 official UPS van or was it --

4 A. No, sir, just a van we went and got.

5 Q. Now, when you went in, when you arrived -- and this
6 location is in Anderson County; is that right?

7 A. That's correct. It's actually in Anderson City,
8 and we contacted Anderson City. They didn't have anybody
9 available, and us and the sheriff's office went ahead and
10 proceeded with it.

11 Q. Now, when you first went in to deliver, I guess you
12 were doing a fictitious delivery?

13 A. That's correct.

14 Q. Did you observe -- what if anything did you
15 observe?

16 A. When I turned on Miracle Mile Drive headed towards
17 the Honda shop parking lot, I think that's the easiest to
18 refer to it, everybody knows it as the Honda shop, I took
19 a right behind Break Time and went into the parking lot.
20 I observed a red pick-up truck with two Hispanic males
21 sitting in the parking lot over near Hancock Fabric.

22 Q. And what type of position or how were they
23 positioned in this vehicle?

24 A. They were positioned facing Miracle Mile Drive.

25 They could not see the apartments other than the entrance

1 to the apartments but they were facing directly towards
2 Miracle Mile Drive watching the road.

3 Q. And you feel they were watching you as you went in?

4 A. I know they were watching me as I went in. I
5 watched them watch me.

6 Q. And when we're talking about watching you what kind
7 of distance we talking about?

8 A. Less than a hundred yards.

9 Q. And at that point, as you already testified, you
10 went into Anderson Outdoor Power?

11 A. I actually went into another business before that.
12 I'm not sure of the name of it. I walked in there with
13 an empty box, identified myself as a SLED agent. I told
14 them we were attempting to do a controlled delivery down
15 the road, this box is empty. I showed them the empty
16 box, showed them my credentials. Said you can keep it,
17 use it or throw it away, and told them that's all I
18 needed and walked out.

19 Q. And you did that at one business. What did you do
20 next?

21 A. As I came out I could still see the red pick-up
22 truck and still see them facing my direction. At this
23 time I couldn't tell where their eyes were, if they were
24 watching me or not. I then went into Anderson Outdoor
25 Power Supply, whatever the name of it is; and told them

1 the same exact thing. I handed him an empty box, said
2 we're attempting to do a controlled delivery down the
3 road. It's empty. You can use it or throw it away, and
4 I left.

5 Q. And did you get a good look at this vehicle that
6 was watching you as you were doing these deliveries?

7 A. I did.

8 Q. Did it match the description of the vehicle that
9 initially flagged down an earlier UPS driver?

10 A. It did.

11 Q. Now, at this point after you delivered this second,
12 for lack of a better name, fake delivery, what if
13 anything did you do next?

14 A. After I went into the second business I came out,
15 did something in the back of the van, got in the van,
16 came out of that parking lot, took a right, and as I did
17 I could see the two Hispanic males in the pick-up truck
18 actually watching me turn out of the parking lot.

19 When I turned out of the parking lot I began to see
20 the red truck to move. I couldn't tell actually where it
21 was coming from but I did begin to see it to move. I
22 turned left into the apartment complex which was the one
23 way in and one way out. I lost sight of it at that time
24 until I parked the van at another location.

25 Q. And this apartment complex, the only entrance to it

1 is through Miracle Mile Drive; is that correct?

2 A. That's correct. That's the only way in and the
3 only way out.

4 Q. So It'd be safe to say that a truck siting at the
5 entrance of it would have the ability to survey
6 everything coming and going?

7 A. That's correct.

8 Q. Do you feel when you were making these fake
9 deliveries were you trying to be as obvious as possible?

10 A. I was trying to be as obvious as possible. We had
11 made one delivery with no success in a pick-up truck.
12 We've made another delivery with no success in a pick-up
13 truck. Obviously there was a problem somewhere.

14 When I received information about someone flagging
15 down a UPS truck we realized that they were actually
16 doing counter surveillance on basically UPS waiting on
17 UPS to drive by, and once UPS drove by they would know
18 that in fact a package was coming to be delivered. So I
19 was not going to be successful in delivering a package
20 unless I was as obvious as possible as being a UPS man
21 and delivering packages.

22 Q. Now, at this point you had driven down into
23 Cobblestone Apartments?

24 A. That's correct.

25 Q. The individuals in the red truck kind of mirrored

1 your movements?

2 A. They followed me as I moved, yes, sir.

3 Q. Did the people in this truck, did they come down
4 into the apartment complex itself?

5 A. When I went into -- I went into the complex part
6 where, you know, you have an apartment on this side and
7 an apartment on this side. I drove down in here and
8 parked and I actually did two more -- I saw the red truck
9 through a wood line.

10 It rode through the wood line and it turned around
11 and came back and parked on the edge of the wood line
12 where there's a trail coming down through the woods from
13 directly behind Hancock Fabric. There's a fence, a line
14 of trees and a trail coming down. A truck parked
15 directly at that trail. It's just a dirt trail. People
16 walk back and forth on it. Parked directly right there
17 and started watching me.

18 I actually went into a breezeway with a package,
19 came out of that one. I think I went to one more
20 breezeway with an empty box, and about the time that I
21 went back to the van to get this package to take to 10-G
22 is about the time that I saw a Hispanic male walking down
23 the dirt trail from the red truck towards me.

24 Q. And this tree line you are talking about separates
25 Cobblestone Apartments from the back of the shopping

1 center?

2 A. From the back of the parking lot, yes, sir.

3 Q. Now, did you at this point go up to Apartment [REDACTED]

4 A. Well, I actually got a little concerned at first
5 from the counter surveillance they were running on me
6 made me a little uneasy and I told -- I don't remember
7 which agent I told or I might have just been speaking
8 into the audio but they were doing counter surveillance
9 on me and had actually put one out on foot.

10 I can't remember if I had a weapon on me or not.
11 Sometimes you just can't carry one. But the counter
12 surveillance concerned me a little bit, and once I told
13 them of that I did actually get the package and head
14 towards [REDACTED]

15 Q. And why are you concerned at this point in time the
16 other individual is out on foot?

17 A. Well, I've obviously got surveillance in the area
18 but I don't have anybody there with me. I've got what I
19 know to believe marijuana in a package and at this time
20 it weighed 52 pounds. The package I was carrying, street
21 value on that is somewhere close to \$30,000 and I'm just
22 concerned, you know. It's me and him and nobody else.

23 Q. And when you say audio, what are you referring to?

24 A. Before I actually went and did the delivery
25 Anderson County Narcotics wired me with an audio

1 recording device where everything I say can be heard and
2 everything I tell them can be monitored, also.

3 Q. And at this point did you actually approach or go
4 up to Apartment [REDACTED]?

5 A. I did.

6 Q. With this box?

7 A. I carried it straight up to [REDACTED] I had a pad with
8 some signatures on it. Knocked on the door, a Hispanic
9 male came to the door. Told him I was UPS with a
10 package, and he signed for the package and I left.

11 Q. I'm going to show you what's been marked as State's
12 Exhibit 1.

13 MR. CAMPBELL: Your Honor, I want to display this
14 to the jury. Is it okay if the officer steps off the
15 stand again?

16 THE COURT: Yes. What exhibit number is that
17 again, please, sir?

18 MR. CAMPBELL: We're dealing with State's Exhibit
19 1, Your Honor.

20 (The witness stepped down from the witness stand.)

21 BY MR. CAMPBELL:

22 Q. Now, Agent Sloan, I'm going to show you what's been
23 marked as State's Exhibit Number 1. First, can you
24 please identify what this is and then explain what
25 significance this piece of evidence plays in this case.

- 1 A. This is a --
- 2 Q. Please speak to the jury.
- 3 A. -- delivery information record, is what it's
- 4 called. When UPS brings you a package you can sign your
- 5 name on it and accept the package. That's all this is,
- 6 is where they accepted the package.
- 7 Q. Now, is this an actual form that is used, copy of
- 8 an actual form that is used by UPS?
- 9 A. It is.
- 10 Q. And where did you get this form from?
- 11 A. Somewhere at UPS.
- 12 Q. I'm going to put this on the overhead here first.
- 13 Now, looking at this we have six total deliveries,
- 14 or indicating deliveries. Please explain what all this
- 15 information is that is put into here.
- 16 A. The first one, two, three, four, five signatures,
- 17 addresses, additional information there, that's all stuff
- 18 that -- all names and addresses that either myself or
- 19 another agent wrote down on there to make it look as if I
- 20 had been delivering the packages, the actual package that
- 21 they were watching me.
- 22 Q. So everything on this is just you all made up,
- 23 officers made up until the last line; is that right?
- 24 A. Until the last line that says [REDACTED]
- 25 [REDACTED].

1 Q. If you'll please explain what on -- the information
2 on the last line?

3 A. First line there is the address, [REDACTED]
4 [REDACTED] That's where I was delivering it to. The second
5 one shows 52 pounds down there. I don't actually
6 remember what this number is we wrote down there. It
7 could be just a fictitious number. I don't remember what
8 that number is. It shows the weight of the package,
9 which is 52 pounds, and the signature here. I can't read
10 the writing but this is a Hispanic male that came out,
11 received the package and signed for it.

12 Q. Okay. And after he signed this package, at this
13 point you left?

14 A. I left. I told -- I spoke to the audio that I had
15 on, told them that the package had been delivered, the
16 package had been delivered, and that's when the
17 surveillance teams and the security teams began to come
18 in.

19 Q. If you'll please take the stand.

20 A. (The witness complied).

21 Q. Now, at this point what you just testified to you
22 gave the, for a lack of a better word, the signal to go
23 ahead and do a takedown or the arrest of the individuals?

24 A. That's correct. They knew. When I told them that
25 the package had been delivered, or whatever wording I

1 used to say that the package was actually delivered, that
2 they were going to move in, and number one we had to get
3 the package. We had to take possession of the package.

4 Q. Now, why in this case did you go ahead and give the
5 signal to make the arrest instead of waiting until the
6 individuals actually had the packages -- or this package
7 in their hands?

8 A. Well, there's several reasons for that. We had
9 counter surveillance run on us. We knew that. I,
10 myself, was watching them run the counter surveillance.
11 We knew that they had already flagged down the UPS truck
12 requesting this package. But the main issue is safety
13 and not letting what we now know as 30 pounds of
14 marijuana get out on the streets of Anderson County or
15 Greenville County.

16 If I take the risk of letting them pick up the
17 actual package there's so many things that could go
18 wrong. We could get into a high speed chase with the
19 people who picked the package up, we can try to surveil
20 them and end up losing them.

21 You got a safety risk on the first one for us, the
22 community; and on the second one if something happens,
23 which it does doing surveillance, and we loose them, then
24 we got 30 pounds of marijuana on the streets of
25 Greenville and Anderson, or one of the counties.

1 Q. And in this case, I mean, this is basically a
2 judgment call on a case-by-case basis on your part; is
3 that right?

4 A. That's correct. It was my decision -- or our
5 decision, yes.

6 Q. Now, at this point in time how many people were
7 arrested?

8 A. Three people were arrested at this time.

9 Q. And the individual in the wood line in the red
10 truck, was he still there when you walked down from the
11 Apartment [REDACTED]

12 A. As I was coming out down the stairs of [REDACTED] and
13 came out into the open area I saw the Hispanic male
14 walking towards me, the one that had been dropped off.
15 He was walking my way. I was walking back to the van.

16 The red pick-up truck was actually pulling off, and
17 I told him on the audio that I was wearing, The red
18 pick-up truck is leaving, the red pick-up truck is
19 leaving, so they would know to go back out and stop the
20 red pick-up truck.

21 Q. And at this point eventually everybody that you saw
22 to be involved in this case was arrested?

23 A. That's correct.

24 Q. Now, after the individuals were arrested what was
25 your next step in this investigation?

1 A. After they were arrested we of course wanted to
2 determine where the package was going to from Anderson,
3 where it was going to originate to and try to determine
4 what further investigation could be done.

5 Q. Now, at this point in time had you gotten the
6 State's Exhibit Number 18 back into your possession?

7 A. We had. I had actually kept walking towards the
8 van but the surveillance team security had already went
9 up there and recovered the package.

10 Q. Now, at this point in time and dealing strictly
11 with Apartment [REDACTED] where this package was delivered did
12 you eventually yourself go back up to this apartment?

13 A. I did. That's where I spent the majority of the
14 time, was at the apartment.

15 Q. And regarding this investigation, how many officers
16 are we dealing with, approximately?

17 A. Six to eight.

18 Q. And when you are doing your OP's plan is everybody
19 doing the exact same thing?

20 A. No. They are doing hopefully what we told them in
21 the OP's plan but not the -- everybody is not doing the
22 exact same thing.

23 Q. Everybody has a different job involving this
24 delivery?

25 A. Yes, delegation.

1 Q. And so after you gave the signal to arrest did you
2 initially just walk right into this apartment?

3 A. No. I actually was trying to be the actual UPS man
4 and not, as we call it, get burned, let them know that I
5 was actually an undercover agent, but I didn't have a way
6 to get -- I didn't have a way to get back, change
7 clothes, so I ended up just going back up to the
8 apartment like I was.

9 Q. And at that point did you come into contact with
10 the individual who you initially dropped this package off
11 to?

12 A. I did.

13 Q. And were you able to determine who this individual
14 was?

15 A. At that time I did, uh-huh.

16 Q. And what name were you given?

17 A. Jose Santos.

18 Q. And did he have any other names?

19 A. He did. We used Jose Santos there at the
20 apartment, then when he was actually booked into the
21 Anderson County Detention Center we learned he was Jose
22 Delorez, and Jose Santos was his alias.

23 Q. And I'm going to show you what's been marked as
24 State's Exhibit Number 2?

25 MR. CAMPBELL: Your Honor, may I have the witness

1 step off the stand again?

2 THE COURT: Yes, sir.

3 (The witness stepped down from the witness stand.)

4 BY MR. CAMPBELL:

5 Q. First I'm going to show you what's State's Exhibit
6 Number 2. Please look at it and see if you can identify
7 it, and after that point would you please explain what it
8 is to the ladies and gentlemen of the jury.

9 A. This is a consent to search form. Instead of us
10 doing a search warrant if somebody actually lives in that
11 residence, pays rent, owns the residence and they are
12 agreeing to let us search the residence we do this
13 consent to search. We advise them of their rights of us
14 not to search if they don't want us to. Jose Santos
15 agreed. He gave us consent to search, and that's what
16 this is, listed with what we took.

17 Q. Is this your signature on the bottom of this
18 consent to search?

19 A. That's not my signature.

20 Q. Is that your name?

21 A. That's my name.

22 Q. You were present when this was done?

23 A. Yes. I actually filled out the consent to search.

24 Q. If you will please put on the overhead.

25 If you can please go through it and explain what

1 the information that is upon this exhibit, please.

2 A. It's kind of self explanatory but up top is the
3 date, the address of where we're at, which is -- you all
4 have heard enough about Apartment Number [REDACTED]. It says
5 Jose Santos, he was informed of his rights, and he
6 explained to him that he can tell us not to search if we
7 wants us to. We informed him of that.

8 It's listed who was there, SLED agents, Anderson
9 County Sheriff's Office, the address again, the
10 signatures of the witnesses and the signature of Jose
11 Santos, which is right there.

12 Below that is what we actually took out of the --
13 I'm sorry. I'm sorry. Below that is actually what we
14 took out of the residence, which was the box. Of course
15 it lists a tracking number, and we took \$1200 in U. S.
16 Currency.

17 Q. And this was all found inside this apartment?

18 A. That's correct.

19 Q. Now, when you talked to Mr. Santos did he speak to
20 you in English?

21 Yes, sir. If you'll please take the stand. I'm
22 sorry.

23 (The witness returned to the witness stand.)

24 A. Mr. Santos did speak to us in English.

25 Q. And at this point in time you conducted a search of

1 the apartment, and the items that you took out of this
2 apartment was the box and was \$1200 of currency; is that
3 correct?

4 A. That's correct.

5 Q. I'm going to show you what's been marked State's
6 Exhibit 13, 14 and 15. If you can please identify --
7 look at these, sir, first and please identify what they
8 depict.

9 A. Thirteen is where the actual box was sitting when
10 agents went inside the apartment. Fourteen, again, is
11 the same box we've been dealing with the whole time, the
12 Delta planer box with same shipping label, and 15 is a
13 close up of the shipping label.

14 Q. Now, looking at State's Exhibit 13. You just
15 stated this is the box as it was where you found it when
16 you entered the apartment?

17 A. That's correct, just sitting right inside the door
18 there.

19 Q. And then 14 and State's Exhibit 15, are these just
20 a close up of the packing labels?

21 A. That's correct, just to show it was the same
22 package I actually delivered.

23 Q. And it is actually the same package you delivered;
24 is that right?

25 A. It is.

1 Q. Now, at this point in time you knew this individual
2 to be Jose Santos but later on you learned he went by
3 another name; is that right?

4 A. Not until we got him to the Anderson County
5 Detention Center, wasn't until we learned that Jose
6 Santos was his alias and Delorez -- he had a longer name
7 but Jose Delorez was his in fact real name.

8 Q. And was he arrested as a part of this --

9 A. He was.

10 Q. -- ongoing investigation?

11 A. He was.

12 Q. And were you able to confirm in fact that he did
13 live at [REDACTED] Anderson?

14 A. We did confirm that he did live there.

15 Q. Now, were you able to ascertain how many people
16 were actually living in this apartment?

17 A. We couldn't actually determine a number of people
18 but while we were there a couple of Hispanics showed up
19 and said they lived there, but Jose Santos was the
20 primary resident of it. I can't tell you how many people
21 actually lived in the apartment.

22 Q. Were you able to confirm whether or not a Carlos
23 Ochoa lived at this Apartment [REDACTED]

24 A. We were. Carlos Ochoa did not live at Apartment

25 [REDACTED]

1 Q. And to your knowledge had a Carlos Ochoa ever lived
2 at this apartment?

3 A. No, he had not.

4 Q. Now, the other individual who was walking on the
5 sidewalk, he was also arrested --

6 A. He was also arrested. That's correct.

7 Q. -- as a result of this investigation; is that
8 righted?

9 A. Uh-huh.

10 Q. Were you able to identify who this individual was?

11 A. We were.

12 Q. And who was that?

13 A. Concepcion Ramirez.

14 Q. And was he too also charged with being involved in
15 this --

16 A. He was. He was also arrested along with the other
17 two.

18 Q. Now, was the driver of the pick-up truck also
19 arrested?

20 A. He was.

21 Q. And at some point in time did you eventually go up
22 to where the red pick-up truck was located or to where
23 this individual was?

24 A. No, I did not. I stayed at the apartment complex.
25 He was actually brought back to -- they arrested him at

1 the Citgo station on the corner of the Miracle Mile right
2 there across from the old Dodge dealership. The other
3 agents actually brought him back to the apartment complex
4 where I was at.

5 Q. This Miracle Mile, it comes in in Clemson
6 Boulevard; is that correct?

7 A. That's correct.

8 Q. And at that point in time did you come in contact
9 with this individual?

10 A. It wasn't immediately when they brought him back
11 because I was still dealing with things inside the
12 apartment, but within a short time, yes, I came in
13 contact with him.

14 Q. And were you able to confirm the identity upon the
15 driver of this red pick-up truck?

16 A. I'm sorry. Ask me that one more time.

17 Q. Were you able to confirm the identity of the
18 individual who was driving this red pick-up truck?

19 A. I was. Jose Olivares.

20 Q. Is he present in the courtroom today?

21 A. He is. He's in the burgundy shirt beside the
22 interpreter.

23 Q. And this was the individual that you saw on June
24 5th, 2009; is that correct, same individual?

25 A. Yes, one of the -- yes, sir. Yeah.

1 Q. Now, have prior to this -- now, officially he had a
2 longer name. You were calling him Jose Olivares but he
3 actually had a longer name?

4 A. That's correct, and I don't remember his full name
5 but we've all referred to him as Jose Olivares.

6 Q. Now, prior to this investigation, did you know
7 Mr. Olivares?

8 A. I did not.

9 Q. Have you ever come in contact with him any shape,
10 way or form?

11 A. Never been in contact with him. No, sir.

12 Q. How about the other two individuals?

13 A. Never seen them or heard of them.

14 Q. Were you able to confirm an address upon
15 Mr. Olivares?

16 A. I was.

17 Q. And where at this point in time was he residing?

18 A. I don't remember the numerics. It was Lily Street,
19 I believe in Greenville, South Carolina. I think it
20 might have been [REDACTED] in Greenville.

21 Q. And did you have an occasion to determine how far
22 is this Lily Street, [REDACTED] in Greenville to
23 this Apartment [REDACTED]?

24 A. It's over 30 miles.

25 Q. And how did you determine that?

1 A. MapQuest.

2 Q. Now, did you, yourself, at this point in time speak
3 to Mr. Olivares while he was at -- when he was brought
4 back to the apartment complex?

5 A. I did. Sometime there when I got done with the
6 apartment I did go down and speak with Mr. Olivares.

7 Q. And at this point in time he had already been
8 Mirandized?

9 A. Yes. Actually, I didn't speak to Mr. Olivares
10 until one of the agents, is either Betsill or McGuire,
11 came and got me and told me that --

12 MS. DRAWDY: Objection, Your Honor, hearsay.

13 THE COURT: Sustained.

14 BY MR. CAMPBELL:

15 Q. Now, at this point in time to your knowledge
16 Mr. Olivares had already been Mirandized of his legal
17 rights?

18 A. That's correct.

19 Q. Now, I'm going to go back to Mr. Ramirez,
20 Concepcion Ramirez. Were you able to determine where his
21 residence at this time was located?

22 A. I don't actually remember Mr. Ramirez's address.

23 Q. Do you remember what county he was living in at the
24 time, or city?

25 A. I believe it was Greenville.

1 Q. Now, after everybody's arrested, Mr. Olivares has
2 been brought back to the apartment, what if anything did
3 you all attempt to do at this point in time?

4 A. After I learned he had been Mirandized I went and
5 spoke with Mr. Olivares. He was actually sitting in -- I
6 don't remember whose car he was in. He was sitting in a
7 car. We spoke about the package and he informed us that
8 he was willing to cooperate and attempt to deliver the
9 package to the address that he was supposed to take it to
10 in Greenville.

11 Q. And when you were speaking to him was he speaking
12 in Spanish or was he speaking to you in English?

13 A. Speaking to me in English. I don't speak Spanish.

14 Q. And were you able to hold a conversation regarding
15 the events that had taken place?

16 A. The entire time.

17 Q. Did you feel his ability to understand the English
18 language or your ability to understand the Spanish
19 language prohibited you all from understanding one
20 another?

21 A. No, sir. I mean, he had to speak to me in English
22 or I would not have understood him.

23 Q. And so the Spanish language barrier was not an
24 issue in this case?

25 A. Not at all.

1 Q. Now, he agreed at this point in time to cooperate
2 with you?

3 A. That's correct.

4 Q. Was anything held out or promised to him in order
5 to get him to do this?

6 A. No, sir.

7 Q. And what was his cooperation? What did he want to
8 do?

9 A. He informed me that the package was -- that he was
10 going to -- coming to get the package he receives \$500
11 for the package. He pays the man in the apartment a
12 hundred dollars for accepting the package and the
13 passenger he would also pay a hundred dollars for walking
14 down and picking up the package. After they received the
15 package they were going to take it back to a [REDACTED]
16 [REDACTED] in Greenville, to be delivered again.

17 Q. And did you attempt at this point in time to make a
18 delivery to this Broadway Apartments?

19 A. We did.

20 Q. And was there a name of an individual that you were
21 supposed to be delivering this package to?

22 A. Mr. Olivares said that Hulio Garfio, Garfio had
23 sent him to get the package. He had already done a --
24 picked up a package for him one time before this and he
25 expected many more packages out of it.

1 Q. And dealing with this did you all at this point
2 attempt to make a controlled delivery?

3 A. We did. Within a short time frame thereafter we
4 were working on a time frame on the first delivery of
5 this package and by this time our time frame is already
6 getting -- our window is getting shut for delivering this
7 package to Greenville, so we tried as quickly as we can
8 to put up an OP's plan. I had to contact Greenville
9 County Narcotics, get them on board. That took a little
10 while. We had a predetermined location we were going to
11 meet at, and we met and we attempted to do the controlled
12 delivery again.

13 Q. And you were talking about being on a time frame.
14 What are you referring to in this second part?

15 A. Kind of the same principle as you all and people
16 know when UPS is going to deliver packages if people in
17 -- when dealing with drugs if people are sent to pick up
18 a package and they are not back by a certain time. They
19 know how long it takes them to get there, how long it
20 takes them to get the package.

21 Q. And when you say they, who are you referring to?

22 A. Hudio Garfio, and if they are not back by a certain
23 time they know that something has happened and they are
24 probably not going to take the package when they get
25 back.

1 Q. And did anything materialize as a result of this
2 second controlled delivery?

3 A. We went and attempted it. Mr. Olivares was wired
4 with an audio recording device like I was the first time.
5 We had an undercover vehicle in Greenville we used. We
6 let Mr. Olivares drive his red Ford Ranger to the
7 apartment complex on -- Broadway Apartments in
8 Greenville.

9 There was kids everywhere. I mean, there was a lot
10 of stuff going on in the apartment complex. The package
11 wasn't delivered, couldn't get anybody to the door.
12 Mr. Olivares was still wanting to cooperate but I just
13 felt like our time frame was up. There was too much
14 going on in the apartment complex and we should just call
15 it off at this time.

16 Q. And did you all call it off?

17 A. We did.

18 Q. So the package was never successfully delivered to
19 Hulio --

20 A. Garfio.

21 Q. Garfio?

22 A. It was not delivered, no.

23 Q. And were you able to actually ever confirm whether
24 or not this Hulio Garfio was a real person?

25 A. No. I was never able to confirm if Hulio Garfio

1 was a real person.

2 MS. DRAWDY: Your Honor, may Mr. Campbell and I
3 approach:

4 THE COURT: Yes, ma'am.

5 (WHEREUPON, a bench conference was had.)

6 THE COURT: Mr. Burns, I need to take a few minutes
7 with these attorneys on a matter. Would you take your
8 jury back to the jury room and let's go ahead and have
9 your morning break, and if you all need anything would
10 you please let the bailiff know, please, sir.

11 (WHEREUPON, the jury leaves the courtroom at
12 approximately 10:14 a.m.)

13 THE COURT: All right, guys. Let's do this. Let's
14 take about a two-minute break. I need to run back here
15 and I'll be right back. I'm going to let you put your
16 arguments on the record and then I'll make a ruling,
17 Okay? In other words, I need to take a restroom break if
18 you don't mind.

19 MS. DRAWDY: Same. And then we'll get to discuss
20 it?

21 THE COURT: Right.

22 MS. DRAWDY: Cool. Cool.

23 (WHEREUPON, a brief recess was taken.)

24 THE COURT: All right. Ms. Drawdy, we had a bench
25 conference and I went ahead and excused the jury. And

1 your complaint, if I understand it, was there was
2 reference to the defendant being -- we don't have our
3 interpreter. Just one second.

4 (The interpreter enters the courtroom.)

5 THE COURT: All right. We had a bench conference
6 and you were complaining that the defendant apparently
7 was wired at this controlled delivery in Greenville;
8 however, you filed for discovery and there was no
9 recording provided to the defense with regard to that
10 aspect of this arrest. Is that the nature of your
11 complaint?

12 MS. DRAWDY: That is true, Your Honor. I think the
13 testimony is that there were two attempts at the audio,
14 and clearly some conversation must have taken place on
15 the audio whether to do one, try again, cease, he said
16 stop, they tried not to do anymore.

17 We did. We filed for discovery and I only have the
18 audio of the buy, controlled buy they talked about here
19 in Anderson, apparently going on. I have no record of
20 any or all of that audio that may have taken place or did
21 take place, according to the testimony, in Greenville,
22 and it could even be exculpatory, especially as to
23 whether or not promises or anything else was made.

24 So I'd like to know what was on that audio. They
25 took the time to record it, taken the time to testify

1 about it, took a bunch of agents to go execute it, and I
2 don't have it.

3 THE COURT: Does the first recording of the
4 controlled buy also include the defendant being
5 Mirandized?

6 MS. DRAWDY: No, Your Honor.

7 THE COURT: There's nothing of that recorded at
8 all?

9 MS. DRAWDY: There's nothing on this controlled
10 delivery related to Miranda, and this is the delivery
11 here in Anderson at Miracle Mile.

12 THE COURT: All right. Mr. Campbell?

13 MR. CAMPBELL: Your Honor, we have turned over
14 everything that we have regarding the audios. The audios
15 that we have in our possession are the ones where Agent
16 Sloan attempted to deliver the package to [REDACTED]
17 [REDACTED], was the first attempts, and then of the
18 second one in which he actually was successful of
19 delivering the package.

20 Later on the audio of the individual, Mr. Olivares,
21 who was cooperating freely and voluntarily, we do not
22 have. There is -- what Agent Sloan has told me, there
23 was nothing on it, so they didn't keep anything regarding
24 it. He wasn't Mirandized or anything on an audio. The
25 Miranda was done by three different officers --

1 THE COURT: Yeah, I got you.

2 MR. CAMPBELL: -- orally. So there is nothing
3 regarding that issue on Miranda, whether it was audio or
4 on video, or anything. It was all just done orally. We
5 do not have any audio whatsoever regarding his
6 attempt, his willing cooperation to deliver this package
7 to the person that sent him.

8 MS. DRAWDY: Your Honor, they don't get to --

9 THE COURT: Let me ask you a question, and I'll
10 certainly hear from you, but what would be the standard
11 that I'm supposed to apply to the State's alleged failure
12 to provide this information and also what relief are you
13 seeking from the Court?

14 MS. DRAWDY: Your Honor, I'm going to ask for a
15 mistrial, and here's why. They don't get to pick and
16 chose what they give and don't give to me. All right.
17 They've testified there is an audio. They have it. The
18 statements, what was said when and where are extremely
19 critical in this case in terms of proving knowledge.

20 We just had testimony about a package. Heck, he
21 did look for a package, okay. We have to prove
22 knowledge. Did he know what was in the package? If they
23 are all talking about he accepted a package that goes
24 right to our defense, the heart of our defense, did he
25 accept a package knowing there was marijuana in there or

1 did he just as any UPS driver accept and work with a
2 package. I have no idea what's on that audio in those
3 two attempts at a controlled delivery in Greenville, and
4 I shouldn't have to take this agent's word for it.

5 This agent has already testified there was just a
6 package, and I can promise this Court later through this
7 trial we're going to hear no, there was a package of
8 marijuana, no there was a package of drugs. It lessens
9 my ability to impeach, it lessens my ability to give my
10 client a strong defense where he just accepted delivery
11 of a package. Knowledge is critical in this case.

12 We've stipulated that there were drugs. Did he
13 knowingly accept a package of marijuana? If it just says
14 package on there, I was trying to deliver the package or
15 I'll try and deliver the package, that is the heart of
16 our defense. I'm trying to help deliver a package. He
17 didn't know what was in that package. I think we have to
18 have that audio.

19 THE COURT: Just one second. Let me look to see
20 something.

21 All right. So, again, I guess the first question I
22 had to ask you is what would be the standard that I have
23 to use to apply any -- I know the manifest necessity
24 standard for a mistrial. I'm talking about for failure
25 to provide discovery.

1 MS. DRAWDY: I would say in the light most
2 favorable to the defendant this is -- under Brady they
3 don't get to pick and choose what I might get or might
4 could use. That's why Brady is there.

5 THE COURT: Well, I understand that but what I
6 understand Mr. Campbell is saying we don't have it.
7 There's nothing there, at all.

8 Is that not correct? Is that what you said?

9 MR. CAMPBELL: That is correct. We do not have it,
10 and, I mean, I could put the officer on the stand and go
11 through a litany of questions where he can question, Your
12 Honor, regarding that but we do not have an audio
13 regarding the Greenville delivery.

14 And, you know, in dealing with this and what she's
15 raising on knowledge this is a question for the jury.
16 It's a jury issue, and she can bring this out through
17 cross-examination of the officers and go into it and
18 impeach him or attack his credibility regarding this and
19 regarding their police work. I mean, that's something
20 she can get into.

21 But as it goes to the knowledge of him knowing,
22 he's voluntarily cooperating in this investigation. Of
23 course now he's flipping it saying now he's not. But at
24 the time they wouldn't of known where to go unless he was
25 willing and cooperating.

1 THE COURT: Well, I understand that, and I think
2 that you very well may be right; however, what I'm going
3 to do, I'm going to take it under advisement. I'm going
4 to do my own independent research and I'm going to ask
5 you to provide me some information on it, too.

6 MS. DRAWDY: I will.

7 THE COURT: I am concerned. I have no doubts that
8 Officer Sloan is a very good and loyal and fine officer,
9 and there's no impugment on you but I am concerned that
10 there is potential exculpatory information, also
11 potential information that has to go to the aspect of
12 knowledge.

13 With that being said, I think with other evidence I
14 have so far, and that being that the defendant agreed,
15 said he was willing to cooperate, spoke in English,
16 allegedly, said I was paid 500. I gave a hundred to the
17 guy in the apartment, a hundred to the guy in the car. I
18 mean, it's not necessarily going to the heart of saying,
19 I knew it was pot, but also it'd be a factual question as
20 to whether the jury believed that that's enough to have
21 knowledge of what the package is. At this stage it's my
22 preliminary idea. I'm not saying that's what I'm ruling
23 but that is my thoughts on it because it certainly goes
24 to what I would say scienter, that he has a bad --

25 MS. DRAWDY: And I would just remind the Court when

1 we get to cross or where this case goes is he says he was
2 to be paid 500 for a package. So that's entirely
3 different than he had received, and that's why what's on
4 the audiotape, if they have it, what if, it all matters.

5 THE COURT: I don't see the distinction, quite
6 frankly. I don't think in anybody's common knowledge you
7 get paid \$500 just to go pick up a package, just to go
8 pick it up, unless there's somebody there, that somebody
9 else is trying to get you to do it for them, as if what
10 was going on. That was my impression when I was hearing
11 this evidence, quite frankly.

12 Now, I may be dead wrong, and I'm going to look at
13 it. If I am I'll stand correct and I'll grand you a
14 mistrial, but at this state I need to look at it further.
15 So in other words, I'm taking it under advisement, okay?

16 MS. DRAWDY: Thank you.

17 THE COURT: Anything further from the State?

18 MR. CAMPBELL: Not on these issues, Your Honor.

19 THE COURT: Anything further?

20 MS. DRAWDY: No, Your Honor. Thank you.

21 THE COURT: All right. Would you bring the jury
22 back.

23 (WHEREUPON, the jury enters the courtroom at
24 approximately 10:30 a.m.)

25 THE COURT: Mr. Campbell, you ready to proceed?

1 MR. CAMPBELL: Yes, Your Honor.

2 BY MR. CAMPBELL:

3 Q. Now, Agent Sloan, I'm going to go back before we
4 took the break. We were talking about this delivery in
5 Greenville.

6 A. That's correct.

7 Q. At this point you testified that the individual
8 Jose Olivares, who is present in court, was wired with an
9 audio; is that correct?

10 A. That's correct.

11 Q. Do you have a copy of this audio?

12 A. I do not.

13 Q. And why do you not?

14 A. I don't remember if Greenville County put the audio
15 on him or Anderson County put the audio on him. We don't
16 turn the audio on until he is sent from us. We don't run
17 an audio the entire time he's with us. We don't run
18 audio while we're sitting talking to him about what he's
19 going to do, how he's going to do it, how we're going to
20 keep a watch on him. We don't turn the audio on until
21 basically he's fixing to leave our presence, get in his
22 vehicle and drive to where he's going.

23 Nothing transpired in Greenville. There was
24 nothing on the audio other than him walking to an
25 apartment and walking back to his truck, and driving back

1 to us. That's the only reason I can tell you we don't
2 have the audio. There's no other reason for it.

3 Q. Now, after this failed delivery attempt in
4 Greenville did you all come back to Anderson?

5 A. We did. We came back to Anderson and took
6 Mr. Olivares to the detention center.

7 Q. And at any point were you able to determine whether
8 or not he had any prior contacts with Anderson or
9 Anderson County?

10 MS. DRAWDY: Objection, Your Honor.

11 MR. CAMPBELL: On what grounds?

12 THE COURT: You all address the Court.

13 MS. DRAWDY: Relevance.

14 THE COURT: State your question again, please.

15 MR. CAMPBELL: I asked Agent Sloan whether or not
16 he at any time learned whether or not Mr. Olivares had
17 any contacts with Anderson or Anderson County prior to
18 this.

19 (WHEREUPON, a bench conference was had.)

20 MS. DRAWDY: Withdrawn.

21 BY MR. CAMPBELL:

22 Q. If you'd please answer the question.

23 A. Would you ask me one more time.

24 Q. Whether or not after -- during your course of this
25 investigation were you ever able to learn whether or not

1 Mr. Olivares had any contacts with Anderson, Anderson
2 City or Anderson County prior to this?

3 A. I don't recall him having any contacts with any
4 police or law enforcement in Anderson.

5 Q. Now, he was arrested, you charged him with
6 trafficking in marijuana; is that correct?

7 A. That's correct.

8 Q. Between 10 and 100 pounds?

9 A. Correct.

10 Q. And part of the elements regarding that is whether
11 he knew what he was doing or what he was trafficking; is
12 that correct?

13 A. Correct.

14 Q. Can you please tell the ladies and gentlemen of the
15 jury your basis or your reason why you charged him with
16 this. What grounds did you have?

17 A. Well, there's many factors that play into why we
18 charged him with it. Number one, he was coming to pick
19 up this -- we watched him. He did counter surveillance
20 on me as I delivered the package. He sent another
21 Hispanic male out of the truck walking to pick the
22 package up. The package was marijuana. After he was
23 Mirandized he told not only --

24 MS. DRAWDY: Objection, Your Honor, hearsay.

25 THE COURT: Overruled.

1 MR. CAMPBELL: Your Honor, he hasn't finished --

2 THE COURT: Overruled.

3 A. After he was Mirandized he told me, included, he
4 knew what was in the package. He was being paid \$500 to
5 pick the package up, paying the apartment -- the guy in
6 the apartment \$100, and paying the passenger \$100.
7 That's \$700 to pick up a box that looks like a Delta
8 planer that probably costs \$200.

9 Q. And in this case he did agree to cooperate; is that
10 right?

11 A. That's correct. He actually -- not only did he
12 agree to cooperate he knew where the package was going
13 and he took us to that apartment in Greenville to attempt
14 to deliver it.

15 Q. Now, this package, State's Exhibit Number 18, it
16 remained in your care, custody and control; is that
17 right?

18 A. That's correct.

19 Q. What if anything did you do with this package?

20 A. After we took it back to the sheriff's office it
21 was kept in my custody until I transported it to SLED to
22 be put in evidence.

23 Q. And once back at the sheriff's office did you open
24 the box up fully at that point?

25 A. We did. We opened the box fully at that point and

1 examined each bale in there.

2 Q. And after you did that as some point in time did
3 you deliver this item to SLED?

4 A. I did. I took it myself.

5 Q. And when I say SLED we're referring to chemical lab
6 or --

7 A. Headquarters in Columbia.

8 Q. And at some point in this case you were issued a
9 report by a SLED chemist, which we stipulated to?

10 A. That's correct.

11 Q. And what were the results of that?

12 A. Each bale tested positive for marijuana. It was a
13 total of 30. -- just a hair over 30 pounds total of
14 marijuana.

15 Q. And I want to show you what's been marked State's
16 Exhibit 16 and 17. Can you please identify what this is,
17 sir.

18 A. This is the SLED Forensic Service Laboratory report
19 where Carmen Tucker, who is a chemist, took the three
20 bales of plant material, analyzed it and found it was
21 marijuana, 485.51 ounces, which comes out to just a
22 little bit over 30 pounds of marijuana.

23 Q. And that's basically dividing by 16 ounces to a
24 pound?

25 A. Sixteen ounces to a pound, yeah.

1 Q. Now, Agent Sloan, in dealing with State's Exhibit
2 Number 18 --

3 MR. CAMPBELL: Your Honor, if we can have the agent
4 step down and open the exhibit.

5 THE COURT: Yes, sir.

6 BY MR. CAMPBELL:

7 Q. Agent Sloan, could you please open State's Exhibit
8 Number 18 and confirm to the ladies and gentlemen of the
9 jury this is the items that you delivered to SLED.

10 MR. CAMPBELL: Your Honor, at this time, just for
11 the record, Agent Sloan is opening State's Exhibit Number
12 18.

13 THE COURT: So noted.

14 A. That is what I delivered to SLED. The Saran wrap
15 is in the bottom, yes.

16 Q. And what is the white powder substance on the
17 outside of the box; do you know?

18 A. That's part of the laundry detergent that was
19 packed all under the Saran wrap.

20 Q. If you, Agent Sloan, could pick this up and set it
21 for the view of the ladies and gentlemen of the jury.

22 A. (The witness complied).

23 Q. Now, the initial weight you had on this package was
24 how much, from UPS?

25 A. The total box was 52 pounds.

1 Q. And the final weight, once all the material and
2 packing was removed, was what?

3 A. A little over 30 pounds.

4 Q. And this is how it was received back from you from
5 the chemist at SLED?

6 A. This is the first time I've opened it.

7 MR. CAMPBELL: Your Honor, can you ask the jury if
8 all of them are able to see it.

9 THE COURT: Mr. Burns, can everybody on the jury
10 see in the box? Is there anybody who cannot see the box,
11 would you raise your hand.

12 (No hands were raised.)

13 THE COURT: Thank you very much.

14 (The witness returned to the witness stand.)

15 MR. CAMPBELL: Agent Sloan, that's all the
16 questions I have for you at this time. Will you please
17 answer any questions Ms. Drawdy may have.

18 THE COURT: Cross-examination.

19 MS. DRAWDY: Thank you, Your Honor. May it please
20 the Court.

21 Opposing counsel.

22 CROSS-EXAMINATION

23 BY MS. DRAWDY:

24 Q. Well, this is the first time, Agent Sloan, we've
25 heard or seen any information from you that my client,

1 Jose Olivares, told you he knew there was marijuana in
2 the package. According to your report, your
3 investigative report -- you do do investigate reports,
4 yes?

5 A. That's correct.

6 Q. In your investigative report he provided the
7 following information and your -- first of all, your
8 investigative report, it's a summary of what two other
9 officers got from Mr. Olivares?

10 A. No. That's not correct about the investigative
11 report, no.

12 Q. Okay. But your report says Hulio -- this is what
13 Olivares provided to you. Hulio Garfio lives at [REDACTED]
14 [REDACTED] in Greenville and paid him \$500 to
15 pick up the marijuana. Is that the statement you are
16 saying where he told you he knew there was marijuana in
17 this package?

18 A. I don't know if that's in fact the exact statement
19 you're talking about but if that's what's in my report
20 then --

21 Q. Okay. Okay. At a prior hearing you testified that
22 he told you he knew there were drugs in the package.

23 A. Okay.

24 Q. Today you've testified about a package, he talked
25 to you about the package.

1 A. When I refer to the package I'm referring to the
2 package sitting in front of me.

3 Q. Let's start with the incident date. You found out
4 about this on June 4th and set up a controlled buy on
5 June 5th, 2009?

6 A. Yes. I believe so. Yes, ma'am.

7 Q. Contacted agents with the Anderson County Sheriff's
8 Office?

9 A. Correct.

10 Q. Set up this controlled buy. Now, there were so
11 many names mentioned. Let's start with, I think it's
12 State's Exhibit Number 4, and let's be clear. State's
13 Exhibit Number 4.

14 A. I can't see it, Your Honor.

15 Q. Oh, can you see it? I'm sorry. Step down.
16 State's Exhibit Number 4.

17 A. That's good right there.

18 Q. Can you see it now?

19 A. Uh-huh.

20 Q. This package is shipped from Jesus Ochoa, correct?

21 A. Yes.

22 Q. That's not Jose Olivares?

23 A. That's correct.

24 Q. It is shipped to Carlos Ochoa. That again is not
25 my client?

1 A. Correct.

2 Q. I think you testified also on direct time was of
3 the essence in this controlled delivery and you did a
4 quick search for Carlos Ochoa. There were 15 or so and
5 you dealt with one?

6 A. He was the only one in Anderson County, that's
7 correct.

8 Q. But there were 14 others around and you've
9 testified that my client lived in Greenville, so others
10 could have been elsewhere pretty close just not Anderson
11 County.

12 A. All over the State.

13 Q. But 14 others. And then the name Jesus Ochoa, you
14 testified there were just tons of Jesus Ochoas?

15 A. Correct.

16 Q. So you didn't follow up with those others?

17 A. No, ma'am.

18 Q. So now you go back to your controlled buy.
19 According to your testimony you tried to make two
20 deliveries. They were both unsuccessful, and then it's
21 your understanding you see the red truck. That's when it
22 all starts, really, correct?

23 A. Yes, ma'am. It was a controlled delivery though.

24 Q. All right. Controlled delivery. Now, let's go to
25 the box. The box when you first came into contact with

1 it you testified on direct that it was in good shape?

2 A. The box was, yeah.

3 Q. So all this extra tape, that's all SLED tape.

4 That's not the way this box came to Spartanburg County,
5 right?

6 A. Yes, ma'am.

7 Q. It was sealed, it looked good, looked clean, and it
8 said Delta, some kind of portable planer?

9 A. Yes, ma'am.

10 Q. And then you all opened it up, tore it up and made
11 it look like this?

12 A. No, ma'am. We didn't make it look like that. We
13 sealed it back just like it was. SLED evidence made it
14 look like that.

15 Q. So you sealed it back like it was. So in its
16 original form, and I'm going to show you State's Exhibit
17 14, in its original form did it have these white bands on
18 there or did you put that on?

19 A. I don't remember if it had the bands on or not. I
20 think the actual bands were on there. We slid the bands
21 back on.

22 Q. But you're not sure?

23 A. No. I don't remember about the bands.

24 Q. Okay. And then you opened the box, right?

25 A. After I got the search warrant, yes, ma'am.

1 Q. And you went through it. I'm going to show you
2 State's 5. And you went through the packaging where it
3 had detergent around it, and that's blue wrapping paper.
4 These were seriously wrapped --

5 A. Yes, ma'am.

6 Q. -- were they not? Could you smell the marijuana
7 through the box?

8 A. As soon as you opened the box. As soon as you
9 opened the box you could.

10 Q. Right. But before you opened it you couldn't smell
11 it. In fact, you needed, I think you testified a K-9 to
12 alert to this?

13 A. That's correct.

14 Q. So unless it had been opened anyone receiving this
15 package would just know it to be a package, a package in
16 a nice box, right?

17 A. Unless you knew what was in the package.

18 Q. Right. And you knew what was in the package
19 because you'd opened it, yes?

20 A. Correct.

21 Q. The Apartment [REDACTED], it did not belong to my client?

22 A. It did not.

23 Q. You did successfully deliver the package,
24 ultimately?

25 A. Yes, ma'am.

- 1 Q. And you delivered it to a Jose Delorez?
- 2 A. Correct.
- 3 Q. Jose Delorez accepted delivery of the package and
- 4 signed for it?
- 5 A. That's correct.
- 6 Q. At no time did my client have possession of this
- 7 package?
- 8 A. I never allowed your client to have possession of
- 9 the package.
- 10 Q. At no time did my client open this package?
- 11 A. No, ma'am. I didn't allow him to.
- 12 Q. At no time did my client sign for this package?
- 13 A. He wasn't receiving it at the apartment.
- 14 Q. And at no time he signed for it, correct?
- 15 A. Correct.
- 16 Q. You were not one of the officers who actually
- 17 arrested my client?
- 18 A. I was not. I charged him. I was, I guess in the
- 19 process of getting back to the van when they arrested
- 20 him.
- 21 Q. Now, let's go to the apartment. At the apartment
- 22 where Jose Delorez was, Jose Delorez who accepted this
- 23 package and signed for delivery of it, you found in that
- 24 apartment -- or you went and got a consent to search
- 25 signed by Mr. Jose Delorez, right?

- 1 A. He signed it as Jose Santos but he was in fact Jose
2 Delorez, yes.
- 3 Q. And so you got this consent from Jose Santos, also
4 known as Jose Delorez, and Jose Santos Delorez said,
5 Yeah, you could search my apartment. And you found in
6 his apartment \$12,000 cash?
- 7 A. Correct.
- 8 Q. So in Jose Delorez's apartment you found the cash
9 and the package. And you also confirmed that Jose Santos
10 Delorez lived indeed in Apartment [REDACTED]
- 11 A. Yes, ma'am.
- 12 Q. Now, you testified my client lived in Greenville, I
13 think on Lily Drive?
- 14 A. I think it was Lily Street but, yes, ma'am.
- 15 Q. Lily Street. And you say you spoke with my client,
16 Jose Olivares, about things related to this incident?
- 17 A. That's correct.
- 18 Q. Now, while you were speaking with him you found
19 out, I'm sure, that he installs satellite systems?
- 20 A. I did.
- 21 Q. And he installs satellite systems here in Anderson
22 County, and that's what brings him here on occasion.
- 23 A. Are you asking?
- 24 Q. Did you find that out? You found that out when you
25 spoke with him?

1 A. I don't remember where he puts satellites up at but
2 he installs satellites.

3 Q. And that was why he was here that day?

4 A. No, ma'am.

5 Q. Now, when you say you spoke with Mr. Olivares about
6 the package you testified on direct you are saying he
7 said, okay -- let me ask you. This conversation, this
8 supposed conversation that you had with my client, did
9 you reduce it to writing?

10 A. I did not.

11 Q. You chose not to?

12 A. I didn't read him Miranda.

13 Q. So because you didn't read him Miranda you don't
14 have to write down --

15 A. Oh, you're talking about the statement, a statement
16 from Mr. Olivares?

17 Q. Yeah --

18 A. I'm sorry. I misunderstood you.

19 Q. -- this statement that you are telling this jury
20 here that my client, Mr. Jose Olivares, gave you. Did
21 you reduce it to writing so we can see it today?

22 A. Oh. I misunderstood your question. No, I did not
23 put his statement in writing.

24 Q. So we just have your word for it that he said,
25 supposedly, someone was going to pay him \$500 to pick up

1 this package?

2 A. They were going to pay him \$500, he was going to
3 pay the apartment \$100 and pay his passenger \$100. You
4 have not only my word but other witnesses, also.

5 Q. Well, we'll get to the other witnesses. Just with
6 you, did you find any money? How much? Did you find
7 \$500 on Mr. Jose Olivares?

8 A. I did not, but I actually was not the one who
9 arrested him and not the one who searched him, but I did
10 not find any money on him.

11 Q. So it's not your responsibility to reduce anything
12 to writing when you take a statement and it's not your
13 responsibility to look for money when you take a
14 statement about money?

15 A. It's my decision whether I put it in writing or
16 not, and I decided not to put it in writing because what
17 we were attempting to do.

18 Q. You didn't put it in writing on that day but did
19 you at any time afterwards, after you just arrested my
20 client did you take the time to go back to your office
21 and put in writing what you say my client, Jose Olivares,
22 said?

23 A. I believe I did, yes, ma'am.

24 Q. You did?

25 MS. DRAWDY: Your Honor, may we approach.

MICHAEL SLOAN - CROSS BY MS. DRAWDY

211

1 THE COURT: Yes, ma'am.

2 (WHEREUPON, a bench conference was had.)

3 BY MS. DRAWDY:

4 Q. Agent Sloan, let me clarify that. So you are
5 saying after this incident, June 5th, 2009, you did
6 indeed go write down his statement and write down
7 everything that took place?

8 A. Again, I've misunderstood that question.

9 Q. And the's my fault. I should have clarified that
10 question.

11 A. I thought you were referring to a report. No, I
12 did not go take a statement from Mr. Olivares. I did not
13 need to at that time.

14 Q. You didn't go sit at the jail with him and say,
15 Let's write your statement down that you gave me?

16 A. No, ma'am. I didn't need to.

17 Q. So what we're left with is what you say he said?

18 A. Yes, ma'am.

19 Q. And you say -- you said something about \$500 but
20 you never found the \$500?

21 A. No, I didn't.

22 Q. To your knowledge, did anybody find \$500 in this
23 case on my client?

24 A. He was to be paid \$500. The package never made it
25 back to Greenville. He was not going to receive \$500

1 until the package made it back to Greenville.

2 Q. Were you going to pay him?

3 A. No, ma'am.

4 Q. Okay. So what are you telling us? Who was -- you
5 are telling us that he -- you are telling us, this jury,
6 that he told you that someone else told him that he was
7 supposed to be at some point paid \$500?

8 A. I'm telling you and this jury that Mr. Olivares
9 told me that he would receive \$500 for picking up a
10 package, taking it back to [REDACTED]
11 in Greenville and delivering it to Hudio Garfio.

12 Q. Thank you. Now, you say my client cooperated?

13 A. Yes, ma'am.

14 Q. And he just -- to your knowledge, just when he's
15 been bounced on by eight different officers, or how
16 many -- how many were there?

17 A. He actually wasn't bounced on by anybody, and there
18 was only two officers, I believe. Two to three that went
19 to the convenience store to arrest him.

20 Q. Two or three at the convenience store, and then
21 though he meets with you. So just an average person is
22 accosted by how many officers, would you say?

23 A. Three, four, five.

24 Q. Three, four, five.

25 A. Uh-huh.

1 Q. And he just says, I agree to help you?

2 A. Yes, ma'am.

3 Q. Like any innocent person would, right?

4 A. No, ma'am. He told me he knew what was in the
5 package. He was taking it to Greenville, receiving \$500.
6 He knew what was in it.

7 Q. But he tells you this and didn't seek or get --
8 wasn't promised anything?

9 A. No, ma'am. I don't promise them anything. I've
10 worked many cases in this County and I don't promise
11 people anything.

12 Q. And you never said, Listen, you can help yourself
13 by helping us and telling us where this package was
14 supposed to go?

15 A. Did I tell him that he needed to tell us where the
16 package was?

17 Q. Well, you never say anything like that in your
18 career as law enforcement professional?

19 A. I can't tell you what I say. I don't promise them
20 anything.

21 Q. So it wouldn't be out of the realm of possibilities
22 that you then said, Hey, help yourself, help us, let us
23 know where this package was going back to Greenville?

24 A. I asked him to help us.

25 Q. And he did, didn't he?

- 1 A. He did.
- 2 Q. And you testified you wired him up, fitted him with
- 3 the audio. Now, you were wired up in the control
- 4 deliveries here in Anderson, correct?
- 5 A. Correct.
- 6 Q. And we have that audio where you're wired up.
- 7 A. That's correct.
- 8 Q. Where you get to govern what you say and what's
- 9 recorded, right?
- 10 A. If you want to call it governed. Everything that I
- 11 say is recorded.
- 12 Q. Right, but you get to control what you say, don't
- 13 you?
- 14 A. Sure.
- 15 Q. So now there's audio of Mr. Olivares. He's wired
- 16 up, he's sent to Greenville, and that audio, do we have
- 17 that today?
- 18 A. We do not because nothing transpired at the
- 19 apartments in Greenville.
- 20 Q. But that would be recorded so we can hear it and
- 21 know.
- 22 A. Him driving from leaving us, getting in his truck,
- 23 driving to the apartment, nothing happened at the
- 24 apartment, and driving back to us, yes, that would be
- 25 recorded.

1 Q. And then let's go to that Greenville apartment
2 where you're making this delivery. Did you ever go in
3 that apartment at any time?

4 A. I did not. I didn't have anything to get me into
5 the apartment.

6 Q. Did anybody in this investigation, to your
7 knowledge, go in that apartment where my client took you
8 and said where this package was to go?

9 A. I don't remember anybody ever going into that
10 apartment.

11 Q. So it failed twice that day but you all didn't
12 think anything of it to follow up, find out? You just
13 wrote it off?

14 A. It failed once. We only made one delivery. It
15 failed once. By this point we knew that if in fact there
16 was a Hudio Garfio he was not going to be accepting a
17 package after this time. So, yes, we called it off and
18 went back to Anderson County Detention Center.

19 Q. But isn't that what you testified to on direct when
20 you said you had to do the first controlled delivery here
21 in Anderson and you said we had to get it on time? It
22 was executed at 10:15 because if it didn't get done at
23 10:15 the person who was going to accept delivery in
24 Anderson at Apartment [REDACTED] might not be there, but you kept
25 trying and later on you got someone to accept delivery,

1 right?

2 A. After they flagged down a UPS truck, yes, ma'am.

3 Q. I'm a little confused. I need to get clarification
4 about this police truck that's making deliveries. You
5 said the control delivery took place in Anderson after
6 the two Hispanics in the red truck tried to flag down the
7 UPS driver. But didn't the control delivery take place
8 just when you went up there and knocked on it and
9 someone, Jose Delorez Santos, answered the door and
10 accepted and signed for delivery? He was there.

11 A. Didn't take place until after they flagged down the
12 UPS driver inquiring about this package, then it took
13 place.

14 Q. How long were you talking to Mr. Olivares, my
15 client?

16 A. On and off I was with him for, I'd say an hour and
17 a half, two hours. You know, I could be off on my time
18 frames there but somewhere close to that and we actually
19 spoke a lot. I mean, not only about the case but, you
20 know, I'm going to treat everybody polite, and we carried
21 on a conversation.

22 Q. The payment you say my client was to receive, that
23 \$500 dollars, now, I don't see it in your investigative
24 summary but \$500, was he supposed to get \$500 and from
25 that \$500 pay the passenger in the truck and Jose Delorez

1 Santos in the apartment and only walk away with 300 or
2 was he supposed to get 500 plus two? How are you doing
3 your math?

4 A. I'm not doing any math. He told me \$500 is what he
5 would receive. He would pay the apartment \$100, he would
6 pay the passenger \$100 to pick up a box that says Delta
7 planer on it. I'm not doing any math.

8 Q. Agent Sloan, is it common procedure when someone
9 gives you a statement -- let me back up. A controlled
10 delivery, you did describe that this was serious. In
11 fact, at one point I think you said you were -- well, you
12 didn't say scared. You know, you are a tough guy but you
13 were --

14 A. Concerned.

15 Q. Yes, concerned for your safety. This was an
16 operation, right?

17 A. That's correct.

18 Q. Okay. Is it common practice in operations when you
19 get statements from people that you do reduce those to
20 writing when indeed you do get statements?

21 A. It all depends on the case, the type of case and
22 the circumstances around the case.

23 Q. And after this case -- this was in -- withdrawn.
24 Let me -- with these controlled deliveries, there's audio
25 availability, you are out with an audiotape, right?

1 A. For the delivery, yes:

2 Q. For the delivery. The other officers, you can
3 communicate with them?

4 A. I can't communicate. At one time I picked up my
5 cell phone to tell them that they were doing counter
6 surveillance on me and I was concerned. I can tell them
7 but I can't hear what they are saying back.

8 Everything --

9 Q. You got some kind of communication?

10 A. Oh, yes, ma'am.

11 Q. And the other vehicles that you are relying on for
12 your back up and your support, they are equipped with
13 audio, cell phones -- what do you all call these?

14 A. A radio.

15 Q. Radios?

16 A. They are not equipped with audio recording, no.
17 They are equipped with -- if you bring your cell phone
18 you got a cell phone. There's a radio in the vehicles,
19 yes.

20 Q. Thank you, Agent Sloan.

21 A. Thank you.

22 THE COURT: Redirect?

23 MR. CAMPBELL: Yes, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. CAMPBELL:

- 1 Q. Agent Sloan, just kind of clarify what Ms. Drawdy
2 went over in her cross-examination of you. In your
3 opinion does the fact that Mr. Jose Olivares' name
4 doesn't appear as shown in State's Exhibit Number 4 --
5 A. Mr. Olivares.
6 Q. -- as either the sender or the receiver of this
7 package, does this in and of itself remove his
8 involvement from this case?
9 A. It has no bearing on whether he's involved or not,
10 his name not being on there.
11 Q. Because if it had been addressed to him it would
12 have went to a Greenville address, would it not?
13 A. Lily Street in Greenville, yes, sir.
14 Q. Now, when you were trying to -- attempting to
15 determine if the name Carlos Ochoa was in fact a person
16 who was living [REDACTED] you testified on
17 direct and cross that you had a hit of 15 people in the
18 State of South Carolina with that name?
19 A. Somewhere around 15, yes.
20 Q. Did you see the need or any reason to follow up
21 with tracking down the other 14 names?
22 A. I had no reason to track them down and the only
23 Ochoa we had in Anderson we had no reason to believe he
24 was involved in this case at all.
25 Q. But you did attempt to confirm about the Anderson

1 Carlos --

2 A. We did. Yes, we did.

3 Q. Ms. Drawdy was talking about some question about he
4 never came into possession of this box, this 30 pounds of
5 marijuana in State's Exhibit Number 18, and why is that?

6 A. I never allowed him to come into possession of the
7 box. We intercepted the box before he could get his
8 hands on it.

9 Q. But is your opinion that he was attempting to come
10 into possession of this box?

11 A. 100 percent.

12 Q. And based upon your talk with Mr. Olivares as well
13 as your observations of what the other two individuals
14 were doing do you have an opinion on whether or not he in
15 fact had agreed or put into place using these other two
16 individuals to help obtain this package?

17 A. He told me he put --

18 MS. DRAWDY: Objection, Your Honor, speculative.

19 THE COURT: Just overruled. Go ahead.

20 Q. Please answer the question.

21 A. Mr. Olivares in fact told me he was using both
22 people to pick up the package.

23 Q. At any point when you were talking to him or other
24 officers talk to him in your presence did he mention he
25 was there that day to install a satellite in Anderson?

1 A. No. He was there to pick up a package from [REDACTED]

2 [REDACTED], [REDACTED]

3 Q. Not once did he say he needed to install a
4 satellite?

5 A. Not once.

6 Q. And I believe your testimony was it was your
7 decision at that point in time not to reduce what he told
8 you to writing?

9 A. That's correct.

10 Q. And as you stated, that you take it on a case by
11 case basis and look at it from the standpoint of what is
12 going on in that investigation at that time?

13 A. That's correct.

14 Q. And why in this case did you not take the time to
15 actually sit down and formally go through the whole
16 procedure with him and reducing this statement to
17 writing?

18 A. Number one, I've stressed this. Of course, we are
19 working on a time frame to get it delivered to
20 Greenville. And number two, there was about three to
21 four, to five officers that were with myself and
22 Mr. Olivares when he gave this statement.

23 Q. And when he was giving this statement was he
24 accosted by any of the officers that you were with?

25 A. Never.

1 Q. And you spoke to him; is that right?

2 A. That's correct.

3 Q. Well, how was his demeanor when you were talking to
4 him?

5 A. At first he kind of had his head hung low, you
6 know, like a lot of people do when we are talking to
7 them. After he decided to cooperate and, I mean, his
8 demeanor kind of changed and we were actually, I mean,
9 like I said, we carried on a conversation about other
10 things and talked and just spoke.

11 Q. At any point, in your opinion, did he feel like he
12 was being threatened or coerced in order to get him to
13 cooperate?

14 A. Never.

15 Q. At any point did he attempt to call off this second
16 operation of doing a controlled delivery to Greenville?

17 A. No, he did not.

18 Q. And is it normal as it was happening in this case
19 where a person would be arrested by two or more officers?

20 A. Yes. And, I mean, it could be any number of
21 officers. Two officers, yes, sir.

22 Q. So the number of officers who make an arrest is
23 irrelevant?

24 A. Yes.

25 Q. Or taking a person into custody?

1 A. That's correct.

2 Q. And Ms. Drawdy was talking about the Greenville
3 delivery and talking about going to Broadway Apartments.
4 Did you have any legal reason yourself to actually go
5 into, I believe you said Apartment [REDACTED], [REDACTED]
6 [REDACTED], I believe you said?

7 A. I believe it was Apartment [REDACTED], but it was [REDACTED]
8 [REDACTED], yes.

9 Q. Did you have any legal reason that you could
10 actually get into that apartment?

11 A. No, sir.

12 Q. Based on what you had?

13 A. I didn't have enough for a search warrant and
14 didn't have any probable cause to get me into the
15 apartment.

16 Q. I mean, how did you know about where to go, where
17 this address was located?

18 A. Mr. Olivares told me exactly where to go and took
19 me to it.

20 Q. So you were taking his word at exactly where this
21 delivery was supposed to be made?

22 A. That's correct.

23 Q. And you had no way of proving whether he was
24 telling you the truth or not?

25 A. No, I did not, and I could not identify Hudio

1 Garfio.

2 Q. And why is it that on your third delivery attempt
3 of this package, State's Exhibit Number 18, did you not
4 attempt to make the delivery again in your pick-up truck,
5 your SLED issued pick-up truck, which you did on the
6 first two occasions?

7 A. Because at this point I had learned that they were
8 watching for a UPS truck or someone delivering packages
9 to be coming into the apartment complex. It was
10 essential that I made them know that I was delivering
11 packages or we were not going to successfully deliver the
12 package.

13 MR. CAMPBELL: I have no further questions.

14 THE COURT: Recross?

15 MS. DRAWDY: Just briefly.

16 RECROSS-EXAMINATION

17 BY MS. DRAWDY:

18 Q. You said on -- Mr. Campbell got it out that you
19 chose not to take a written statement about this package
20 because of time. It was your decision?

21 A. Time wasn't the only reason. That was one of them.

22 Q. Okay. Now, at a prior setting didn't you say the
23 reason you didn't reduce this statement to writing was
24 because Mr. Olivares could not read or write in English?

25 A. I don't remember saying that.

1 Q. Would you be surprised if you'd said that?

2 A. No. Not at all. I mean, this was almost two years
3 ago.

4 Q. Do you recall that that's -- you said that because
5 you didn't have the time was one of the reasons you chose
6 not to reduce this to a written statement. What were the
7 others?

8 A. Well, one of them was we had several officers there
9 that heard him. We're trying to do this in a hurry.
10 I've got several officers that have listened to what
11 Mr. Olivares has just told me. I don't have to write the
12 statement down. I don't have to. It's my decision. I
13 made that decision and that's why I'm testifying to you
14 what he told me.

15 Q. Did you have Spanish speaking officers there?

16 A. We did.

17 Q. So if indeed reducing a statement to writing would
18 have been a problem because of some language barrier you
19 still would have been able to do it with the Spanish
20 speaking officers?

21 A. If I chose to.

22 MS. DRAWDY: No more questions. Thank you.

23 THE COURT: May this witness step down?

24 MR. CAMPBELL: Yes, Your Honor.

25 THE COURT: Thank you, sir.

1 Would you call your next witness, please, sir.

2 (WHEREUPON, a bench conference was had.)

3 THE COURT: Mr. Burns, I'm going to ask you to take
4 your jury back to the jury room. We're going to take a
5 quick break then we'll resume the testimony at 11:30.

6 Thank you, sir.

7 (WHEREUPON, the jury leaves the courtroom at
8 approximately 11:18 a.m.)

9 THE COURT: All right. We're in recess until
10 11:30.

11 (WHEREUPON, a brief recess was taken.)

12 THE COURT: Mr. Campbell, the State ready to
13 proceed?

14 MR. CAMPBELL: Yes, Your Honor.

15 THE COURT: Ms. Drawdy, the defense ready to
16 proceed?

17 MS. DRAWDY: Yes, Your Honor.

18 THE COURT: Very good.

19 (WHEREUPON, the jury enters the courtroom at
20 approximately 11:34 a.m.)

21 THE COURT: Mr. Burns, did you have sufficient
22 time, you and the jury?

23 THE FOREMAN: Yes, sir.

24 THE COURT: You all have everything you need? Very
25 good.

1 Would you call your next witness.

2 MR. CAMPBELL: Your Honor, the State calls Brad
3 McGuire.

4 MS. DRAWDY: Your Honor, may we approach just
5 briefly?

6 THE COURT: Yes, ma'am.

7 (WHEREUPON, a bench conference was had.)

8 NEAL BRADLEY MCGUIRE, after having been duly
9 sworn, testified as follows:

10 THE CLERK OF COURT: If you would take the witness
11 stand. State your name and spell your last name for the
12 reporter, please.

13 THE WITNESS: Neal Bradley McGuire, M-c-G-u-i-r-e.

14 DIRECT EXAMINATION

15 BY MR. CAMPBELL:

16 Q. Mr. McGuire, where are you employed?

17 A. Anderson County Sheriff's Office.

18 Q. How long have you been employed with law
19 enforcement?

20 A. Since 1993.

21 Q. And during that time has it always been with
22 Anderson County Sheriff's Office?

23 A. Yes, sir.

24 Q. And what type of positions, capacity have you
25 worked while employed with the sheriff's office?

1 A. I began my career as a reserve officer in 1993. I
2 was hired as a full-time deputy in 1994. In June of 1996
3 I was promoted to the rank of investigator in narcotics
4 division. During that time, I was promoted to senior
5 investigator, and I'm currently under assignment of asset
6 forfeiture coordinator for the sheriff's office, still in
7 the narcotics division.

8 Q. Now, did you have an occasion June 5th, 2009 to
9 help Agent Sloan do a controlled delivery of a marijuana
10 package here in Anderson?

11 A. Yes, sir.

12 Q. Now, I want to talk to you a little bit about that.
13 What exactly was your responsibility or your job being
14 involved in this investigation?

15 A. My job was to be on a surveillance team that was
16 for safety reasons for a controlled delivery of a
17 marijuana delivery. My job was to be on the outside
18 perimeter and observe any kind of suspicious activity or
19 anything that was, you know, potentially dangerous to
20 Agent Sloan.

21 Q. Now, besides yourself did you have anybody with
22 you?

23 A. Yes, sir. Special Agent Daryl Betsill, and there
24 was Deputy Scott Hamby, was a marked unit.

25 Q. And Deputy Hamby was in a different vehicle than

1 you; is that right?

2 A. Yes, sir. Deputy Hamby was in a marked unit in a
3 uniform and was actually out of sight. So he was not
4 directly next to me but he was assigned with me.

5 Q. And you were talking about Agent Betsill, where is
6 he employed?

7 A. He's with the South Carolina Law Enforcement
8 Division.

9 Q. And the type of vehicle you were in, is it a marked
10 unit or unmarked vehicle?

11 A. It's an unmarked, sir.

12 Q. And were you in, for lack of a better term, a
13 Class-A uniform displaying sheriff's office credentials?

14 A. No, sir. I was in plain clothes.

15 Q. Now, can you just briefly tell the ladies and
16 gentlemen of the jury what you did regarding your
17 surveillance, what went on?

18 A. My job, again, was to observe any suspicious
19 activity with the undercover operation of delivering the
20 marijuana. I was to watch any suspected people to make
21 sure that there was not any counter surveillance or there
22 was not any kind of safety reasons for Agent Sloan.

23 Q. Now, were you apart of all three delivery attempts?

24 A. Yes, sir.

25 Q. Now, I mainly want to talk to you about the third

1 and successful delivery attempt. Please tell the ladies
2 and gentlemen of the jury what you observed when you
3 arrived to start your surveillance on the third attempt?

4 A. The third attempt was somewhere after two o'clock
5 that day, around the two o'clock hour, a little later. I
6 observed that special Agent Sloan was decoying some fake
7 deliveries to make it look like he was delivering
8 packages around local stores off of Miracle Mile Drive.

9 The reason for that is we had attempted a couple
10 different times earlier that day and the deliveries had
11 -- there was no one had been there to deliver, and I had
12 learned that Agent Sloan had received information from a
13 UPS driver that a Hispanic -- two Hispanics had tried to
14 ask him about a package. So the third attempt was made.

15 During the surveillance on this time I observed a
16 red Ford Bronco -- red Ford Ranger in the parking lot of
17 a fabric store on Miracle Mile. There was two Hispanics
18 in there. When Agent Sloan began the decoy versions the
19 Ranger actually went into the apartment complex below the
20 fabric store and then one person came back out.

21 Q. And when you say went in, they drove back around
22 the backside of the shopping center stores?

23 A. Yes, sir. It was out of my sight. Once they drove
24 over a hill I couldn't observe what they were doing
25 anymore.

1 Q. Now, during this time that this was ongoing, this
2 control delivery being conducted by Agent Sloan, were you
3 able to monitor what he was doing?

4 A. There was an audio device placed on him for safety
5 and I was only able to hear part of it. I was not able
6 for the whole conversation. It was fading in and out. I
7 only had visual contact with him only part of the time as
8 well.

9 Q. And when you would lose visual contact were there
10 other agents in position were they could still maintain
11 eye contact with him?

12 A. Yes, sir. There was several agents stationed
13 around in different locations.

14 Q. And during this controlled delivery did you -- were
15 you able to, if you wanted to, to contact Agent Sloan
16 while he was conducting this delivery and speak to him?

17 A. Did I have any way to contact him?

18 Q. Well, did you have any means of communication with
19 him?

20 A. No, sir. We may could have used a cell phone, you
21 know, to him but we were not -- that was not part of what
22 we were trying to do, is to have a contact with him.

23 Q. Now, after you lost sight of this red truck -- and
24 we are talking about a Ford Ranger. Is this a big truck
25 or a little truck?

- 1 A. It's a midsize truck.
- 2 Q. About how long after that did you see the truck
- 3 come back around?
- 4 A. Approximately three, four, five minutes maybe. It
- 5 wasn't gone very long. If was, you know, less than
- 6 three, four minutes.
- 7 Q. And when it first went around the building how many
- 8 people were occupying inside this vehicle?
- 9 A. Two.
- 10 Q. And when it came back around how many people were
- 11 occupying the truck?
- 12 A. One.
- 13 Q. And at that point what did the individual who was
- 14 driving this truck do?
- 15 A. The individual first pulled back in at the fabric
- 16 store for a minute then it went down to the Citgo store,
- 17 and then it stopped at the Citgo store and he actually
- 18 went inside, the defendant went inside the Citgo store.
- 19 Q. And you were observing this at this time?
- 20 A. Yes, sir.
- 21 Q. Approximately how far away were you, distance-wise.
- 22 A. From no more than a hundred, 150 yards.
- 23 Q. And after he went to the store what was the next
- 24 action that you conducted?
- 25 A. I learned then from other agents that the delivery

1 had been made and my job was to secure the person in the
2 red Ranger. Myself, Agent Betsill and Deputy Scott Hamby
3 went over and did secure him at the Citgo store.

4 Q. And when you approached him did he appear surprised
5 to you?

6 A. Yes, sir. I mean, you know, the response of, you
7 know, a deputy in a uniform and then two plain clothed
8 officers going in and identifying ourself as who we are,
9 you know, he was a little bit surprised.

10 Q. At this point, did you speak to him or have a
11 conversation with him in English?

12 A. Yes, sir, I did.

13 Q. And what if anything did you tell him at that point
14 in time when you approached him at the gas station?

15 A. I told him that he was being detained by the
16 sheriff's office and that we were going to move to
17 another location due to safety reasons, and we did so.

18 Q. And when he was speaking to you was he speaking to
19 you in Spanish or was he speaking to you in English?

20 A. He was speaking in English.

21 Q. And did it appear to you that he understood what
22 you were telling him?

23 A. Yes, sir.

24 Q. At this point, did you move him to another part of
25 this area?

1 A. Yes, sir. Briefly I got one of the other agents to
2 get his vehicle and secure it and then we secured the
3 defendant and moved him across the street. I was
4 actually stationed at a Break Time restaurant and bar and
5 that's where I moved him back for a few minutes.

6 Q. Now, at this point you have met him. You testified
7 in your experience you've been in narcotics for how many
8 years?

9 A. Seventeen in narcotics.

10 Q. Has that been in Anderson County?

11 A. Yes, sir.

12 Q. Had you ever met Mr. Olivares at this point in
13 time?

14 A. No, sir.

15 Q. Did you even know who he was?

16 A. No, sir.

17 Q. Is the individual that you stopped at the Citgo gas
18 station in the courtroom today?

19 A. Yes, sir.

20 Q. Can you please identify him.

21 A. It's the gentleman in the maroon shirt who would be
22 the second person to the right of the defense prosecutor
23 -- or the defense attorney.

24 Q. Ms. Drawdy?

25 A. Yes.

- 1 Q. This is the person you spoke to on June 5th, 2009?
- 2 A. Yes, sir.
- 3 Q. Now, after you removed him -- what was the reason
- 4 why you just didn't keep him there at the gas station?
- 5 Why did you remove him to a different location?
- 6 A. Through the years I've been involved in over 30, 40
- 7 controlled deliveries, and counter surveillance is a real
- 8 concern, and for -- if there was other people involved in
- 9 it it was a safety reason or if there was going to be a
- 10 continuation of this operation of delivering a package we
- 11 needed to get in a secure location to avoid detection
- 12 from anybody that may be counter surveillance.
- 13 Q. And when you are referring to counter surveillance
- 14 -- let me just step back. Was Mr. Olivares doing counter
- 15 surveillance himself?
- 16 A. Yes, sir. That's one reason he was sitting at the
- 17 fabric store in the parking lot for a while and he would
- 18 move and he would sort of mimic what Agent Sloan was
- 19 doing when he was doing -- he would sort of watch what
- 20 Agent Sloan was doing with the vehicle.
- 21 Q. And also is there any concern that he or any of the
- 22 officers themselves are also being counter -- had counter
- 23 surveillance being conducted upon them?
- 24 A. Yes, sir.
- 25 Q. And is that typical?

1 A. Yes, sir. I mean, any time that you are involved
2 in narcotics and you are delivering or moving a vast
3 amount of narcotics or marijuana it's not uncommon to
4 have counter surveillance to make sure everything goes to
5 plan, to make sure their product gets delivered without
6 police intrusion.

7 Q. And this would be the people who the item was
8 supposed to be finally delivered to, the drugs?

9 A. Yes, sir. Again, a lot of times during my
10 experience we have couriers that actually just accept the
11 package and they will receive an amount of money for it.
12 They are not actually the one it's intended for. They
13 are just a messenger or a courier.

14 Q. Would you consider Mr. Olivares in this case to be
15 a courier?

16 A. Yes, sir.

17 Q. Now, you eventually spoke to him after you moved
18 him; is that correct?

19 A. Yes, sir.

20 Q. Can you please, I want to go through what if
21 anything you did prior to speaking to him regarding his
22 involvement in this case.

23 A. When we initially, you know, put him in handcuffs
24 and told him he was being detained and we told him, you
25 know, that it was involving a drug operation. When we

1 moved him three or four, five minutes from the Break Time
2 location down to the apartment complex I explained to him
3 that, you know, he was under arrest and I gave him
4 Miranda warnings to let him know that he was being under
5 arrest and he had certain rights. I also asked him if he
6 understood English, and he said that he did.

7 Q. Now, when you were talking to him, you gave him his
8 Miranda rights, what is the reason or why do you go
9 through the procedure of informing him of his Miranda
10 rights, and what exactly are they?

11 A. We had reason to believe that he was definitely
12 involved in the deal. He was going to be a suspect in
13 the case and I was going to ask him direct questions that
14 pertained to criminal charges being on him, and we give
15 him Miranda warning letting him understand what his
16 constitutional rights is as an -- in the United States.

17 Q. And did you in fact give him Miranda?

18 A. Yes, I did.

19 Q. Could you please tell the ladies and gentlemen of
20 the jury what exactly procedure and steps, and what did
21 you tell him.

22 A. I have a card that I carry with me that I keep in
23 my vehicle or on my person that actually has a Miranda
24 advice of rights, and I pull it out and I read it.

25 Q. And where did you get this card from?

1 A. This one came from South Carolina Law Enforcement
2 Division.

3 Q. That's also known as SLED?

4 A. Yes, sir.

5 Q. And on it does this have the litany of questions
6 that you give an individual pertaining to their rights?

7 A. Yes, sir. It has seven different areas that it
8 speaks of and it gives the suspect seven different
9 warnings about what his rights are.

10 Q. Can you please just tell the ladies and gentlemen
11 of the jury what exactly you said to him regarding his
12 rights.

13 A. Once I explained who I was and what we were doing,
14 that he was under arrest, then I told him that, you know,
15 before we asked any questions that I was going to give
16 him Miranda warnings.

17 I proceeded with that you have a right to remain
18 silent. Anything you say, you know, can and will be used
19 against you in a court of law. You have a right to talk
20 with an attorney and have him present with you while you
21 are being questioned. If you cannot afford to hire an
22 attorney one will be appointed to represent you before
23 any questioning, if you wish. You can decide at any time
24 to exercise these rights and not answer any questions or
25 make any statements. Do you understand each of these

1 rights I have explained to you? Having these rights in
2 mind do you wish to talk with us now?

3 Q. And after you went through this litany of questions
4 regarding his rights did in fact he agree or not agree to
5 talk to you?

6 A. Yes, sir. He from the very beginning when I
7 started reading he said he understood, that, you know, he
8 understood. And there was a couple, Do you understand
9 your rights? Yes, I understand.

10 It was very clear to me that he -- you know, he
11 spoke enough English that he understood what Miranda was
12 at that point.

13 Q. How would you describe his demeanor at this point
14 in time? Was he cooperative?

15 A. Yes, sir. You know, he stated that he did want to
16 cooperate, you know, with law enforcement and that -- you
17 know, I asked. He said he did, that he understood
18 that -- you know, that he understood the Miranda and he
19 wanted to cooperate.

20 Q. And did he appear to be under the influence of any
21 alcohol or drugs?

22 A. No sir.

23 Q. Did he appear to have any type of mental defect
24 based upon your initial conversation with him that would
25 lead you to believe he couldn't understand what you were

1 telling him?

2 A. No, sir.

3 Q. And at any point was he promised anything to get
4 him to talk?

5 A. No, sir.

6 Q. Was he forced or was he threatened to get him to
7 talk to you?

8 A. No, sir.

9 Q. Now, when I'm saying talk to you, there's other
10 officers present while you're doing it; is that correct?

11 A. Yes, sir.

12 Q. Do you recall who else was present while you were
13 going through this?

14 A. When the Miranda -- Sergeant Hamby, one of the
15 deputies was there during the -- when we moved him from
16 one location to the other, and Special Agent Daryl
17 Betsill was there.

18 Q. Now, was his rights given to him just orally like
19 you just read it off the card or was it eventually
20 reduced to written form?

21 A. No, sir. Once I gave him the Miranda in oral form
22 I did not give him any kind of written form but I did
23 notice that he said that he had to -- he used a phrase to
24 make pee pee. And that was a phrase that, you know --
25 you know, I knew that he had to use the restroom and it

1 sort of made me think that I needed to give him Miranda
2 in Spanish. At that point, then I called asked for
3 someone to come give him his Miranda rights in Spanish.

4 Q. And did you in fact call someone?

5 A. Yes, sir.

6 Q. And who did you call?

7 A. I called Captain Marsee with Anderson City Police
8 Department.

9 Q. And did he in fact come out to where you were
10 located?

11 A. Yes, sir.

12 Q. And did he in fact also Mirandize him?

13 A. Yes, he did.

14 Q. And did he Mirandize him in Spanish or English?

15 A. He Mirandized him in Spanish, and during that
16 conversation he kept acknowledging Captain Marsee in
17 English that, Yes, I understand, yes, I understand. And,
18 you know, that part was even in English.

19 Q. And so at that point do you feel that the language
20 barrier of speaking Spanish was an issue in this case
21 from talking to him?

22 A. No, sir, I did not.

23 Q. Did you have an opinion of whether or not you could
24 converse with him in English and he could understand it?

25 A. I felt like he was -- he had enough vocabulary and

1 he understood what I was, you know, talking in English
2 and I felt like he comprehended what I was saying in
3 English.

4 Q. At any point did you need a Spanish interpreter to
5 come and speak to him as a go-between between you or
6 other law enforcement agents and himself?

7 A. No, sir.

8 Q. Did he ever request to have an interpreter come?

9 A. No, sir.

10 Q. And after you went through his Miranda rights did
11 he ever at any point invoke his rights to remain silent?

12 A. No, sir.

13 Q. At any point during your talk or conversation with
14 him or with other officers did he ever request an
15 attorney to be present while you were talking to him?

16 A. No, sir.

17 Q. And is it your opinion whether or not he freely and
18 voluntarily decided on his own free will to speak to you?

19 A. Yes, sir. In my opinion, that he was very
20 cooperative and he wanted to start talking about where the
21 package was going to be delivered and the particulars of
22 the case.

23 Q. And just please tell the ladies and gentlemen of
24 the jury what you recall that he said to you after you
25 gave him Miranda.

1 A. Once he got Miranda from Captain Marsee, a few
2 minutes later an additional deputy came in. Velez was
3 asked by another agent who was working to come in, and
4 Deputy Velez is bilingual as well. He not only gave the
5 defendant Miranda in English, he gave it to him in
6 Spanish. Again, the defendant was answering in English
7 when he said, I understand, I understand, and he stated
8 wanted to cooperate with law enforcement. After that
9 point --

10 Q. So at this point in time three different officers
11 had Mirandized him; is that right?

12 A. Yes, sir.

13 Q. It's been done twice in English and twice in
14 Spanish?

15 A. Yes, sir.

16 Q. Now, after this point in time he still agreed to
17 speak to you all?

18 A. Yes, sir.

19 Q. And what if anything did he say to you?

20 A. Some of the first line of questions that I asked
21 him was, you know, did you know what was in the package.
22 And at that point he sort of dropped his head and said,
23 Yes. And I asked him, and he said marijuana.

24 And I said, you know, is this your marijuana, you
25 know, some generalized questions is this your marijuana.

1 He said, No, that it belonged to someone in Greenville.

2 And I said so -- you know, then I was able to
3 determine that he was a courier. And he said that, you
4 know, he was, that he received \$500 for a package. And I
5 asked him had he gotten any other packages before.

6 He said once a week or so before he had gotten
7 another package and that there was possibly more coming,
8 that his work was slow. That he was actually a satellite
9 installer, that work was slow and he had been approached
10 by someone and that he, you know, said that he needed the
11 money.

12 Q. And as part of his willingness to cooperate what if
13 anything did he agree to do?

14 A. He agreed that the package was not his, that it
15 belonged to someone in Greenville, at a certain address
16 the Greenville. I'm not familiar with the address. That
17 he would, you know, attempt to get that person the
18 marijuana that, you know, he had received that day or he
19 had gotten that day. That he would agree that he would,
20 you know, wear a wire, basically, an audio device to go
21 deliver that package to the person in Greenville.

22 Q. And in part of doing this delivery in Greenville
23 did you all also attempt to work with the Greenville
24 County Narcotics Officers?

25 A. At that point there was -- you know, SLED was

1 involved in it, you know, we were involved in it and then
2 they started getting in contact with agents in Greenville
3 as well as Greenville County agents in trying to put an
4 operation together over there to do another control
5 delivery of the marijuana.

6 Q. And was this second delivery attempt or this
7 controlled delivery in Greenville, was it successful?

8 A. No, sir.

9 Q. Now, was he promised or offered anything to get him
10 to take you to Greenville?

11 A. No, sir.

12 Q. And do you recall what area or location you were
13 supposed to go to in Greenville?

14 A. No, sir. I know -- I believe it was an apartment
15 complex but I was not familiar with the area at all.

16 Q. And where did you get the information of where to
17 go? Who did you get the information from of where to go
18 in Greenville?

19 A. The defendant, he spoke with me when I was doing
20 the interview, along with myself and Agent Betsill, and
21 he spoke in English to me and told me who the person was
22 and where it belonged to, and how it was actually set up
23 to do, about, you know, he was supposed to pick the
24 package up in Anderson and make a call, and then he would
25 deliver it and he would receive his money.

1 Q. And did you ever form an opinion on whether or not
2 he was involved in trafficking marijuana?

3 A. Yes, sir. By his own admission when I was
4 debriefing him he, you know, told me that it was
5 marijuana. He told me he got \$500 for it. He told me
6 that he had done it before, and it was very clear to me
7 that in it, you know, that he was speaking to me that he
8 had an involvement in today and he was getting \$500 for
9 this package. So there was no doubt in my mind that he
10 was involved in it.

11 Q. Now, after he was telling you all this did you take
12 the time to reduce this to writing?

13 A. No, sir, I did not.

14 Q. And why didn't you do that?

15 A. When you are conducting undercover operations with
16 delivery services you have a window of time that you
17 deliver it because the counter surveillance and the
18 people that are expecting the package know that there's a
19 window, that it comes in from 11 o'clock to 2:00 or to
20 12:00. There's a time frame there and we were already at
21 a third, you know, time going there.

22 Our avenue was closing on trying to further the
23 drug case, and if I had started putting -- you know,
24 taking formal statements it would have taken more time
25 and we would certainly not been able to do a second

1 controlled delivery.

2 Q. And had he not agreed to cooperate would you have
3 still gone to Greenville?

4 A. No, sir.

5 Q. What would you have done?

6 A. If he had not agreed to cooperate we would have
7 went ahead and incarcerated him and, you know, we would
8 have started doing paperwork on what had happened in
9 Anderson that day.

10 Q. And at some point in time you generated a report;
11 is that right?

12 A. Yes, sir.

13 Q. And based upon your report you did it October 26,
14 2009; is that correct?

15 A. I'm sorry?

16 Q. You wrote your report on October 26, 2009?

17 A. That's very possible. I'm not sure when I actually
18 generated, you know, the written version on our

19 P. D. Manager.

20 Q. So you don't do it immediately right after this
21 case was --

22 A. No, sir.

23 Q. -- concluded?

24 A. No, sir.

25 Q. And in your report you generated two supplemental

1 reports; is that right?

2 A. Yes, sir.

3 Q. And in that did you -- why did you generate two
4 supplemental reports?

5 A. There was -- I have administrative rights on the
6 P. D. Manager and I had written, you know, part of the
7 follow up and there was other things that added. When I
8 went to look for it again I couldn't find it. And so,
9 you know, I went in and generated, you know, the same
10 duplicate type thing but I added the things to it. And
11 then later on I was able to find out what I had done.

12 The report actually wasn't lost. It was -- when
13 you start to put the -- in the administrative side where
14 the writing officer there's a drop down box and if you --
15 my name is Neal McGuire, and it's N. M., and there was a
16 Meders that was right below it and I just -- you know,
17 the block was blue and I pushed it and I didn't even
18 realize it.

19 Q. So the second report that has L. E. Meders, that
20 was a mistake on your part?

21 A. Yes, sir.

22 Q. And when you generated these two supplemental
23 reports on October 26, 2009, in fact the one case you
24 mentioned Captain Marsee, the other case you mentioned
25 Deputy Velez --

- 1 A. Yes, sir.
- 2 Q. -- gave Miranda warnings; is that right?
- 3 A. Yes, sir.
- 4 Q. But you didn't mention them together, them together
- 5 in one report?
- 6 A. No, sir, I did not.
- 7 Q. And that would be a mistake on your part?
- 8 A. Yes, sir.
- 9 Q. Now, after this did you have any further
- 10 involvement in this case?
- 11 A. Once the second attempt for the controlled delivery
- 12 failed, no, sir, I was pretty -- well, that was the end
- 13 of the case.
- 14 Q. And referring to the second attempt, you are
- 15 referring to the Greenville?
- 16 A. Yes, sir.
- 17 Q. Now, did you also know that two other individuals
- 18 were arrested in this case?
- 19 A. I was familiar with only the one. I really wasn't
- 20 a part of that -- I never really got in part of that. My
- 21 job was the defendant here today and I pretty well stayed
- 22 with him to the finish of that day.
- 23 Q. Did you ever come into contact with the other two
- 24 individuals that were arrested in this case?
- 25 A. No, sir.

1 MR. CAMPBELL: That's all the questions I have.

2 Please answer any questions Ms. Drawdy may have.

3 CROSS-EXAMINATION

4 BY MS. DRAWDY:

5 Q. Detective McGuire. Okay. I keep hearing there was
6 no time, there was no time. This incident occurred on
7 June 5th, 2009, correct?

8 A. Yes, ma'am.

9 Q. You generated two supplemental reports on October
10 26th, 2009, correct?

11 A. You know, I don't have the report in front of me.
12 If that's what it says, yes, ma'am. I'm not sure. If
13 that's the date, I'm not sure.

14 Q. Would you like me to show it to you?

15 A. Please.

16 Q. Okay. I'll show you that report. Do you recognize
17 that report?

18 A. Yes, ma'am.

19 Q. Is that your supplemental report?

20 A. Yes, ma'am, that's one of them. Yes, ma'am.

21 Q. And is the date at the bottom of that October 26,
22 2009?

23 A. Yes, ma'am.

24 Q. Now, I'm going to count. June, July, August,
25 September, October, four months before you write your

1 report, correct?

2 A. In the P. D. Manager in that form, yes, ma'am.

3 Q. Mr. Olivares after you arrested him was taken to
4 the Anderson County Detention Center pursuant to his
5 arrest, yes?

6 A. Yes, ma'am, I believe so.

7 Q. So at any time after this incident when everybody
8 went away and started to calm down you could have gone
9 over there and just reduced this statement to writing,
10 couldn't you?

11 A. Ma'am, I was assisting another agency. It was
12 SLED. You know, my job was over that day and that's --
13 you know, that's -- I didn't -- it wasn't my job to go
14 interview him once we had closed that deal.

15 Q. Not your responsibility, not your job. So what you
16 do instead in October you generate this report in
17 October, and let's take a look. You've already talked on
18 direct about actually two reports, and just for reference
19 would it be easier for me to give you a copy of both of
20 those reports so you've got them, or I'll ask this way.
21 When did this incident occur?

22 A. It would have happened in June, June 5th.

23 Q. June 5th of 2009, correct?

24 A. Yes, ma'am.

25 Q. And your report typed in October of 2009 begins

1 with on June 8th, 2009. What happened on June 8th, 2009?

2 A. It's not uncommon for me to make a typo or mistake
3 in my writing, ma'am.

4 Q. A typo?

5 A. Yes, ma'am.

6 Q. Now, that's on -- there's a report that you've
7 already explained you made a mistake, you punched in your
8 initials and so at the bottom of the report it came up
9 under Meders' name, right?

10 A. Yes, ma'am.

11 Q. Now, did this Meders have anything to do with there
12 case?

13 A. No, ma'am.

14 Q. And you testified that you couldn't find that
15 report and so you had to redo it, correct?

16 A. What I -- you know, I just did the report, yes,
17 ma'am. I couldn't find the Meders part when I was
18 looking for it.

19 Q. So you were going to fix your initial report?

20 A. No, ma'am. I was going to put the report in there
21 that -- in writing in typed form at first, you know, the
22 notes I had written that day in June.

23 Q. So first report you entered in on October 26th,
24 2009, it went under the name Meders; is that correct?

25 A. Yes, ma'am.

1 Q. And Meders had nothing to do with this case?

2 A. No, ma'am.

3 Q. So you go to fix your report and you were just
4 going to change and make it McGuire at the bottom?

5 A. Yes, ma'am. I usually go back and try to clean up
6 some of my grammatical errors.

7 Q. Now, in the first report that you did it said June
8 8th, 2009 this occurred. On the one you cleaned up for
9 clerical errors it too read June 8th, 2009. So were you
10 changing stuff in the report or were you just changing
11 your name at the bottom?

12 A. I would have probably changed some stuff in the
13 report as well. I mean, if I can look at it I can tell
14 you if I did. I mean, both of those are my reports.

15 Q. Would you like me to give you a copy of them?

16 A. Yes, ma'am.

17 MS. DRAWDY: May approach?

18 THE COURT: Yes, ma'am.

19 BY MS. DRAWDY:

20 Q. Now, do you have two supplemental reports in front
21 of you?

22 A. Yes, ma'am.

23 Q. Okay. Are they identical?

24 A. No, ma'am.

25 Q. Are they both dated October 26th, 2009?

- 1 A. Yes, ma'am.
- 2 Q. Are these reports entered by you?
- 3 A. Yes, ma'am.
- 4 Q. They both have on June 8th, 2009 at the top; is
- 5 that correct?
- 6 A. Yes, ma'am.
- 7 Q. One of them reads that my client, Mr. Olivares, was
- 8 Mirandized by Deputy Velez, correct?
- 9 A. Yes, ma'am.
- 10 Q. Now, another incident report reads my client, Jose
- 11 Olivares, was Mirandized by Captain Marsee; is that
- 12 correct?
- 13 A. Yes, ma'am.
- 14 Q. But neither report mentions both of them, right?
- 15 A. Yes, ma'am.
- 16 Q. So the report you cleaned up, that you go back and
- 17 fix for clerical errors you didn't put my client was
- 18 Mirandized by both Captain Marsee and Deputy Velez, and
- 19 you had the opportunity to clean that up, right?
- 20 A. Yes, ma'am.
- 21 Q. You testified on direct that my client told you --
- 22 well, you testified actually this. You say after you
- 23 Mirandized him the first question you asked, Did you know
- 24 what was in the package. And you testified and told this
- 25 jury that my client, Mr. Olivares, did this with his

1 head, dropped it, and said, Yes, marijuana. Is that in
2 either of those reports?

3 A. No, ma'am.

4 Q. Not in the first one and not the one you fixed,
5 right?

6 A. No, ma'am.

7 Q. What is in both reports, would it be fair to say,
8 this is the summary of your discussion with my client,
9 Jose Olivares: Investigator McGuire begin to ask him
10 where he lived, where he worked and how much he got for
11 receiving packages. Mr. Olivares stated he lived in
12 apartments in Greenville, he worked installing satellite
13 systems. He stated work had been slow. He had been
14 approached by another Hispanic a short time ago and was
15 told he would give him \$500 for receiving packages.

16 That's what's in there, right?

17 A. Yes, ma'am.

18 Q. No mention of marijuana, is there, just package?

19 A. Package, yes, ma'am.

20 Q. And to be fair, he also told you or this is what
21 you state he told you, that he'd received one other
22 package a week or two back. He stated he'd paid the man
23 in the apartment a hundred dollars for allowing him to
24 use the address, and that the way he delivered the
25 package back to Greenville was he called the man near the

1 apartments and he would met [sic] him at an apartment and
2 he would give him the package and the money, and leave.

3 That's the extent of that statement, right?

4 A. Somewhat, yes, ma'am.

5 Q. But it's all you reduced to writing, even when you
6 had the chance to correct your writing?

7 A. Yes, ma'am. This is all I have here..

8 Q. You testified on direct you were comfortable with
9 the discussion you had with my client when you first
10 arrested him but then he said make pee pee. You thought,
11 Woah, I need to get a Spanish speaking officer, correct?

12 A. Yes, ma'am.

13 Q. Now, did you get one or did you get two Spanish
14 speaking officers to come out?

15 A. What actually had happened that day was I had
16 called Captain Marsee because I had used him before.
17 Captain Marsee was on light duty at the time because he
18 had a broken hand. He came over almost immediately.
19 Within a few minutes he was there and he gave him
20 Miranda. I didn't know that another agent had called and
21 asked Deputy Velez to come in and give Miranda. So there
22 was actually myself, Captain Marsee and Officer Velez
23 that gave him Miranda.

24 Q. And after that Miranda did you have -- after that
25 Miranda you did not have Captain Marsee or Deputy Velez

1 stick around and help you talk with my client, did you?

2 A. Captain Marsee only stayed there a little while. I
3 mean, he just stayed there for Miranda. He didn't stay
4 very long. Deputy Velez was asked to stay with us in
5 case we needed, you know, an interpreter later or if we
6 needed anything. So Deputy Velez did stay with us the
7 rest of the afternoon.

8 Q. So Deputy Velez was there?

9 A. Yes, ma'am.

10 Q. And you've got a statement. Let me go back. It's
11 your testimony you Mirandized my client, Deputy Velez and
12 Captain Marsee did at well. Now, is it common for law
13 enforcement officers or agencies to have what's termed a
14 Miranda warning form?

15 A. In general speaking, yes, but not in special
16 operations it's not always possible.

17 Q. And what is a Miranda warning form?

18 A. It's a written form that you get the defendant to
19 actually check off certain places and actually read it
20 back to -- most investigators get it, read it back to
21 them to make sure they understand and can read and write
22 and comprehend. It's another investigative tool that we
23 use when we do written Miranda.

24 Q. And then we don't have to take your word for it.

25 You'd have a document that shows my client was read his

1 rights and it would be checked off by him, right? And he
2 would have checked off yes, I've been told I have the
3 right to an attorney, I have the right to remain silent.
4 It's one page, yes?

5 A. It's one page.

6 Q. Takes a few minutes to fill out?

7 A. Usually me anywhere from five to seven minutes I'll
8 do one of them. I take a little bit more time than some.

9 Q. And you were with Mr. Olivares how long that day?

10 A. Approximately a couple hours, I guess.

11 Q. Deputy Velez was with my client how long that day?

12 A. I guess about an hour or so.

13 Q. And nobody thought to have my client sign a
14 one-page checkoff list that he understood his Miranda
15 warnings?

16 A. When we were told by the defendant that he wanted
17 to cooperate we were already running out of the window of
18 opportunity to do a second controlled delivery. We did
19 not have a written form with us. Had we have went back
20 to the office where I would have done a written form, you
21 know, it would have taken even more time, and we felt
22 like that time was of essence to get this controlled
23 package. At the time that he was cooperating with us he
24 was very adamant about wanting to get it and he was
25 talking about that he needed to call this person. So we

1 were running out of time to do this. But to answer your
2 question, no, ma'am, I didn't get a written form.

3 Q. Well, what do you mean, when we were told he wanted
4 to cooperate? You were the officer who approached him.
5 And weren't you the one according to the two different
6 supplemental reports you drafted, one you sort of
7 corrected, you write, Investigator McGuire asked him if
8 he wanted to tell the truth and cooperate?

9 A. Yes, ma'am.

10 Q. Is that exactly how you said it, Do you want to
11 tell the truth and cooperate?

12 A. Yes, ma'am.

13 Q. Wouldn't you have said or isn't it probably you can
14 help yourself? Help us and we'll help you. Could you
15 have said that?

16 A. Could I have said that, yes, ma'am, I could have.

17 Q. Those Miranda warnings forms, are they carried in
18 cars, law enforcement cars, unmarked and marked?

19 A. Some may have them. I didn't have any in my
20 unmarked car that day.

21 Q. Because you ran out?

22 A. No, ma'am.

23 Q. Did anybody have one?

24 A. To be honest, I didn't ask anyone.

25 Q. Didn't bother?

1 A. It wasn't a bother. It was a matter of trying to
2 get this into the window we was trying to operate
3 through. We were running out of time, and I really
4 didn't think about stopping and getting a written
5 Miranda, to be honest with you.

6 Q. And didn't care to do one after the so-called
7 controlled deliveries were attempted in Greenville. It
8 wasn't your job?

9 A. Once it was determined that it was not going to
10 happen this was a SLED case. We were assisting an
11 agency. Probably shouldn't have said it wasn't my job.
12 It was the case agent's responsibility for continuing
13 charges. My job as assisting them was over at that time.

14 Q. So Agent Sloan should have done it?

15 A. I'm not going to say he should have. I can't guess
16 what he should do.

17 Q. So we don't have a written Miranda warning form,
18 which takes a couple minutes to fill out. This
19 statement, the only thing we have about Jose Olivares
20 saying anything about this package is what you say he
21 said; is that correct?

22 A. There's some other offices and agents there present
23 that if they testify I'm quite sure they'll tell you
24 something very similar to what I'm saying.

25 Q. But right now we have what you say he said.

- 1 A. Yes, ma'am.
- 2 Q. Did you relay what you say he said to Agent Sloan?
- 3 A. Yes, ma'am.
- 4 Q. So we have what you say he said, is what you told
- 5 Agent Sloan, okay.
- 6 MS. DRAWDY: Beg the Court's indulgence one moment
- 7 Your Honor.
- 8 (PAUSE)
- 9 BY MS. DRAWDY:
- 10 Q. How long were you at Miracle Mile, Detective?
- 11 A. In pre-surveillance, or during the operation, or
- 12 afterward?
- 13 Q. When you have my client in custody?
- 14 A. Approximately maybe an hour or less.
- 15 Q. How far away is the sheriff's office from Miracle
- 16 Mile?
- 17 A. It's five minutes or less.
- 18 Q. You had a phone?
- 19 A. Yes, ma'am.
- 20 Q. Couldn't call anybody to bring over a Miranda
- 21 warning form?
- 22 A. Ma'am, like I testified, there was a lot of things
- 23 we were trying to get to happen within that time frame
- 24 and I didn't think about calling to get somebody to bring
- 25 me a written Miranda form.

1 Q. You were part of the Greenville operation where
2 they went and tried and delivered these packages in
3 Greenville? You were part of that?

4 A. I was part of that, yes, ma'am.

5 Q. My client, Mr. Olivares, was supposed to make a
6 phone call to a Hudio in Greenville; is that true?

7 A. I believe that's the correct name.

8 Q. Were you present when that call was made?

9 A. I was somewhere. I mean, I may not have been right
10 with the defendant but I was somewhere within the group
11 going to Greenville.

12 Q. Was that call recorded?

13 A. That call was attempted to be recorded, yes, ma'am.

14 Q. Attempted to be recorded?

15 A. There was no answer.

16 Q. Was Mr. Olivares wired?

17 A. He had a device that you could hear phone
18 conversations with, the best I recollect.

19 Q. So what does it mean attempted to be recorded? Was
20 the call recorded or not?

21 A. The call would have been recorded. When he made
22 the phone call there was no answer, so there was no
23 interpretation -- there was no answer on the other side.

24 Q. So to your knowledge --

25 MS. DRAWDY: Beg the Court's indulgence.

1 Q. I'm confused. Were you there for the phone call or
2 not? Were you present when this phone call was made?

3 A. Within feet, no, ma'am. I mean, I would have been
4 somewhere on the location we were at. I don't know if I
5 was there during that -- I mean, I don't remember being
6 exactly --

7 Q. How do you know if the call went through or not?

8 A. I was told that.

9 Q. Okay.

10 A. Because we decided to go back to the -- you know,
11 the jail and the sheriff's office.

12 Q. One other thing. About the package, it's over
13 there, did you know what was in it?

14 A. Yes, ma'am.

15 Q. How did you know what was in it?

16 A. Because it was open prior to us doing a controlled
17 delivery that morning.

18 Q. Did you get physically near the package, ever?

19 A. That morning, yes, ma'am.

20 Q. Could you tell without it being opened what it
21 contained?

22 A. Without it being opened, no, ma'am.

23 Q. Now, you spent sometime with my client, correct?

24 A. Yes, ma'am.

25 Q. You knew then that he worked as a satellite dish

1 installer?

2 A. Yes, ma'am, after we started talking. Yes, ma'am.

3 Q. And you knew that he came to Anderson to do these
4 satellite dish installations?

5 A. I didn't know he came to Anderson to do them, no,
6 ma'am. I knew that he said that he installed satellite
7 dishes and it had been sort of slow.

8 Q. And I think we've gone through what you said in
9 your statement. When you arrested my client you searched
10 him?

11 A. Yes, ma'am.

12 Q. Did you search that red truck?

13 A. Did a quick inventory of it, you know, at the
14 initial part of it, yes, ma'am.

15 Q. Had you had time to go through the red truck
16 thoroughly after June 5th or was that not your job?

17 A. Would I have had time to go through it? I would
18 have but, no, ma'am, that was not part of what I was
19 supposed to do.

20 Q. My question is did you find \$500 on my client's
21 person or in his red truck?

22 A. Not to my recollection, no, ma'am.

23 Q. Did you find \$500 anywhere?

24 A. There was some money that was found that Agent
25 Sloan had told me was inside the apartment, but other

1 than that I don't know of any other money.

2 Q. And by inside the apartment you mean inside the
3 apartment where Jose Santos Delorez lived?

4 A. I don't know who lived there, ma'am.

5 Q. That wasn't your job either, was it?

6 A. My job was counter surveillance and surveillance to
7 make sure that, you know, that nothing unsafe happened.

8 MS. DRAWDY: Okay. That's fair. Thank you,
9 Detective McGuire.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 BY MR. CAMPBELL:

13 Q. Deputy McGuire, just follow up on a few things
14 here. Now, Ms. Drawdy has gone over about your reports
15 and your report writing ability and the typos you made,
16 and we've gone through this ad nauseam but we got to
17 clear a few things up. Does the fact you made some typos
18 and made mistakes in your report take away from the fact
19 that the defendant was culpable and involved in this
20 trafficking in marijuana?

21 A. He was very aware of what -- the facts of it. He
22 was very aware of what was happening, and I was sure of
23 that.

24 Q. And basically this report writing basically
25 reflects back upon you about your ability to write

1 reports?

2 A. Yes, ma'am. Yes, sir.

3 Q. And, in fact, you didn't try to hide the fact that
4 you wrote two reports, did you?

5 A. No, I did not.

6 Q. You turned both of these reports over knowing that
7 you were going to get hammered on this, didn't you?

8 A. Yes, I did.

9 Q. Because you could have easily just changed it and
10 nobody would have known it, couldn't you?

11 A. That's correct.

12 Q. And the fact that you had he was Mirandized by two
13 different officers on two different papers, does that
14 take away from the fact that he was Mirandized by two
15 different officers --

16 A. Not at all.

17 Q. -- in Spanish?

18 A. Not at all.

19 Q. Was he, in fact, Mirandized by two different
20 officers in Spanish?

21 A. Yes, he was.

22 Q. And the fact that Deputy Velez was called by
23 another officer to come out there and he spoke to him and
24 he hung around with you all and attempted to do the
25 control delivery, was at any point was he ever needed to

1 translate or communicate between Mr. Olivares and any of
2 the officers involved in this second controlled delivery?

3 A. No, sir, he was not.

4 Q. At any point did Mr. Olivares ever ask any law
5 enforcement officer he needed to stop and have the
6 conversation with someone in Spanish to converse with you
7 all in English?

8 A. No, he did not.

9 Q. And as Ms. Drawdy eluded to regarding this package
10 about you knew what was in it, would there have been any
11 reason for him if this was an innocent package pick up to
12 attempt to cooperate with you all to deliver a
13 package that was nothing illegal?

14 MS. DRAWDY: Objection, speculation.

15 THE COURT: Sustained.

16 BY MR. CAMPBELL:

17 Q. Now, typically I think you testified you've been in
18 narcotics 17 years?

19 A. Yes, starting my 17th year.

20 Q. Seventeenth year. Is it typical in every case in
21 which you are interviewing a potential suspect and he
22 gives you a statement to reduce it to writing?

23 A. If we have the possibility of continuing the drug
24 case a lot of the times they will not reduce to writing
25 until the completion of that case. It's not uncommon not

1 to put anything in writing at the very initial part of
2 it, no.

3 Q. So it's on a case-by-case basis?

4 A. Yes, sir.

5 Q. And in this case it was Agent Sloan's decision, the
6 case officer, not to have it put in writing; is that
7 right?

8 A. He was the case agent. We were the assisting
9 agency.

10 Q. And while these -- while Mr. Olivares was being
11 read his Miranda rights not only by you, by Captain
12 Marsee, by Deputy Velez, were there other officers around
13 in the area that heard all this?

14 A. Part of the time I do know that Sergeant Hamby was
15 around. There were several people doing several things.
16 I wouldn't be able to testify if anybody else actually
17 heard it or not.

18 Q. And do you feel confident that he voluntarily
19 waived rights and agreed to cooperate?

20 A. Yes, sir, not only with me, you know, he was
21 willing to cooperate then when Captain Marsee did it. He
22 was speaking in English, he understood and he was adamant
23 about trying to get something done because he also
24 realized that there was a time frame that we had to get
25 this phone call made if he was going to do something, you

NEAL BRADLEY MCGUIRE - REDIRECT BY MR. CAMPBELL

269

1 know, to continue the deal.

2 Q. So the defendant himself, Mr. Olivares, knew about
3 the -- knew he was on a time schedule?

4 A. Yes, sir.

5 Q. And, in fact, even if it was reduced to writing,
6 his statement to you, would it have changed your opinion
7 of whether or not he knew what was in this package?

8 A. No, it would not have.

9 Q. And the questioning along the lines that you never
10 found \$500 on him or in his vehicle, to your knowledge
11 was he supposed to be paid prior to the package pick up
12 or after it was delivered back to Greenville?

13 A. It was when he delivered the package when he would
14 receive the \$500.

15 Q. So the fact he never delivered it meant he didn't
16 get paid the \$500?

17 A. Yes, sir.

18 Q. And that's only being because law enforcement
19 intervened?

20 A. Yes, sir.

21 MR. CAMPBELL: I have no further questions.

22 THE COURT: Any recross?

23 MS. DRAWDY: No. Thank you so much.

24 THE COURT: Thank you, sir. You may step down.

25 May I see the attorneys up here, please.

1 (WHEREUPON, a bench conference was had.)

2 THE COURT: Call your next witness, please, sir.

3 MR. CAMPBELL: Your Honor, the State calls Captain
4 Kevin Marsee to the stand.

5 KEVIN MARSEE, after having been duly sworn,
6 testified as follows:

7 THE CLERK OF COURT: If you would have a seat on
8 the stand and state your name and spell your last name
9 for the record, please.

10 THE WITNESS: My name is Kevin Marsee, K-e-v-i-n.
11 Last name is spelled M-a-r-s-e-e.

12 DIRECT EXAMINATION

13 BY MR. CAMPBELL:

14 Q. Mr. Marsee, where are you employed?

15 A. With the Anderson City Police Department.

16 Q. In what position?

17 A. I am the captain and training manager at this time.

18 Q. How long have you been in law enforcement?

19 A. Almost 28 years. It's 27 and a half years that
20 I've been in law enforcement.

21 Q. All with the City of Anderson?

22 A. No. I did a year and a half in Greenville with the
23 Law Enforcement Support Division, and came to Anderson in
24 '85.

25 Q. In fact, in your law enforcement career have you

1 ever had the occasion to be involved in narcotics
2 trafficking cases?

3 A. I have. I worked 21 years in the narcotics
4 division, and for 13 years I was the commander of the
5 division.

6 Q. Now, I want to talk to you about your ability to
7 speak Spanish and translate. Did you on the occasion of
8 June 5th, 2009 have the opportunity to speak to Mr. Jose
9 Olivares Romero?

10 A. I did.

11 Q. Is he in the courtroom today?

12 A. Yes, he is. He's seated in the red shirt there at
13 the defense table.

14 Q. And how did you come about meeting Mr. Olivares?

15 A. I was on light duty because I had an injury, and I
16 was driving around and Brad McGuire called me that day
17 and asked if I could come and give the defendant his
18 Miranda rights in Spanish.

19 Q. Now, what is your education in speaking Spanish?

20 A. I've been through the immersion program with HIDTA
21 out of Atlanta. I have been trained by the Federal Law
22 Enforcement Training Center out of Artesia, New Mexico,
23 and also RCTA in Meridian, Mississippi in what's termed
24 as command Spanish.

25 It's said that the average person speaks about 2500

1 words daily, you know as far as their vocabulary as in
2 Spanish, and I probably know about a thousand words.

3 Q. And besides your formal training through these
4 schools, law enforcement schools, do you have any other
5 reason to speak the Spanish language?

6 A. My wife is Hispanic from the Country of a Colombia
7 where Spanish is the native language.

8 Q. And do you typically converse with her in Spanish?

9 A. I do.

10 Q. And approximately how much do you talk to her in
11 Spanish?

12 A. Seventy-five percent on a daily basis.

13 Q. Now, regarding your abilities to speak or interpret
14 the Spanish language, have you had the occasion to be
15 called out by other law enforcement agencies and other
16 cases to speak to Hispanic subjects or suspects?

17 A. Yes. I've been called out by Ocone County
18 Sheriff's Office, Anderson County Sheriff's Office, and
19 various agencies when they need assistance in tactical
20 type situations or to identify Hispanic people or to read
21 some material to them.

22 Q. And have you given people Miranda in Spanish
23 before?

24 A. Yes, I have.

25 Q. In this case did you have an occasion to speak to

- 1 Mr. Olivares?
- 2 A. Yes, I did.
- 3 Q. And where did you first meet him?
- 4 A. He was in the back of a marked patrol car in
- 5 Cobblestone Apartments, which is located in the City of
- 6 Anderson. I drove up to that location and entered the
- 7 vehicle, and that's where I talked to Mr. Olivares at.
- 8 Q. Were you in a uniform --
- 9 A. No, I was --
- 10 Q. -- or were you dressed like today?
- 11 A. Like today. I didn't have on a tie but I was
- 12 dressed in plain clothes.
- 13 Q. And did you identify yourself as a police officer?
- 14 A. I did.
- 15 Q. At that point in time what if anything did you do
- 16 in regards to talking to Mr. Olivares?
- 17 A. I told him that I was a police officer with
- 18 Anderson and that he had rights in this Country. And I
- 19 have a piece of paper that I keep in my wallet that has
- 20 the Spanish translation of Miranda. I read that to him.
- 21 He cut me off two or three times and told me he
- 22 understood but he was telling me he understood in
- 23 English. After I read him his entire rights I told him
- 24 also in Spanish that he did not have to talk to the
- 25 police officer without a lawyer.

1 Q. And is that part of the formal Miranda rights, not
2 talking to the police?

3 A. No, it is not. I was taught that a lot of Hispanic
4 people don't have, you know, an educational level of
5 above third or fourth grade and that it might be
6 important to make sure that they understand that they
7 don't have to talk to the police without a lawyer.

8 Q. And do you have this piece of paper that you
9 translated the Miranda rights to him in Spanish on you?

10 A. I've copied this paper several times. This may not
11 be the paper but it's the same wording on the paper. As
12 my wallet gets older I have to copy this every couple
13 years or so.

14 Q. And is this identical to what you read to
15 Mr. Olivares on June 5th, 2009?

16 A. Yes.

17 Q. Could you just please read to the ladies and
18 gentlemen of the jury what you said or spoke to him.

19 A. First of all I told him -- I identified myself.
20 (Spoke in Spanish).

21 And he said, Okay.

22 (Spoke in Spanish) which means you have rights in
23 this Country.

24 And I read to him this document. (Spoke in
25 Spanish) which was the Miranda right.

KEVIN MARSEE - DIRECT BY MR. CAMPBELL

275

1 And I also told him (spoke in Spanish). I said you
2 don't have to talk to the police without a lawyer, but he
3 responded to me in English, and at that time I turned him
4 back over to Brad.

5 Q. And when you read this to him how would you
6 describe his demeanor.

7 A. Friendly, said he understood, and just general
8 conversation.

9 Q. And when he spoke back to you did he speak back to
10 you in Spanish or in English?

11 A. No, in English. He said, I understand, I
12 understand.

13 Q. So the Spanish language being a barrier between you
14 and him and other law enforcement agencies wasn't an
15 issue in this case?

16 A. No, it was not.

17 Q. You didn't have to sit around and talk or be a
18 go-between between the law enforcement officers and
19 himself, did you?

20 A. No, I did not.

21 Q. And did he appear at this time to be under the
22 influence of alcohol or drugs?

23 A. No, he was not.

24 Q. To your ability did he appear to understand what
25 you said to him?

- 1 A. Yes. He told me he understood.
- 2 Q. And did he freely and voluntarily agree to talk to
- 3 law enforcement?
- 4 A. Yes, he did.
- 5 Q. Did he invoke his rights to remain silent?
- 6 A. No, he did not.
- 7 Q. Did at any point he ask while you were present that
- 8 he wanted to speak to an attorney first?
- 9 A. No, he did not.
- 10 Q. And was he forced, threatened or promised anything
- 11 in order to get him to speak to law enforcement?
- 12 A. No, he was not.
- 13 Q. Now, prior to this occasion you testified you've
- 14 been in -- with the Anderson City, was it 28 years you
- 15 said?
- 16 A. Almost 28, yes.
- 17 Q. Have you ever -- did you know him prior to this?
- 18 A. No, sir.
- 19 Q. First time you seen him?
- 20 A. Yeah. That was the first time I had met him, yes.
- 21 Q. And in your experience whether you are a narcotics
- 22 agent officer or in law enforcement in general is it
- 23 always your practice to reduce -- every time a suspect
- 24 gives you a statement reduce it to writing?
- 25 A. Not in every case, no, sir.

1 Q. Is it on a case-by-case basis?

2 A. Yes, it is.

3 Q. So the fact this case -- you didn't reduce this
4 statement or what he said to writing wouldn't be out of
5 the ordinary?

6 A. No. It's not out of the ordinary. No, sir.

7 Q. And you, yourself, did not go to Greenville when
8 they did an attempt -- another attempt to do a controlled
9 buy, did you?

10 A. No, I could not do anything because I was told by
11 the doctor I had to stay on light duty and I could not
12 perform other law enforcement functions.

13 Q. So that was your involvement totally with this
14 case?

15 A. Yes, it was.

16 MR. CAMPBELL: I have no further questions. Please
17 answer any questions Ms. Drawdy may have.

18 THE COURT: Cross-exam.

19 MS. DRAWDY: Thank you.

20 CROSS-EXAMINATION

21 BY MS. DRAWDY:

22 Q. Captain Marsee, I'm a little confused. Did you
23 just read Miranda rights to my client, Jose Olivares, or
24 did you also take a statement from him?

25 A. I only read him his rights.

- 1 Q. Okay. So you never exchanged any words with him
2 other than reading his rights?
- 3 A. He responded to me that he understood the rights.
- 4 Q. But that was the extent of it?
- 5 A. That was the extent.
- 6 Q. And we don't have that in an incident report? You
7 didn't reduce that to writing to tell us that?
- 8 A. No. Brad had included my presence on his incident
9 report.
- 10 Q. So it wasn't your job to do that, it was Detective
11 McGuire's?
- 12 A. Yes, it was their case.
- 13 Q. Detective McGuire's?
- 14 A. The county's case, the officers.
- 15 Q. You weren't present when Detective McGuire -- you
16 weren't present for any conversations with my client and
17 any officers, were you?
- 18 A. No, ma'am.
- 19 Q. So you have no knowledge of what may or may have
20 transpired between my client, Jose Olivares, and any
21 other officer?
- 22 A. No. No, ma'am.
- 23 Q. You were in what vehicle, again, a marked car, an
24 unmarked car?
- 25 A. Unmarked vehicle.

- 1 Q. Did your vehicle have those Miranda warning forms
2 in them?
- 3 A. No, ma'am.
- 4 Q. A Miranda warning form, it's just a one-page
5 document, right?
- 6 A. You talking about the one that's --
- 7 Q. The Miranda form that's reduced to writing --
- 8 A. Yes.
- 9 Q. -- where someone can check. It's just one page,
10 right?
- 11 A. Yes, it is.
- 12 Q. And it has those rights that you listed out reduced
13 to writing and a checkoff box next to each one?
- 14 A. Correct.
- 15 Q. And how long does it take you to fill one of those
16 out with someone you've Mirandized if you chose to reduce
17 it to writing?
- 18 A. Not long.
- 19 Q. A couple minutes?
- 20 A. Yes, ma'am.
- 21 Q. You testified that my client, Jose Olivares, was in
22 a marked vehicle when you arrived on the scene?
- 23 A. Yes.
- 24 Q. Do you know if there was a Miranda warning form in
25 that marked vehicle?

- 1 A. I have no knowledge of a that, ma'am, no.
- 2 Q. And you said your wife's from Colombia, right?
- 3 A. Correct.
- 4 Q. Okay. Colombia. I do not (spoke Spanish). Are
- 5 you speaking with a Colombian dialect?
- 6 A. No. I quite understand a little about the
- 7 difference between Colombian dialect and the Mexican
- 8 dialect because my teachers through FLETC were Mexican.
- 9 Q. And what you read to us earlier, that was with a
- 10 Colombian dialect though, was it not?
- 11 A. No.
- 12 Q. It was not?
- 13 A. No.
- 14 Q. It was what?
- 15 A. Normal Spanish. The only difference would have
- 16 been the pronunciation of the two L's, which would be
- 17 pronounced as a J instead of a Y. But there was nothing
- 18 else on the page that really would have a different
- 19 dialect.
- 20 Q. Okay.
- 21 MS. DRAWDY: Beg the Court's indulgence one moment,
- 22 Your Honor.
- 23 BY MS. DRAWDY:
- 24 Q. Oh, I do have one last question. Deputy Velez, was
- 25 he present when you were there?

1 A. No. He arrived at a later time.

2 MS. DRAWDY: Thank you. No more questions. I
3 appreciate it.

4 THE COURT: If you would, get a copy of that
5 Miranda statement in Spanish. I'm going to make it a
6 court exhibit so you'll have part of that in the record,
7 okay?

8 CAPTAIN MARSEE: I've got that saved on my
9 computer. You all can have this one.

10 THE COURT: I'll just make a copy and give that
11 back to you. I just want to make that so she can get
12 that down, but you may be excused. Thank you.

13 MR. CAMPBELL: Your Honor, may this witness be
14 excused? I have no further need for Mr. Marsee.

15 THE COURT: You think it's a good time to take a
16 lunch break?

17 MR. CAMPBELL: Yes, sir.

18 THE COURT: Ms. Drawdy, you agree with that?

19 MS. DRAWDY: That he be excused or lunch?

20 THE COURT: Well, we'll take a lunch break at this
21 stage since it's quarter to one.

22 MS. DRAWDY: That's absolutely fine.

23 THE COURT: All right. Very good.

24 All right. Mr. Burns, ladies and gentlemen of the
25 jury, this is a good time to take a break in the

1 testimony. I'm going to let you go to lunch on your own
2 at this stage but I'm going to ask that you be back in
3 your jury room at two o'clock and we'll resume testimony
4 shortly thereafter.

5 I'll remind you you are not to speak amongst
6 yourselves or with anyone else about this case, okay?

7 THE FOREMAN: Yes, Your Honor.

8 THE COURT: Thank you very much.

9 THE CLERK: And please leave your pads and pens in
10 your chair. We will lock the courtroom while you are at
11 lunch.

12 (WHEREUPON, the jury leaves the courtroom at
13 approximately 12:47 p.m.)

14 THE COURT: All right. Ms. Drawdy, you wanted to
15 renew your motion for a mistrial dating back to
16 Mr. McGuire's testimony; is that correct?

17 MS. DRAWDY: That is correct, Your Honor. And I
18 would like to add to it. My addendum is that we heard
19 testimony from Detective McGuire that indeed there had
20 been an audio, there had been a phone call placed, so
21 it's more than just what Agent Sloan said, that the audio
22 records of him driving to the place in Greenville and
23 nothing happening.

24 Clearly now we're finding out there was a phone
25 call, and that again is the basis for my motion. As we

1 go on we find out a little bit dripping in here and out
2 about this audio that the defense has asked for and we
3 have not received. So we do renew our motion.

4 THE COURT: I think you are protected on the
5 record. I'm still taking that under advisement and we're
6 looking it up -- quite frankly, it appears to me, and I
7 don't know that this is correct or not, that the standard
8 that you have, to show some type of prejudice to the
9 defendant. I believe that's correct, and I'm more than
10 willing the stand corrected if I'm not right on that.

11 MS. DRAWDY: Thank you.

12 THE COURT: But that appears to be. That's still
13 under advisement.

14 If there's nothing further from the State or the
15 defense we'll be in recess until two o'clock.

16 (WHEREUPON, a lunch break was taken.)

17 THE COURT: Mr. Campbell, the State ready to
18 proceed?

19 MR. CAMPBELL: The State is ready, Your Honor.

20 THE COURT: Ms. Drawdy, the defense ready to
21 proceed?

22 MS. DRAWDY: Your Honor, if I may, I'd like to
23 present something on my motion for the mistrial.

24 THE COURT: Okay.

25 MS. DRAWDY: I have a case I'd like to put forth.

1 (WHEREUPON, a document was handed to the Court.)

2 MS. DRAWDY: Thank you, Your Honor. May it please
3 the Court.

4 THE COURT: Yes, ma'am.

5 MS. DRAWDY: We believe that this is somewhat akin
6 to a DUI case in the sense that if someone blows a 0-0 on
7 the data master the State still has an obligation to have
8 that evidence and turn it over, and the State has some
9 audio and they have not turned it over. It's our belief
10 that State V. Jackson does address that on page two. I
11 think I've highlighted the relevant portions.

12 Having me prove the prejudice without having that
13 tape is again trying to prove a negative. I cannot do
14 that without the evidence itself. Not having the
15 evidence, not having the audio it's our possession is per
16 se prejudicial because I don't know what's on it. We've
17 heard, you know, that there was a call. First we heard
18 there was nothing on it.

19 THE COURT: Are you urging me to adopt a per se
20 rule? I'm not going to do that, okay? That's not the
21 rule and I'm not going to do that, but I'm going to let
22 you make a record. But I can tell you I will not go that
23 far.

24 MS. DRAWDY: Well, I will say that they say
25 requiring the defendant to so show bad faith on the part

1 of the police both limits the extent to the police's
2 obligation to preserve the evidence.

3 There has been two witnesses have testified there
4 was audio. I don't have that audio. I think that's
5 extremely prejudicial to my client, and I just without
6 having it, again, I think the Court is asking me to prove
7 a negative.

8 THE COURT: Right, and let me say this, and I
9 understand because that's one of the things that my law
10 clerk and I were discussing, how do you prove a negative.
11 But I looked up a case, and it's a more recent case than
12 the 1990 case you cite, and the name of the case is State
13 vs. Breeze, which is at 379 S. C. 538, 665 S.E.2d 247.
14 And it's a somewhat similar case that you have here.

15 In that case, you had a defendant who was charged,
16 amongst other things, with possession of marijuana with
17 intent to distribute, and the marijuana was destroyed
18 prior to trial, partly because he absconded and had to
19 have a bench warrant and they thought the case had been
20 disposed of.

21 In that case the destruction of the failure to
22 provide the marijuana was phrased in the due process
23 argument saying that they are denied of their due process
24 rights because this could have been exculpatory.

25 In that case they say this. Its says, The State

1 does not have an absolute duty to safeguard potentially
2 useful evidence that might vindicate the defendant but to
3 establish a due process violation a defendant must do one
4 of two things: One, that the State destroyed the
5 evidence in bad faith that was evident that it was
6 beneficial to the defendant or that the evidence
7 possessed an exculpatory value apparent before the
8 evidence was destroy and the defendant cannot obtain the
9 evidence by other means.

10 That sounds more in line with what we're dealing
11 with in this case. Now, what I heard from the testimony
12 from these officers is that number one, we didn't tape
13 the wire because there was nothing on it. And what was
14 the other area that he was trying to --

15 MS. DRAWDY: Phone call.

16 THE COURT: The phone call. And then the phone
17 call was a non answer. And so either way, I mean, you
18 have to do more than just say we don't have it.

19 MS. DRAWDY: Take it in totality though when they
20 say they are not doing written statements they have
21 decided boom, boom, boom every witness what evidence to
22 get and not to get and all we have is their word on
23 anything.

24 THE COURT: Well, I understand that but, I mean,
25 just because it's oral testimony doesn't mean it's not

1 admissible and doesn't mean that it's good testimony. I
2 mean, it's up to the jury to decide whether or not they
3 believe it. You've been harping away at these officers
4 pretty good about their failure to have this evidence up
5 there. I think it goes to whether or not the State can
6 meet its burden of proof and it's a factual question. So
7 right now I am denying your motion for a mistrial. I do
8 believe you -- give you right to re-file your motion if
9 something else should become apparent during this trial
10 but right now I'm denying your motion.

11 MS. DRAWDY: Thank you, Your Honor.

12 THE COURT: All right. You ready to proceed? You
13 ready to proceed, Ms. Drawdy?

14 MS. DRAWDY: Yes, Your Honor.

15 THE COURT: Okay. Would you call your next
16 witness, please, sir.

17 THE BAILIFF: You want me to bring the jury back?

18 THE COURT: Yeah, let's get jury back in here.
19 That would be grounds for a mistrial.

20 (WHEREUPON, the jury enters the courtroom at
21 approximately 2:10 p.m.)

22 THE COURT: Mr. Burns, you and your jury have your
23 pads and everything you need to proceed?

24 THE FOREMAN: Yes, Your Honor, we do.

25 THE COURT: Very good.

1 Mr. Campbell, you may call your next witness.

2 MR. CAMPBELL: Your Honor, the State calls Jonathan
3 Velez to the stand.

4 JONATHAN VELEZ, after having been duly
5 sworn, testified as follows:

6 THE CLERK OF COURT: If you would have a seat and
7 state your name and spell your last name for the record,
8 please.

9 THE WITNESS: My name is Jonathan Velez. My last
10 name is spelled V-e-l-e-z.

11 DIRECT EXAMINATION

12 BY MR. CAMPBELL:

13 Q. Mr. Velez, obviously you work for Anderson County
14 Sheriff's Office?

15 A. That's correct.

16 Q. How long you been employed in law enforcement?

17 A. I've been in law enforcement for approximately four
18 years.

19 Q. For the sheriff's office here?

20 A. I've been three years here at the sheriff's office.

21 Q. Now, were you working at Anderson County Sheriff's
22 Office back on June the 5th, 2009?

23 A. Correct, I was.

24 Q. On that day did you have an occasion to be called
25 to a narcotics investigation?

- 1 A. Yes.
- 2 Q. Involving the defendant in this case, Jose
- 3 Olivares?
- 4 A. That's correct.
- 5 Q. How did you become involved in this case?
- 6 A. I was notified by Rusty. He advised me that he
- 7 needed --
- 8 Q. When you say Rusty, who are you referring to?
- 9 A. Scogins, and he advised me that he needed to -- he
- 10 works with the narcotics division. He advised that he
- 11 needed a Hispanic subject to speak with one of the
- 12 subjects at the time he had detained due to their course
- 13 of their investigation. He didn't get into too much
- 14 details.
- 15 Q. And why would he call you?
- 16 A. I'm the only Hispanic that can speak Spanish in the
- 17 county and in Pickens County, too.
- 18 Q. So you speak fluent Spanish?
- 19 A. Correct.
- 20 Q. With a name like Velez I understand but let's just
- 21 tell the ladies and gentlemen of the jury a little bit
- 22 about how you speak Spanish, how you came about it.
- 23 A. It really depends on how well the person knows
- 24 English and what ethnicity they are. Me being Puerto
- 25 Rican I was born in Puerto Rico. Certain dialects is

1 different from Mexican Spanish or Cuban Spanish but
2 overall it's all pretty much the same. It's just
3 understanding what certain slang words are. So due to
4 the fact of course of my law enforcement experience I've
5 kind of figured out each type of cultural word, wording
6 to use.

7 Q. So you understand the differences in speaking
8 Mexican Hispanic language compared to -- such as your
9 actual language --

10 A. Right. Yes.

11 Q. Now, was Spanish your first language?

12 A. Yes. Yeah, it is.

13 Q. And are you fluent and able to converse from
14 English to Spanish, Spanish to English?

15 A. That's correct.

16 Q. And in fact I think you've already eluded to this.
17 Other law enforcement agencies have called you in the
18 past to speak to Hispanic subjects or suspects?

19 A. That's correct.

20 Q. What agencies have called you?

21 A. Pickens County, Highway Patrol, Pickens County
22 Highway Patrol, Anderson County Highway Patrol,
23 Greenville County Highway Patrol, different divisions of
24 my agency and Anderson County. Primarily mostly within
25 Anderson County and Pickens County, and some with

1 Greenville.

2 Q. So you are used a lot by other local law
3 enforcement agencies to converse with Hispanic speaking
4 people?

5 A. That's correct.

6 Q. Now, and that was the reason why you got involved
7 in this case on June 5th, 2009?

8 A. Correct.

9 Q. And regarding this, where did you go after you were
10 called?

11 A. I was advised to meet up with the investigators at
12 Miracle Mile Drive at the apartment complex. Like I
13 said, I wasn't advised too much of the investigative
14 aspect of it just that they needed my assistance to speak
15 with Hispanic subjects.

16 Q. You were basically brought in as an interpreter?

17 A. That's correct.

18 Q. And did you go there?

19 A. That's correct.

20 Q. And at some point did you speak to a Hispanic
21 suspect?

22 A. That's correct.

23 Q. Who did you speak to?

24 A. I spoke with Mr. Jose Olivares, I believe is his
25 last name.

1 Q. Is he in the courtroom today?

2 A. That's correct. He's sitting over there at the end
3 with the burgundy shirt on.

4 Q. And when you introduced yourself and when you
5 approached him were you dressed like you are today?

6 A. That's correct. We had a different uniform at that
7 time but, yes, I was representing Anderson County
8 Sheriff's Office at the time.

9 Q. And you wear the star, the patches?

10 A. That's correct.

11 Q. The whole nine yards. He knew you were law
12 enforcement?

13 A. That's correct.

14 Q. Did you have an opportunity to speak to him?

15 A. That's correct.

16 Q. And just please go through what you talked to him
17 about and tell the ladies and gentlemen of the jury how
18 it came about.

19 A. Pretty much I wasn't advised too much on what was
20 going on in the investigative prospective but they did
21 advise me prior to my arrival that he was Mirandized but
22 they still wished me to Mirandize him once more before
23 they started proceeding forward with the investigation.

24 I have my card here, and it's in English and
25 Spanish. I Mirandize him in Spanish and then I do it in

1 English and ask him if he understood, and he actually
2 spoke English pretty good to me in reply that he
3 understood, and the investigators would ask, you know,
4 random questions and I would make sure he would
5 understand.

6 Q. And when this was going on did you Mirandize him --
7 the card you have, where did you obtain this card from?

8 A. I got it through the State of a South Carolina.

9 Q. Would it be through law enforcement division?

10 A. Correct. That's correct.

11 Q. And on one side of the card does it have English?

12 A. Actually, it's all on one side. I have it blown
13 up. It says it in English and right beside it is in
14 Spanish. Sometimes some people like rather to read it
15 themselves than me read it to them because some, like I
16 said, some dialects are different, some people rather
17 just read it. But in this situation I just -- I spoke to
18 him. I read it to him and he understood, and we were
19 speaking English and Spanish back and forth.

20 Q. And did you read it to him in English?

21 A. That's correct.

22 Q. And did you read it to him in Spanish?

23 A. That's correct.

24 Q. And after you got done with both language versions
25 of it did he appear to understand his rights?

- 1 A. He did, yes.
- 2 Q. And to your knowledge did he appear to be under the
3 influence of any alcohol or drugs?
- 4 A. No. He wasn't under the influence of anything.
- 5 Q. Anything appear to you that would prohibit his
6 ability to understand or comprehend what you were saying
7 to him?
- 8 A. No.
- 9 Q. And was he forced, threatened, promised or coerced?
- 10 A. No.
- 11 Q. To talk to you all?
- 12 A. He was more than willing to comply.
- 13 Q. And at any point did he invoke his rights to remain
14 silent?
- 15 A. No.
- 16 Q. At any point did he request an attorney?
- 17 A. No.
- 18 Q. To be present with him?
- 19 A. No.
- 20 Q. And you said while you were giving it to him he
21 interjected and would speak to you?
- 22 A. Correct. Yeah. We had a pretty good rapport with
23 one another. I was not involved in the investigative
24 prospective so I was just more -- my job was there as
25 more of a civilian than an actual law enforcement

JONATHAN VELEZ - DIRECT BY MR. CAMPBELL

295

1 officer. We just spoke about general topics for the most
2 part as the investigators were doing their job.

3 Q. And he would speak to you in English?

4 A. English and Spanish, back and forth. It was a
5 mixture of the two.

6 Q. And how was his demeanor?

7 A. Very calm and relaxed as he is now, for the most
8 part.

9 Q. And prior to this did you know him?

10 A. No. No.

11 Q. And did you think the Spanish language was a
12 barrier for him to understand what was going on?

13 A. I would say no because in most Hispanics in the
14 general area I would say that they don't understand
15 certain words that are said in English and they just say
16 they do, but Jose understood. And me being beside him
17 most throughout the whole duration as I was there if he
18 had any questions he would just say, Hey, you know. He
19 can always just refer to me if they were speaking to him
20 in English.

21 Q. And after you Mirandized him did you stick around
22 or did law enforcement, the other law enforcement
23 officers take over from that point?

24 A. I always stood beside Jose, and as I was there
25 throughout the whole course all the way to Greenville I

1 actually stayed with him in Greenville as well.

2 Q. And were you called upon to interpret during this
3 point in time from the time in Anderson through
4 Greenville?

5 A. That's correct.

6 Q. And did you interpret -- have to do any type of
7 interpretation?

8 A. I couldn't recall what type of questions were
9 asked. I mean, it's been a while ago but, you know,
10 there was certain basic questions about the suspect that
11 they were attempting to apprehend in Greenville and
12 they'll ask him basic questions like a vehicle type and
13 make sure he understood, you know, what was being asked
14 of him.

15 Q. And after that did you have any further involvement
16 in the case?

17 A. I just stood by and pretty much just made sure
18 Mr. Jose is, you know, understanding everything that was
19 going on?

20 Q. And do you have an opinion of whether he
21 understood?

22 A. Oh, he understood, yes.

23 MR. CAMPBELL: I have no further questions. Please
24 answer any questions Ms. Drawdy may have.

25 THE COURT: Cross-exam.

1 CROSS-EXAMINATION

2 BY MS. DRAWDY:

3 Q. Deputy Velez, were you at the apartment when
4 Captain Marsee was there?

5 A. For the City, Anderson City.

6 Q. Yes.

7 A. I believe he was there, yes. I can't --

8 Q. Were you there at the same time he was? Do you
9 recall?

10 A. I was only there -- when I was dealing with the
11 case I was staying right beside Jose. I wasn't too
12 concerned about who else was there and who wasn't there.

13 Q. But while you were next to Mr. Olivares Captain
14 Marsee was not there?

15 A. Like I said, I don't know who else was there.

16 Q. Did you do an incident report?

17 A. No, I did not.

18 Q. You told us how you say you Mirandized
19 Mr. Olivares.

20 A. Correct.

21 Q. Are you familiar with Miranda waiver forms?

22 A. I am, yes.

23 Q. Does the County have those?

24 A. They do.

25 Q. Do you use them?

- 1 A. Not in all circumstances.
- 2 Q. But do you use them?
- 3 A. Yes. Some officers do use them.
- 4 Q. And is it a one-page form?
- 5 A. It is a one-page form.
- 6 Q. It's got a list of the rights and a box that you
- 7 just check off?
- 8 A. Pretty much the same thing that's on a card, yes.
- 9 Q. And how long would it take you to execute one of
- 10 those?
- 11 A. Five, ten minutes.
- 12 Q. Five to ten minutes?
- 13 A. Uh-huh.
- 14 Q. And you were with Jose Olivares for how long?
- 15 A. It was a few hours during the duration of the
- 16 investigation.
- 17 Q. Did you arrive in your patrol car?
- 18 A. I did.
- 19 Q. And is your patrol car equipped with these Miranda
- 20 warning forms?
- 21 A. It is, yes.
- 22 Q. Is your patrol car equipped with video?
- 23 A. No, ma'am.
- 24 Q. There were other officers out there, yes?
- 25 A. Investigators for the narcotics division.

1 Q. Do you know if their cars were equipped with video?

2 A. You would have to ask them. I'm not too sure of
3 their vehicles.

4 Q. Do you know anything about a phone call

5 Mr. Olivares may or may not have made to Greenville?

6 A. I'm sorry. I'm trying to remember. It's been a
7 while ago. When we were in Greenville I believe he
8 possibly tried to make a phone call but it kept going to
9 a voicemail, and I was trying to listen in a little bit
10 because -- over the speakerphone but I don't think no one
11 ever replied to the phone call.

12 Q. And when you spoke you said you talked to my
13 client?

14 A. Right.

15 Q. Is it fair to say you talked to him just about his
16 family, where he worked?

17 A. Right. At the time I did not consider myself to be
18 a representative as an arresting officer. So I was there
19 more for his comfort, and I can understand someone that
20 if they somewhat understand English or they don't
21 understand English I want to make sure they are
22 comfortable with their surroundings. I mean, it's a very
23 serious situation, essentially due to the amount of drugs
24 that was seized.

25 MS. DRAWDY: Okay. Beg the Court's indulgence one

1 moment, please, Your Honor.

2 BY MS. DRAWDY:

3 Q. Do you know or do you recall if Mr. Olivares left a
4 message on that voicemail?

5 A. No, ma'am. I can't recall that.

6 Q. Don't recall. Thank you. I have no more
7 questions.

8 THE COURT: Any redirect?

9 MR. CAMPBELL: No, Your Honor.

10 THE COURT: May this officer be excused?

11 MR. CAMPBELL: I have no problem.

12 MS. DRAWDY: No objection.

13 THE COURT: Thank you, sir. You may step down.

14 You can call your next witness, please, sir.

15 MR. CAMPBELL: Your Honor, the State calls Daryl
16 Betsill to the stand.

17 JOHNNY DARYL BETSILL, after having been duly
18 sworn, testified as follows:

19 THE CLERK OF COURT: If you would take the witness
20 stand and state your name and spell your last name for
21 the record, please.

22 THE WITNESS: My name is Johnny Daryl Betsill.
23 It's spelled B-e-t-s-i-l-l.

24 DIRECT EXAMINATION

25 BY MR. CAMPBELL:

JOHNNY DARYL BETSILL - DIRECT BY MR. CAMPBELL

301

- 1 Q. Mr. Betsill, where are you employed?
- 2 A. I'm employed with the State Law Enforcement
- 3 Division.
- 4 Q. That's also known as SLED?
- 5 A. It is.
- 6 Q. And how long you been employed with SLED?
- 7 A. I've been with SLED for 18 years now.
- 8 Q. Were you there, I'm assuming then on June 5th,
- 9 2009?
- 10 A. I was.
- 11 Q. And on that date did you have occasion to assist
- 12 Agent Sloan in the investigation of a controlled
- 13 delivery, a package of marijuana?
- 14 A. I did.
- 15 Q. Was that here in Anderson County?
- 16 A. It was.
- 17 Q. And briefly, what was your job involving that day
- 18 and regarding this investigation?
- 19 A. I was assigned to assist SLED narcotics and the
- 20 Anderson County Sheriff's Office Narcotics Division in a
- 21 controlled delivery of approximately, I think they said
- 22 50 pounds of marijuana. And my primary duty was to do
- 23 surveillance and to provide support for the undercover
- 24 agent.
- 25 Q. And did you do that?

1 A. I did.

2 Q. And as a result what if anything did you observe
3 during this investigation?

4 A. I was riding with Anderson County Investigator Brad
5 McGuire. He was driving and I was the passenger, and we
6 were running surveillance on the undercover agent and we
7 surveilled the area where the marijuana was scheduled to
8 be delivered by UPS, and Agent Sloan was in an undercover
9 van and we surveilled him.

10 Q. And while you were conducting surveillance on Agent
11 Sloan did you observe anything else ongoing while you
12 were watching?

13 A. I did.

14 Q. And what did you see?

15 A. We were -- I had got information that there was a
16 red Ford Ranger pick-up truck with a ladder rack and the
17 driver had communicated with UPS looking for a package,
18 and we spotted that truck.

19 Q. And what was this truck doing while you were
20 conducting your surveillance?

21 A. The truck was close to the area where the marijuana
22 was scheduled to be delivered and it was what I call was
23 doing surveillance of the area as well.

24 Q. And where their truck was set up, where was it
25 located in relationship to the apartment?

1 A. It moved -- the truck moved. It was right in the
2 vicinity of the apartments at Miracle Mile. It wasn't in
3 the apartment complex from what I saw. It was right
4 outside the -- and I don't know the area very well but it
5 was right outside the area in a business parking lot
6 across the street.

7 Q. And when you say don't know the area very well, is
8 Anderson County one of the counties that you typically
9 cover?

10 A. I do cover it.

11 Q. And in this case where are you based out of?

12 A. I live in Spartanburg but our main office is in
13 Greenville.

14 Q. So you have jurisdiction to work here in Anderson?

15 A. I do.

16 Q. And at some point did you have occasion to come
17 into contact with Mr. Jose Olivares?

18 A. I did.

19 Q. And how did that come about?

20 A. He had pulled into a convenience store parking lot.
21 He was driving the red truck. And he had pulled into a
22 convenience store parking lot, I think a Citgo, right off
23 Clemson Boulevard, and he was sitting in the truck. He
24 had gotten out of the truck, and myself and Investigator
25 McGuire approached him in the parking lot of the Citgo

1 and started a conversation with him.

2 Q. And was he cooperative with you?

3 A. He was.

4 Q. And did you identify yourself as a law enforcement
5 officer?

6 A. I did.

7 Q. At that point did you keep him there or did you
8 move him to a different location?

9 A. We moved him to a different location. We moved him
10 back toward the apartments, where the rest of the law
11 enforcement officers were.

12 Q. And were you present when he was Mirandized getting
13 his legal rights?

14 A. I was.

15 Q. And was he Mirandized in English?

16 A. He was.

17 Q. And was he also Mirandized in Spanish?

18 A. He was.

19 Q. And after that did he agree to cooperate, after he
20 was given his rights in both English and Spanish
21 cooperate with law enforcement?

22 A. He did. He agree and he did cooperate.

23 Q. And were you present when he spoke to law
24 enforcement?

25 A. I was.

JOHNNY DARYL BETSILL - DIRECT BY MR. CAMPBELL

305

1 Q. Were you one of the people that he spoke to?

2 A. I was.

3 Q. Now, after this, did you eventually write a report
4 regarding the conversation he had with you?

5 A. I gave the information to SLED Agent Michael Sloan
6 and he put it into a report.

7 Q. And you were giving it to him while he was typing?

8 A. I was giving it to him while he was typing and of
9 course as it was happening shortly after I had given him
10 the information verbally.

11 Q. And what date did you do your report?

12 A. I gave him the information on June the 5th. The
13 day of the incident I gave it to Agent Sloan.

14 Q. And prior to him putting it into the official
15 report did you review it prior to him okaying it?

16 A. I did.

17 Q. And what if anything did Mr. Olivares say to you
18 regarding this delivery?

19 A. He said that the marijuana was to be delivered to
20 that apartment at the [REDACTED] and
21 it was Apartment [REDACTED], and he had a passenger at one time
22 in the truck with him that we observed. He had let the
23 passenger out of the truck. He said that he was at the
24 Citgo and that he was going back to the apartment where
25 he would be picking his passenger up along with the

1 marijuana.

2 He said that he was to deliver the marijuana back
3 to a gentleman in Greenville named Garfio, and that he
4 was being paid \$500 by Mr. Garfio to drive from
5 Greenville to Anderson to get the marijuana and then
6 carry the marijuana back to Greenville, and that the
7 passenger, which was Mr. Ramirez, was getting a hundred
8 dollars from the gentleman, Mr. Olivares, and that he
9 said that there would be many more marijuana packages
10 come through the mail and that he had done this before.

11 Q. And did he specifically tell you that it was
12 marijuana?

13 A. He did. He called it both marijuana and weed,
14 which is street slang for marijuana.

15 Q. And so he knew what was in the box, in your
16 opinion?

17 A. He did.

18 Q. And did in fact -- was there marijuana in the box?

19 A. There was.

20 Q. Now, were you part of the team that attempted to do
21 the controlled delivery to Greenville?

22 A. I was part of that team.

23 Q. And was that delivery successful?

24 A. No, sir.

25 MR. CAMPBELL: I have no further questions, Agent

1 Betsill.

2 THE COURT: Cross-exam.

3 MR. CAMPBELL: Please answer any questions

4 Ms. Drawdy may have.

5 MS. DRAWDY: Thank you.

6 CROSS-EXAMINATION

7 BY MS. DRAWDY:

8 Q. Agent Betsill, you know there's marijuana in this
9 package, don't you?

10 A. I do.

11 Q. And that's exactly what you asked my client,
12 Mr. Olivares, and that's the answer he gave you,
13 according to you, right?

14 A. He did.

15 Q. Did you put that in an incident report?

16 A. I did not. Agent Sloan would have been the one to
17 put that in there. But, no, ma'am, to answer your
18 question I did not put marijuana or weed in an incident
19 report.

20 Q. You were there when my client was Mirandized, yes?

21 A. That's correct.

22 Q. At any time did you step forward and say we need to
23 reduce this to a written form?

24 A. No, ma'am.

25 Q. You said my client was extremely cooperative, yes?

1 A. He was.

2 Q. At any time did you think it was necessary to go
3 and get this reduced to a written statement about what he
4 may or may not have known about the package?

5 A. We do -- we can do either a written statement or we
6 can do what we call a memorandum of interview, and it's
7 generally up to whoever the lead agent is on the case, if
8 they want to get it in a written statement or what we
9 call a memorandum of interview, and on this occasion we
10 did it in a memorandum of interview as opposed to a
11 written statement. But as long as we get the information
12 correct and factual that's the most important part.

13 Q. So it wasn't your responsibility to get a written
14 statement. It was the lead agents, correct, to make that
15 decision anyway?

16 A. It would have been a decision -- I could have made
17 the decision to have taken a written statement. Agent
18 Sloan wouldn't have had a problem with it but we agreed
19 to do it in a memorandum of interview due to the fact
20 that we -- the operation was continuing to roll. Once
21 the gentleman agreed to cooperate and agreed to assist us
22 in trying to make a controlled delivery to the Greenville
23 residence with the marijuana we didn't -- were kind of on
24 a clock. We didn't sit down and take a written statement
25 at that time, no, ma'am.

JOHNNY DARYL BETSILL - CROSS BY MS. DRAWDY

309

- 1 Q. So you knew there was marijuana in this package?
- 2 A. I did.
- 3 Q. And then you went back and wrote a report, or
- 4 actually didn't write a report but told the lead agent
- 5 that he admitted he knew there was marijuana in the
- 6 package?
- 7 A. He did admit that.
- 8 Q. After he'd been -- okay. You are here to pick up
- 9 this package, was that asked?
- 10 A. I did ask him that.
- 11 Q. His answer?
- 12 A. He was to pick the package up from Apartment [REDACTED]
- 13 at [REDACTED] and he was to take the package to
- 14 apartments in Greenville, and I think the name was
- 15 Broadway Apartments, and there was a gentleman there that
- 16 he was to deliver the package to named Mr. Garfio.
- 17 Q. So he fully admitted he was there to pick up a
- 18 package?
- 19 A. Yes, ma'am.
- 20 Q. And you knew there was marijuana in that package?
- 21 A. Yes, ma'am.
- 22 Q. How did you know there was marijuana in the
- 23 package?
- 24 A. We did a briefing at the Anderson County Sheriff's
- 25 Office the morning before we attempted to make the

1 control delivery to the apartment, and while we were at
2 the Anderson County Sheriff's Office they opened the
3 package there and it was tested there.

4 Q. Could you tell from the package itself that it
5 contained marijuana or did it have to be opened?

6 A. It had to be opened.

7 Q. And you knew there was marijuana in there because
8 you'd seen it or other people had told you?

9 A. I was told first that there was marijuana in the
10 package and then I visually observed it once we were at
11 the sheriff's office.

12 Q. And when you arrived what kind of vehicle did you
13 arrive in?

14 A. I have a gold Ford Crown Victoria.

15 Q. Is it equipped with video equipment?

16 A. No, ma'am.

17 Q. Were any of the vehicles there equipped with video
18 equipment?

19 A. I'm not sure.

20 Q. Do you have those Miranda forms in your vehicle?

21 A. Yes, ma'am.

22 Q. You chose not to use one?

23 A. We verbally -- are you asking was he given Miranda?
24 I'm sorry. I didn't understand your question.

25 Q. Yes. You testified you were there -- you testified

JOHNNY DARYL BETSILL - CROSS BY MS. DRAWDY

311

1 you were there when he was Mirandized.

2 A. Yes, ma'am.

3 Q. And you just chose not to get a form to follow that
4 up and get it reduced to writing?

5 A. He was given his Miranda verbally. We can do it on
6 a written Miranda form or we can do it verbally, or we
7 can do it both. Of course, the most important part is to
8 be assured that they understand what the Miranda is.

9 Q. So in this way you took the short way out and just
10 didn't do it?

11 A. We gave him verbal Miranda, yes, ma'am.

12 MS. DRAWDY: Beg the Court's indulgence just one
13 moment, please.

14 (PAUSE)

15 BY MS. DRAWDY:

16 Q. Agent Betsill, you told Jose Olivares if he -- he
17 could help himself by helping you all, right?

18 A. I don't know what the exact wording was. I did ask
19 him -- we did ask him to help us. Certainly we would
20 have made no promises to him or led him to believe that
21 by helping us he would be reducing any kind of
22 consequences he would be facing.

23 Q. So in your opinion it's fair to say that a man
24 who's shackled in handcuffs, has, I don't know, three,
25 four more agents around, this is a controlled delivery,

1 you know, speaks English but you all worried enough to
2 have some Spanish speaking officers come and Mirandize
3 him, he just folds and cooperates with not a scintilla of
4 any kind of offer from you?

5 A. No, ma'am. We are not at liberty to make any deals
6 or any offers.

7 Q. You are just at liberty to say if you help us
8 you're helping yourself, wink, right?

9 A. No, ma'am. We don't do that. We explain to him if
10 they help us we will relay to the solicitor their
11 cooperation level, and that's all we can pretty much tell
12 them.

13 Q. Did you relay that to the solicitor?

14 A. It was told that -- no, ma'am, I did not. I did
15 not relay that.

16 MS. DRAWDY: Beg the Court's indulgence one last
17 time.

18 (PAUSE)

19 MS. DRAWDY: Thank you, Agent Betsill. I have no
20 questions.

21 THE COURT: Redirect?

22 MR. CAMPBELL: Just a couple.

23 REDIRECT EXAMINATION

24 BY MR. CAMPBELL:

25 Q. Agent Betsill, when you were helping conduct

JOHNNY DARYL BETSILL - REDIRECT BY MR. CAMPBELL

313

1 surveillance with Detective Brad McGuire were you in your
2 patrol vehicle or were you in his?

3 A. We were in Officer McGuire, we were in his vehicle.

4 Q. And the defendant in this case, Jose Olivares, he
5 did in fact admit to you that he knew he was picking up
6 marijuana?

7 A. He did.

8 Q. And did you put that in your report?

9 A. I gave the information to Agent Sloan and Agent
10 Sloan had put it into a memorandum of interview, and I
11 would have to review the memorandum of interview to put
12 the exact wording what was said.

13 Q. Agent Betsill, I'm going to show you what's been
14 marked -- or show you what --

15 MR. CAMPBELL: Your Honor, you want me to mark this
16 ahead? I'm not planning on introducing it into evidence
17 just going to show it to him and see if it refreshes his
18 memory.

19 THE COURT: Just let him look at it for the
20 purposes of refreshing his memory.

21 BY MR. CAMPBELL:

22 Q. For purposes of refreshing your recollection,
23 please tell me what this is, Agent Betsill.

24 A. This is a memorandum of interview and it was
25 prepared by Agent Michael Sloan, and it was prepared for

1 me and Agent McGuire. The information we gave to Agent
2 Sloan he put it into the memorandum of interview.

3 Q. And this is the information that you gave him and
4 he typed it out for you?

5 A. That's correct.

6 Q. And in your -- have you had an opportunity to
7 review what this memorandum says?

8 A. I have.

9 Q. And in it did in fact -- did or did not
10 Mr. Olivares admit that he knew he was picking up
11 marijuana?

12 A. He did acknowledge that he knew that he was driving
13 from Greenville to Anderson to pick up marijuana.

14 Q. And that's what you put into this memorandum?

15 A. That's correct.

16 MR. CAMPBELL: I have no further questions.

17 THE COURT: Redirect -- recross?

18 MS. DRAWDY: Just briefly.

19 RECROSS EXAMINATION

20 BY MS. DRAWDY:

21 Q. Actually, Agent Betsill, what you said, he admitted
22 to picking up a package of marijuana not marijuana,
23 right?

24 A. He admitted to picking up marijuana. I don't
25 recall if he said package, but he did admit to picking up

1 marijuana.

2 Q. Well, that's what was in that same report, package?

3 A. And if I told that to Agent Sloan that's what he

4 told me.

5 Q. And again, this is what you say he said because you

6 didn't write anything down?

7 A. It's what the gentleman told me.

8 Q. What you said he said. Thank you.

9 THE COURT: May this officer be excused?

10 MR. CAMPBELL: Yes, sir. He needs to leave. I

11 have no objection to him leaving.

12 THE COURT: Okay.

13 MS. DRAWDY: No. No objection.

14 Thank you, Agent.

15 THE COURT: Thank you, sir. You may be excused.

16 Would you call your next witness, please, sir.

17 MR. CAMPBELL: Your Honor, the State calls Rusty

18 Scogins to the stand.

19 THE COURT: Ladies and gentlemen, while we're

20 waiting, because our system -- we've cut it off because

21 it must have a short in it going on but we'll fix that

22 tonight, but if anybody cannot hear the proceedings just

23 raise your hand and we'll make sure we stop, and insist

24 that you do, okay.

25 ROGER K. SCOGINS, after having been duly

1 sworn, testified as follows:

2 THE CLERK OF COURT: If you would have a seat on
3 the witness stand and state your name and spell your last
4 name for the record, please.

5 THE WITNESS: My name is Roger K. Scogins,
6 S-c-o-g-i-n-s.

7 DIRECT EXAMINATION

8 BY MR. CAMPBELL:

9 Q. Mr. Scogins, you commonly go by another name; is
10 that right?

11 A. Yes, sir. I go by Rusty as well.

12 Q. And what is your occupation?

13 A. I'm a narcotics investigator with Anderson County
14 Sheriff's Office.

15 Q. And how long have you been employed in law
16 enforcement?

17 A. Approximately ten years.

18 Q. And how many of those ten years have been employed
19 in narcotics?

20 A. Approximately five of those years.

21 Q. And what exactly are your duties as a narcotics
22 officer?

23 A. For the main part investigating the narcotics
24 trade, how people are bringing in narcotics into our
25 county and as well as investigating narcotics on a daily

1 basis.

2 Q. And based upon your experience have you learned a
3 few things about drug trafficking that you didn't know
4 prior to you joining to the sheriff's office?

5 A. Yes, sir. We constantly train, have different kind
6 of training programs, some in state some out of state
7 just to keep up on the drug trade, as well as a
8 day-to-day basis of what we do just keeps you up on how
9 things change and what's going on.

10 Q. Now, have you learned through the performance of
11 your duties as a narcotics officer what methods that drug
12 dealers or people in the drug trade use to import,
13 distribute or bring drugs into Anderson County and the
14 surrounding communities?

15 A. Yes, sir, I have. A lot of that is through
16 experience of working many cases where drugs are being
17 brought in, as well as some of the training programs we
18 go teaches that.

19 Q. And you also learn through your training and
20 experience where drugs are typically sent into this area
21 from?

22 A. Yes, sir, we are. We do.

23 Q. And what type of training experience have you had
24 besides your on-the-job training, what type of formal, I
25 guess for lack of a better word, formal education have

1 you had?

2 A. I've had numerous classes put on by the Drug
3 Enforcement Administration, as well as United States
4 Department of Justice, U. S. Attorney's Office, several
5 other groups that teach outside training,
6 multi-jurisdictional task force training in reference to
7 the drug trade.

8 Q. And approximately -- would you have an idea of how
9 many hours you've had in this type of training?

10 A. I've had probably in excess of four to 500 hours of
11 training in the narcotics trade from outside agencies.

12 Q. And what was the most recent one you've been to?

13 A. I went to one a few weeks ago that was Narcotics
14 Commander's College, which is sponsored by the United
15 States Department of Justice and U. S. Attorney's Office
16 which had 28 different instructors coming in and teaching
17 you how to identify drug -- you know, different part of
18 the drug trade as well as how it's being brought into our
19 Country and into our states.

20 Q. And your five years as a narcotics officer you know
21 approximately how many narcotics arrests you've made?

22 A. Several hundred arrests over the last five years.

23 Q. And what type of drugs are we talking about?

24 A. I've made arrests in marijuana, methamphetamine,
25 cocaine, crack cocaine, heroin, ecstasy, any -- most any

ROGER K. SCOGINS - DIRECT BY MR. CAMPBELL

319

1 elicit drug that you can think of we make arrests daily
2 on.

3 Q. And has that been here in Anderson County?

4 A. Yes, sir, here in Anderson County.

5 Q. And as part of your experience in training have you
6 ever had opportunity to work a narcotics investigation
7 where a package of drugs is being sent through the mail?

8 A. Yes, sir, I have. Actually have an investigation
9 that's ongoing now that is several years in the making
10 that's in reference to this same exact thing, where
11 packages are being sent in by different mail courier
12 services into Anderson County, as well as several other
13 investigations that have led to arrests in this same
14 exact situation.

15 Q. And when you are conducting these type of
16 investigations do you deal strictly or only with Anderson
17 County Sheriff's Office or do you encompass or work with
18 other agencies?

19 A. Hardly ever in these type of investigations is it
20 just solely the sheriff's office because a lot of times
21 in all cases the packages are coming in from outside of
22 the State and even outside of the Country and we have to
23 work with other agencies to investigate it on both ends
24 of where it's coming from and where it may be going to.

25 Q. And in your experience you have participated in

1 illegal narcotics activity in Anderson County?

2 A. Yes.

3 Q. Have you always conducted investigations dealing
4 with the Federal Government?

5 A. Yes, sir.

6 Q. And what type of investigations are you working on
7 over there?

8 A. Through the last five years I've worked five
9 different cases involving other federal agencies in the
10 United States that we've included wiretap cases where
11 basically listening to people's phone conversations long
12 term what end up being eight to ten month long
13 investigations into people bringing drugs into the
14 County, and most of the time we involve these federal
15 agencies in these cases because of the fact that it's
16 involving other counties as well as other states.

17 Q. And have you done this also on the state level?

18 A. That's correct, yes, sir.

19 Q. And what agency would that be through?

20 A. We've also utilized SLED most recently in a case
21 that is the same type of case. It was a very long-term
22 investigation case that we had to involve SLED because we
23 were in about five different counties of South Carolina
24 alone where drugs were being transported back and forth.

25 Q. And have you specifically had any training or

ROGER K. SCOGINS - DIRECT BY MR. CAMPBELL

321

1 experience in working with marijuana?

2 A. Yes, sir. We've had -- just as I was stating
3 earlier, several of these different classes. I've
4 actually had a drug identification class that was taught
5 by the United States Department of Justice in basic
6 identification of all illicit drugs that we would
7 encounter on a daily basis.

8 MR. CAMPBELL: Your Honor, at this time I move to
9 qualify Deputy Scogins as an expert in drug trafficking
10 and drug trade.

11 THE COURT: Drug trafficking and drug trade?

12 MR. CAMPBELL: Yes, sir.

13 THE COURT: All right. What is your position on
14 that?

15 MS. DRAWDY: No objection.

16 THE COURT: No voir dire of this witness?

17 MS. DRAWDY: No. Thank you.

18 THE COURT: All right. Ladies and gentlemen, this
19 witness will be qualified as an expert in drug
20 trafficking and drug trade, which means that he will be
21 allowed to give his opinion. Normally witnesses are not
22 allowed to give their opinion except in very limited
23 circumstances. They can only testify to what they've
24 seen, they've heard, they've felt, they saw, basically
25 your senses, but because of his education and experience

1 he is going to be allowed to give an opinion in the field
2 of his expertise. But his testimony is just like any
3 other testimony you hear in this courtroom. You can
4 accept it, you can reject it. You can do with it what
5 you will. Very good.

6 MR. CAMPBELL: Thank you, Your Honor.

7 BY MR. CAMPBELL:

8 Q. Now, Deputy Scogins, how did you become involved in
9 this case of Jose Olivares?

10 A. On this day in question I was contacted by Agent
11 Sloan in reference to this situation advising that he had
12 gotten information about this package that I believe
13 ultimately was sent into the Spartanburg terminal and was
14 being transferred down here and he requested our
15 assistance in the package because it was going to be
16 ultimately sent to an address inside of Anderson County.

17 Q. And were you present when the box was brought to
18 Anderson County?

19 A. Yes, sir, at the terminal at UPS.

20 Q. And was the box opened there at the terminal?

21 A. Eventually it was brought back to our office but
22 not opened there at the terminal.

23 Q. At what point did you open the box or was the box
24 opened?

25 A. After the package had been brought back to the

1 Anderson terminal we actually had a search warrant
2 ultimately we ended up being written. We seized the
3 package due to K-9 alerts and brought it back to our
4 office where we opened the package to examine what was
5 inside the package.

6 Q. And did you open every bundle of -- how many
7 bundles were in the package once you opened it?

8 A. There was three bundles individually wrapped inside
9 the bundle -- inside the package. I'm sorry.

10 Q. And at this point did you open up each bundle?

11 A. We examined each bundle by a small cut in them just
12 to make sure what was inside of each bundle but we didn't
13 take them out of the box at that point in time.

14 Q. And were you the officer that was actually doing
15 the cutting?

16 A. That's correct.

17 Q. Now, when you got this box did you first take a
18 look, overall observation of it? And I'm going to show
19 you what's been marked State's Exhibit 3. If you could
20 please identify this, sir.

21 A. Yes, sir. This is in fact the package that was
22 brought in that day.

23 Q. Okay. Now, when this package was brought in did
24 you first make a visual observation of it?

25 A. Yes, sir. We looked at the package obviously to

1 begin with. It was heavily sealed up, which is typical
2 of these type of packages. It also has a label on it
3 where it was shipped from with a -- I believe it had a
4 Hispanic name on it and it was shipped from McAllen,
5 Texas, which is also very typical in these packages.

6 Q. I'm going to show you what's been marked State's
7 Exhibit 4. If you can please identify what this is, sir.

8 A. This is the shipping label in fact that we're
9 speaking of that was on top of the package. It has the
10 ship from address and it has the ship to address on it,
11 as well as a tracking number.

12 Q. Now, let's go back to the way this box was
13 initially taped up. Was it, in your opinion, consistent
14 with a box that's being used to transport for drugs by a
15 parcel carrier?

16 A. It is in fact very typical with the way they are
17 shipped in like that.

18 Q. And why is that? Why is it you wouldn't just
19 consider this as a box someone sent through the mail?

20 A. Packages in the past as well as this one that we
21 have intercepted which are in the dozens of packages that
22 we've taken from these parcel services are always heavily
23 taped up, maybe glued.

24 They don't want these packages to -- even if they
25 take some sort of damage or take some sort of beating in

ROGER K. SCOGINS - DIRECT BY MR. CAMPBELL

325

1 transit they don't want them to be able to be exposed,
2 whatever is inside of the boxes. So they go to extra
3 measures to make sure that the package is very, very
4 secure.

5 Q. And you just identified as State Exhibit Number 4,
6 can you see that?

7 A. I can see it. Yes, sir.

8 Q. And you mentioned that the address kind of meant
9 something to you?

10 A. Yes, sir.

11 Q. What is that?

12 A. The address that was the ship from address is
13 coming from McAllen, Texas which is a -- it's a very
14 heavily transported spot coming out of Mexico into the
15 United States where drugs are brought across on a daily
16 basis, just a hub.

17 Q. And where is McAllen, Texas in relationship to the
18 Country of Mexico?

19 A. McAllen is just across the boarder. It would be on
20 the most north northeast tip of Mexico nearest the Gulf
21 of Mexico just across the boarder of Texas. It's the
22 closest point of Mexico to us in variation.

23 Q. And based on your training and experience you said
24 you've had other packages come from McAllen, Texas; is
25 that right?

1 A. Yes, sir, a lot of packages.

2 Q. And so this package kind of raised suspicion to you
3 it could be illegal narcotics in there?

4 A. That's correct.

5 Q. Now, would you consider McAllen, Texas to be
6 basically a drug hub?

7 A. It is most definitely a drug hub.

8 Q. And typically through your training and experience
9 and through the schools you have gone through is it
10 normal for a certain Mexican cartel to control the area
11 that the drugs are sent from and the area that the drugs
12 are sent to?

13 A. Most definitely that a specific cartel of the
14 Mexicans will -- even Colombians will control specific
15 areas in Mexico as well as they will control specific
16 areas in the United States that drugs are shipped to.
17 It's a boarder war type thing that they control. They
18 control a specific area. And in this instance McAllen as
19 well as that specific area of Mexico will be controlled
20 by specific cartel.

21 Q. And you know which cartel through training and
22 experience controls that area?

23 A. At this point in time right now --

24 MS. DRAWDY: Objection, Your Honor. At this point
25 I'd ask what the relevance of --

ROGER K. SCOGINS - DIRECT BY MR. CAMPBELL

327

1 THE COURT: I sustain the objection.

2 MS. DRAWDY: Thank you.

3 BY MR. CAMPBELL:

4 Q. Now, Detective Scogins, now after you opened this
5 package did anything jump out at you?

6 A. Yes, sir, it did.

7 Q. And what was that?

8 A. As I was mentioning earlier, the way that the item
9 was packaged in it was heavily secured around it with --
10 just anything in general that they use installation.

11 Sometimes they use Styrofoam. In this particular
12 instance I believe they used, which is a spray in foam
13 which once you spray it into the box it just
14 completely -- it just seals up all the way around it,
15 packages to keep them from moving?

16 Q. And I'm going to show you what's been marked
17 State's Exhibit 5. If you could please identify that,
18 sir.

19 A. Yes, sir. That's the inside of the box, and it
20 does have the Styrofoam as well as the peanuts. It was
21 also glued with what appeared to be probably a -- kind of
22 like a caulking gun would spray out the glue in. Not a
23 small glue thing but to hold everything in place, that
24 way nothing shakes around, nothing moves.

25 Q. Is that typical of packages that are being shipped

1 through a --

2 A. It is.

3 Q. -- commercial carrier like this?

4 A. It is.

5 Q. Now, at some point in your investigation you did
6 take the opportunity to completely remove these bundles,
7 these three bundles from this box; is that right?

8 A. Yes, sir. At the end of the investigation we did.

9 Q. And when these bundles were removed you labelled
10 them?

11 A. That's correct.

12 Q. And what was the reason why you would do that?

13 A. Any time we encounter such a situation as this, any
14 kind of drugs in a house whether it be in packages or
15 whether it be in a house we label them for purpose of
16 being able to go back and determine what each specific
17 item was by packaging, by location of where it may be and
18 by the weight of it, all of these factors.

19 Q. I'm going to show you on the overhead State's
20 Exhibit 10. Can you identify what this is, sir?

21 A. That's one of the three packages that was inside of
22 the box.

23 Q. And what is the white stuff in this case?

24 A. It would be some sort of laundry detergent, which
25 basically is used to mask the smell or the odor of the

ROGER K. SCOGINS - DIRECT BY MR. CAMPBELL

329

1 marijuana from being able to be alerted on by K-9s.

2 Q. And is this common practice in trafficking
3 narcotics this way, to put some sort of masking odor in a
4 box?

5 A. Every single package that we have removed from a
6 parcel service has had some sort of item such as this to
7 mask the odor of it.

8 Q. So this is nothing out of the ordinary?

9 A. No. It's very typical.

10 Q. And showing you what's marked State's Exhibit 8,
11 can you identify what that is, sir?

12 A. That is in fact the three packages after we removed
13 the first layer of cellophane, which was the green, and
14 the laundry detergent, which was a powder form. It just
15 fell out once we removed all of the cellophane.

16 Q. And also showing you State's Exhibit Number 11.
17 What is that depicting?

18 A. One again, these items are taped, taped over. We
19 had already removed the first layer. When it was cut
20 into it then you have dryer sheets, which is once again
21 just another item used for masking the odor of it, and,
22 you know, in between that and the actual marijuana in the
23 picture.

24 Q. So in this case each bundle was wrapped the same
25 way?

1 A. All three bundles were wrapped consistently, yes.

2 Q. And they were wrapped each with two different color

3 Saran wrap?

4 A. That's right.

5 Q. Along with using a masking -- some sort of agent to

6 mask the odor of the narcotics?

7 A. Yes, sir, multiple items, obviously.

8 Q. In fact, is this you in this picture right here?

9 A. That would be me, yes, sir.

10 Q. In fact, you were the officer who actually went

11 into each bundle; is that right?

12 A. That's correct.

13 Q. And after you actually took these bundles, prior to

14 you cutting into them you weighed them first?

15 A. We weighed them individually before taking any --

16 removing any of the packaging and then we weighed them

17 once we actually took them out of the packaging. The

18 packaging will have a large amount of weight on them as

19 well.

20 Q. And the actual weight that you would get, would

21 that be the actual final weight that the chemist would

22 get?

23 A. Depending on the amount of time in between when we

24 weighed it and when the chemist would have weighed it, in

25 marijuana most especially.

1 Q. And why is that?

2 A. Just over time it's going to dry out. If you --
3 this may have been wrapped this way for days, it may have
4 been wrapped this way for weeks but with it being wrapped
5 in the cellophane and all the different packaging it will
6 retain the moisture in the marijuana. It's just like any
7 other plant. It has moisture in it. That's how it
8 survives. Once you remove it from its source of moisture
9 then it's going to begin to dry out.

10 In this case, depending on -- as soon as we exposed
11 it to air it's going to immediately begin to dry out. So
12 depending on how much time between we weighed it and
13 whenever the chemist in this case would have weighed it
14 it would have most definitely changed in weight.

15 Q. Now, through your training and experience you learn
16 how when these parcel packages are coming in how the drug
17 traffickers arrange for pick ups?

18 A. Yes, sir. In most all cases that we've encountered
19 this situation the actual person that would be receiving
20 the package ultimately to open the package and start to
21 distribute it out is never the person that actually
22 receives the package upfront, and usually not the person
23 that would -- there may be one, two, three people that
24 would handle the package before it ever starts getting
25 actually broken up to be sold.

1 Q. And why is this?

2 A. In most cases the person that is actually in
3 control of it; ultimately where it will end up at, they
4 want to separate themselves from the mail service and
5 from that initial delivery, from it coming in as far as
6 they can out to keep themselves from getting caught.

7 So they will pay somebody an X amount of money to
8 pick the package up, to have it delivered at their home,
9 or to have it delivered at -- sometimes they are
10 delivered at abandon houses and somebody next door will
11 pick them up. They get paid an X amount of money to pick
12 them up and then bring them to the person that is
13 actually supposed to get the package.

14 Q. And is it common for these packages as they are
15 being shipped through these parcel services to be sent to
16 a fictitious name?

17 A. Always. I've never had one that actually had a
18 correct name on it, that I know of.

19 Q. Now, were you part of the investigation that took
20 place on June 5th, 2009 after you had gone through and
21 determined this was marijuana?

22 A. Yes, sir.

23 Q. And what role or position did you play regarding
24 this?

25 A. In my initial role, once we wrapped the package

1 back up and had it back like it was originally I actually
2 assisted Agent Sloan in running surveillance. Agent
3 Sloan went to the apartment actually a couple of times
4 where we set up surveillance as far as up in a parking
5 lot before you ever get down into where the apartment is
6 at just to watch what was going on.

7 A lot of times there's counter surveillance in
8 these situations. So we set up to watch for other people
9 that may be watching for him, in fact looking for a UPS
10 truck or whatever it may be.

11 Q. And was that the fact in this case?

12 A. It was. That was my role is to watch -- to set up
13 partly surveillance on the situation until the package
14 was delivered.

15 Q. And what if anything did you observe?

16 A. At some point -- we made a couple of attempts on
17 this package unsuccessfully. We just couldn't get
18 anybody to the door. Eventually on, I think it was a
19 third attempt that we tried to deliver the package, we
20 did observe -- actually prior to this third attempt we
21 observed a red Ford Ranger pickup truck sitting in the
22 parking lot of Hancock Fabrics. It was actually sitting
23 just inside the entrance if you turn off of Miracle Mile
24 Drive into the parking lot of Hancock Fabrics, away from
25 the store just right there at the edge of the road, with

1 two Hispanic males in it.

2 Q. And what did you observe this truck to do?

3 A. After Agent Sloan went down in the van to attempt
4 the delivery the truck followed him down into the parking
5 lot. Just a couple of minutes later the truck came back
6 out with only one of the Hispanic males inside of it.

7 Q. And the package was eventually delivered?

8 A. The package was at that point delivered within just
9 a couple minutes there.

10 Q. And while Agent Sloan was actually doing the
11 delivery itself did you have communication with him?

12 A. We could hear him on a device that we put on him to
13 monitor him to make sure he was safe and we could hear
14 everything that was going on, yes.

15 Q. But you couldn't communicate with him --

16 A. I couldn't talk to him and tell him this. I could
17 just hear him and what he was saying.

18 Q. And after the box was delivered what did you do
19 next?

20 A. Once the box was delivered we went into the
21 apartment. There were other agents assigned to get --
22 somebody else actually stopped the truck. We had some
23 marked units that was close by in case we needed them,
24 and I believe they actually stopped the car, them or
25 either one of the other agents that was involved. I went

1 down to the apartment and assisted with going -- you
2 know, with actually making contact with somebody there at
3 the apartment.

4 Q. In fact, did you do a consent to search?

5 A. Yes, sir. We did do a consent to search at the
6 apartment from, I believe it was Jose Delorez.

7 Q. I'll show you what's been marked State's Exhibit 2.
8 Can you please identify that, sir.

9 A. That is the consent to search at the [REDACTED]
10 [REDACTED] and I actually -- I
11 actually did not fill out the top of the form but I did
12 fill out the inventory that was taken back away from the
13 house and I signed the execution of the warrant and the
14 consent to search.

15 Q. And the person who consented, he went by the name
16 of Jose Santos at this time?

17 A. That's correct.

18 Q. And did you later learn what his real name was?

19 A. I believe it was Jose Delorez, is what it ended up
20 being when we got him to the detention center.

21 Q. And is that common for them, people in this drug
22 trade to use alias or different names?

23 A. It's very common for them to give us a false name,
24 yes, sir.

25 Q. Now, after that did you have any involvement or

1 were you able to speak to Mr. Jose Olivares?

2 A. At no point did I speak with the defendant, no,

3 sir, not there --

4 Q. Is he in the courtroom today?

5 A. Yes, sir. He's sitting there in the burgundy shirt.

6 Q. But you do recognize him from the incident?

7 A. He was the one driving the red Ford Ranger truck

8 that day and eventually brought back to the apartment.

9 Q. Now, Deputy Scogins, after this incident took place
10 or went down here in Anderson were you part of the team
11 that went to Greenville?

12 A. I was.

13 Q. And what was the reason or why were you going back
14 to Greenville -- or going to Greenville?

15 A. Eventually after just a few minutes of being there
16 at the apartment I learned from someone -- I'm not sure
17 who exactly told us, but several others were inside the
18 apartment dealing with the situation inside and then
19 there was people outside. We learned that the defendant
20 there wished to cooperate with us, which is very common,
21 I mean, that's for us to attempt to at least try to send
22 this package to the next place, if it's going somewhere
23 else. And we learned that he wanted to cooperate. So we
24 ultimately ended up leaving with him, with his truck,
25 with the package and going to Greenville to attempt the

ROGER K. SCOGINS - DIRECT BY MR. CAMPBELL

337

1 delivery of the package to where it was supposed to
2 actually go.

3 Q. And why is this important to law enforcement?

4 A. Like I was stating earlier, in most cases the
5 person that -- the first one or two people that have
6 contact with the package it doesn't belong to them. If
7 we can't stop the root of the problem, which is the man,
8 in this case in Greenville that was receiving the
9 package, then there's another package coming the next day
10 to replace it.

11 Q. And in this case you were dealing with marijuana,
12 30 pounds of it. In your training and experience have
13 you learned what the value of marijuana is in Anderson as
14 well as the surrounding communities?

15 A. Actual street value of 30 pounds of marijuana would
16 be close to \$30,000.

17 Q. So you are roughly dealing with a thousand dollars
18 a pound?

19 A. That's correct.

20 Q. And that would be what the street level value is?

21 A. That's ultimately what it's worth when it gets
22 broke down and sold to the consumer.

23 MR. CAMPBELL: Your Honor, may I have the witness
24 step off the stand, please.

25 THE COURT: Yes, sir.

1 BY MR. CAMPBELL:

2 Q. Deputy Scogins, I want to show you what's been
3 marked State's Exhibit 18. Please look at this and
4 identify what it is.

5 A. There is the box in fact that it was shipped in
6 initially. It's also the packaging that it was wrapped
7 in, and this is the three bundles of marijuana. There is
8 the three bundles of marijuana that were actually in the
9 box this day minus some of the packaging that we removed.
10 This packaging is packaged -- is the tape that we took
11 off.

12 This is what I was explaining to you guys earlier
13 about the foam, the Styrofoam as well as the spray-in
14 foam that just binds it all together to keep it from
15 moving, and then there's some of the green wrapping down
16 at the bottom, if you want me to remove that, that it's
17 ultimately wrapped in. So this is the three bundles in
18 fact from that day.

19 Q. And in your training and experience is it typical
20 that bundles like this, this is how marijuana is shipped,
21 in bundles like this?

22 A. Very consistent, yes, sir.

23 Q. Now, this isn't how a dealer or a person above him,
24 Mr. Olivares, would sell this product as?

25 A. No, sir. It would be -- once it got back to the

1 person that was -- the actual person that was in control
2 of it or that ordered it or had it come in from Mexico or
3 whatever it was coming from, they will cut this up, open
4 it up, and then they'll break it down into ounce bags,
5 generally speaking, maybe pounds.

6 This would probably be broke down into, in my
7 opinion, more than likely 30 one-pound packages. They
8 will put it in Ziploc bags, then they'll sell one, two,
9 three, four, five pounds to somebody that actually breaks
10 it down into a smaller quantity and sells it in ounces,
11 and then it just keeps continuously going down.

12 Q. Until it ultimately gets to --

13 A. Until it ultimately gets to somebody that's using
14 it, yes, sir.

15 THE COURT: Are you finished with that,
16 Mr. Campbell?

17 MR. CAMPBELL: I'll set it down.

18 THE COURT: Yeah, would you all mind moving that.

19 BY MR. CAMPBELL:

20 Q. Was the delivery or attempted delivery in
21 Greenville, was it successful?

22 A. It was not successful.

23 Q. And is this, because due to the fact it's
24 unsuccessful, is this kind of common?

25 A. In cases such as this, really, time is of the

1 essence because if you don't -- in most cases the person
2 that is actually receiving this package ultimately
3 maintains a very strict contact with the person that's
4 going to be doing the couriating of it, or we call it
5 muling. They want to maintain contact with them every
6 10, 15 minutes of the whole entire time period. That
7 they expect them to have contact with the package.

8 In this case we probably had Mr. Olivares for an
9 extended amount of time that -- or too long of a time
10 period that he may not have made contact with this person
11 and once the contact chain is broken then this person is
12 going to separate themselves from the situation, from the
13 package. They are going to drop their phone, it's done,
14 and I believe that in this case that's what occurred. We
15 couldn't get it to happen quickly enough.

16 Q. Therefore they just cut their loses and run?

17 A. Absolutely. It's an exceptional loss to lose 30
18 pounds of marijuana in this type of situation.

19 MR. CAMPBELL: I have no further questions. Please
20 answer any questions Ms. Drawdy may have.

21 THE COURT: Before you do your cross-examination
22 I'm going to go ahead and let the jury take its afternoon
23 break.

24 If you would, Mr. Burns, take your jury back to the
25 jury room and we'll resume testimony at 3:30, okay, sir?

1 (WHEREUPON, the jury leaves the courtroom at
2 approximately 3:18, and a brief recess was taken.)

3 THE COURT: Mr. Scogins, come back around, please,
4 sir.

5 (The witness returned to the witness stand.)

6 THE COURT: Is the State ready to proceed?

7 MR. CAMPBELL: Yes, Your Honor.

8 THE COURT: The defense ready to proceed?

9 MS. DRAWDY: Yes, Your Honor.

10 THE COURT: Bring the jury.

11 (WHEREUPON, the jury enters the courtroom at
12 approximately 3:35 p.m.)

13 THE COURT: All right. Ms. Drawdy, I believe you
14 were about to begin your cross.

15 MS. DRAWDY: Thank you, Your Honor. May it please
16 the Court.

17 CROSS-EXAMINATION

18 BY MS. DRAWDY:

19 Q. Investigator Scogins, I'm glad we have an expert
20 here. And it's common, is it not, in the drug world for
21 people to snitch on one another, turn on one another,
22 right?

23 A. Yes, ma'am. That's common.

24 Q. There's no honor among thieves, in other words?

25 A. No, ma'am.

1 Q. In fact, you would do a lot of working agreements
2 if you arrest one maybe to sell out the guy he's supposed
3 to deliver it to?

4 A. Yes, ma'am.

5 Q. That happens a lot?

6 A. Yes, ma'am.

7 Q. And often too is it fair to say in the drug world,
8 trafficking in particular, the real drug traffickers you
9 find multiple cell phones?

10 A. Yes, ma'am.

11 Q. Weapons?

12 A. Sometimes.

13 Q. Cash?

14 A. Yes, ma'am, sometimes.

15 Q. Now, in this case you testified that street value
16 of this marijuana is \$30,000?

17 A. Yes, ma'am.

18 Q. That's lot of money, isn't it?

19 A. Yes, ma'am.

20 Q. Also in the drug world isn't it fair to say that
21 some of these ultimate recipients of the drugs don't tell
22 the couriers what's coming?

23 A. The specific type of drug, no, ma'am.

24 Q. Well, they don't say, Hey, I got \$30,000 of
25 something coming in, do they?

- 1 A. I'm not sure what they tell them. No, ma'am.
- 2 Q. Is it fair to say that they might say, Look, hey
3 you, I've got a package, I'll give you \$500 if you'll
4 pick it up for me?
- 5 A. I would say that's probably fair.
- 6 Q. Especially maybe fair to say to someone who has
7 kids and he doesn't have much money coming in from his
8 job, and actually people who are sophisticated could
9 maybe take advantage of some folks and say, Hey, if you
10 pick up a package for me I'll give you 500 bucks, and not
11 tell that person that the package is worth 30,000?
- 12 A. That's possible.
- 13 Q. You were involved in this particular case here,
14 right?
- 15 A. Yes, ma'am.
- 16 Q. Are you aware of any cell phones being taken from
17 my client, Mr. Olivares?
- 18 A. I'm not aware of any.
- 19 Q. Are you aware of any cash found on his person?
- 20 A. No, ma'am.
- 21 Q. Are you aware of any weapons he may have had?
- 22 A. No, ma'am.
- 23 Q. He indeed cooperated with you and tried to tell you
24 -- or take you all to the person who asked him to pick up
25 this package, right?

1 A. That's correct.

2 Q. And as you predicted that was unsuccessful because
3 that person was gone?

4 A. He did not accept the package. Yes, ma'am.

5 Q. I'd like to talk about this counter surveillance
6 that we've been hearing. You didn't recover a cell phone
7 from Mr. Olivares. You did a consent to search, right,
8 in the Apartment [REDACTED] where Jose Delorez
9 Santos was, yes?

10 A. That's right.

11 Q. On that consent to search, I think we have it here,
12 it is State's Exhibit Number 2, says you found the box,
13 that box and \$1200 in U. S. Currency. Did you find a
14 cell phone in that apartment, [REDACTED]

15 A. Not that I recall.

16 Q. Cell phones would be important for people
17 conducting counter surveillance, would they not?

18 A. Yes, ma'am.

19 Q. You did do an incident report in this case, didn't
20 you?

21 A. Yes, ma'am.

22 Q. In this particular case -- can you tell me what
23 happened on June 6th, 2009? Was anything going on
24 related to this case on June 6th, 2009?

25 A. I don't recall, ma'am.

1 Q. Do you remember your incident report?

2 A. Yes, ma'am.

3 Q. Would it surprise you that you dated it and said
4 this incident occurred on June 6th, 2009?

5 A. I'm not sure, ma'am. I may have done the report
6 the next day.

7 Q. But under the incident date it wouldn't surprise
8 you that you dated it June 6th, the wrong date, right?

9 A. I'm not sure, ma'am. I don't recall that.

10 MS. DRAWDY: Your Honor, may I approach the
11 witness?

12 THE COURT: Yes, ma'am.

13 MS. DRAWDY:

14 Q. I'd like to give you a document and see if it
15 refreshes your memory. I'll give you a minute to look at
16 that. Do you recognize that document?

17 A. Yes, ma'am.

18 Q. Okay. What is it?

19 A. It's my incident report.

20 Q. And can you tell me what date you put down this
21 incident involving my client occurred?

22 A. I put down June the 6th.

23 Q. 2009?

24 A. Yes, ma'am.

25 Q. That's wrong, isn't it?

- 1 A. Apparently it is.
- 2 Q. Well, is it or isn't it? Do you know now when this
3 incident occurred?
- 4 A. Yeah. It occurred June the 5th. I guess I made a
5 typographical error.
- 6 Q. Typographical error.
- 7 A. Yes, ma'am.
- 8 Q. You also wrote in your incident report three people
9 were subsequently arrested for trafficking marijuana and
10 conspiracy to traffic marijuana. Now, did my client have
11 two charges or one?
- 12 A. I'm not sure, ma'am. Agent Sloan ended up doing
13 the charges but this is just my supplemental. It's just
14 my incident report for assisting them.
- 15 Q. So it wasn't your responsibility to bring the
16 charges?
- 17 A. Not to bring the charges, no, ma'am.
- 18 Q. You write though in your incident report that a
19 1999 Ford Ranger pick-up truck was seized due to it being
20 used in the transportation of marijuana. Those are your
21 words, right?
- 22 A. Yes, ma'am.
- 23 Q. This 1999 red Ford pick-up truck, were any drugs
24 ever found in that pick-up truck?
- 25 A. No, ma'am.

1 Q. So it wasn't used in the transportation of
2 marijuana?

3 A. No, ma'am, not this day.

4 Q. Also you say \$1220 in U. S. Currency was seized
5 inside the apartment, and I'm assuming the apartment is
6 [REDACTED], right?

7 A. Yes, ma'am.

8 Q. \$1,220, correct?

9 A. That's correct.

10 Q. And that's your report, you're an expert in drug
11 trafficking -- and by the way, let me ask you. This is
12 serious, isn't it?

13 A. Yes, ma'am.

14 Q. This kind of charge?

15 A. Yes, ma'am.

16 Q. These incident reports are serious, too, right?

17 A. That's correct.

18 Q. \$1,220 is in your incident report. Now, I go back
19 to that consent to search, State's Exhibit Number 2, and
20 you already told us you didn't fill out the top, you just
21 filled out that middle. How much money did you retrieve
22 from the apartment?

23 A. It says 1200 on there.

24 Q. Okay. Somewhere someone took 20 bucks?

25 A. Seems like somebody added 20 bucks.

- 1 Q. Is this your report?
- 2 A. It's 1200 from there.
- 3 Q. Is this your report?
- 4 A. Yes, ma'am, that's my report.
- 5 Q. And that's your consent to search?
- 6 A. Uh-huh.
- 7 Q. Now, you did your report on June 6th, 2009,
- 8 correct?
- 9 A. Yes, ma'am.
- 10 Q. Okay. Your report it says is approved by Detective
- 11 McGuire, and we're familiar with his mistakes, and
- 12 Detective McGuire he approved your report on October
- 13 15th, 2009; is that correct?
- 14 A. Yes, ma'am. That's what it says.
- 15 MS. DRAWDY: May I approach?
- 16 THE COURT: Yes, ma'am.
- 17 BY MS. DRAWDY:
- 18 Q. It's fair to say this is not a very accurate
- 19 recollection or report about what happened on June 5th?
- 20 A. There are some discrepancies, yes, ma'am.
- 21 Q. And so when you also write in this report that my
- 22 client -- or, I'm sorry. It is that when you also write
- 23 in your report that Agent Sloan advised you -- I'll
- 24 withdraw that. You never had any discussions with
- 25 Mr. Olivares, did you?

1 A. No, ma'am.

2 Q. You and Mr. Campbell spent a lot of time on direct
3 about this box and the contents, and I'll ask you as
4 well. With that masking stuff, the detergent, whatever
5 all that junk was, could you detect that this was
6 marijuana yourself without invading the box?

7 A. No, ma'am.

8 Q. You talked about how sometime these people in drug
9 trafficking use different names. At all times my client
10 has been forthcoming about his name, Jose Olivares, yes?

11 A. I never spoke with him, so I can't tell you that.

12 Q. Were you present when Mr. Olivares made some phone
13 call to Greenville to set up the Greenville deliveries?

14 A. No, ma'am. I was present but not in his immediate
15 presence so...

16 Q. So you don't know anything about the phone call?

17 A. No, ma'am.

18 Q. Do you know if he was wired to do this and if there
19 was audio?

20 A. I don't know.

21 Q. Investigator Scogins, your involvement with this,
22 what kind of vehicle were you in?

23 A. I have no idea, to be honest with you.

24 Q. So you don't know what vehicle you were in. Is it
25 fair to say you don't know if you were in a vehicle that

1 had video equipment?

2 A. No, it did not have any video equipment in it.

3 Q. Do you know if it had any Miranda forms in it that
4 someone can fill out, or do you not recall?

5 A. I can tell you no because our surveillance cars
6 that we use don't have paperwork in them, generally.

7 Q. Thank you.

8 A. You're welcome.

9 MS. DRAWDY: I have no further questions.

10 THE COURT: Redirect?

11 MR. CAMPBELL: Just a couple.

12 REDIRECT EXAMINATION

13 BY MR. CAMPBELL:

14 Q. Investigator Scogins, when the box, this box here,
15 this Delta box arrived at Anderson County Sheriff's
16 Office or at the parcel -- UPS office here in Anderson
17 off McGee Road you, yourself, couldn't smell marijuana
18 through it, through the box, could you?

19 A. No, sir.

20 Q. But that didn't prohibit a dog, a dog was able to
21 detect an odor of narcotics in that box?

22 A. Yes, sir.

23 Q. Now, you were asked about the money that was on the
24 State's Exhibit Number 2, the consent to search form in
25 which you recovered this out of the [REDACTED] [REDACTED]

1 [REDACTED]; do you recall that?

2 A. Yes, sir.

3 Q. Now, where was this money found in the apartment?

4 A. In a bedroom under a mattress.

5 Q. And was this money found directly in connection
6 with this narcotics that just had been dropped off?

7 A. No. It was not found with it.

8 Q. So they weren't together?

9 A. No, sir.

10 Q. And in your experience of conducting narcotics
11 investigations has it always been that any time you
12 arrest a person they are going to have drugs, money, guns
13 or cell phones on them?

14 A. Not always, no.

15 Q. So it's normal for a courier such as Mr. Olivares
16 not to have anything on him?

17 A. Yeah, nothing at all.

18 Q. And you wouldn't consider that out of the ordinary?

19 A. No, sir.

20 Q. Now, you testified on cross-examination that this
21 red truck was not used in the transportation of
22 narcotics; is that right?

23 A. That's right.

24 Q. And why is that? Why was it not used in the
25 transportation of narcotics?

1 A. Because we intercepted the situation before it
2 occurred, before he picked it up.

3 MR. CAMPBELL: I have no further questions.

4 THE COURT: Any recross?

5 MS. DRAWDY: No. Thank you.

6 THE COURT: May this officer be excused?

7 MR. CAMPBELL: Yes, Your Honor.

8 MS. DRAWDY: No objection.

9 THE COURT: Thank you, sir. You may be excused.

10 MR. CAMPBELL: Can we approach?

11 (WHEREUPON, a bench conference was had.)

12 THE COURT: All right. Mr. Campbell, any further
13 witnesses?

14 MR. CAMPBELL: No, Your Honor. That's the State's
15 case.

16 THE COURT: Mr. Burns, ladies and gentlemen of the
17 jury, I'm going to go ahead and excuse you for the day.
18 I'm going to ask that you return back in the morning at
19 nine o'clock and we'll resume testimony in this matter.

20 At this point in the stage of the proceedings I
21 have several administrative things that will probably
22 take me through the rest of the afternoon, but if you
23 would be in your jury room at or before nine o'clock
24 we'll resume and end this case tomorrow, okay, sir?
25 Thank you very much.

1 I'll remind you not to discuss this case with
2 anybody or amongst yourselves.

3 (WHEREUPON, the jury leaves the courtroom at
4 approximately 3:53 p.m.)

5 THE COURT: All right. Ms. Drawdy, do you have any
6 motions to make?

7 MS. DRAWDY: Yes, Your Honor, two in particular.
8 Number one, I renew my motion for a mistrial. There's an
9 audio out there somewhere. I don't know, maybe it's been
10 destroyed. I just know nothing about it.

11 It's been testified that there was an audio, that
12 first on the audio my client is just driving to
13 Greenville for these controlled deliveries, but it's also
14 been testified to that there was a phone call made, that
15 the phone call went to voicemail, and it's our position
16 that I can't go into what this may have led to.

17 There could have been promises made on the audio.
18 I mean, they denied it but I can't challenge it. So
19 since this evidence does exist I would renew my motion
20 under State V. Jackson that a mistrial be declared.

21 THE COURT: Okay. I'm going to deny your motion on
22 the same basis and same authority I did before, and that
23 was State vs. Breeze, and I'm not going to go back into
24 the grounds. It will be the same grounds as I denied
25 before.

1 Do you have any further motions?

2 MS. DRAWDY: I do, Your Honor. I move now at this
3 time for a directed verdict. It would be the defense's
4 position that they have failed to offer evidence that
5 might go to a jury or that a reasonable jury might find
6 where my client knew about the drugs.

7 We've had some testimony from the officers, self
8 serving testimony that my client said, Yes, I knew about
9 marijuana in the package. It's never been corroborated
10 by any written form. The testimony is clear my client
11 never actually possessed, never constructively possessed.

12 On the contrary, Agent Sloan is emphatic, I never
13 let him get control, never let Jose Olivares get control
14 of this package in any way, shape or form. So he never
15 actually or constructively possessed it.

16 Did he knowingly do anything? And all they have is
17 hearsay, within hearsay, within hearsay, within hearsay
18 that he says yes, or something, package. In fact, I
19 think it was Agent Sloan who emphatically stated over and
20 over, I think it was three times, I wrote it down, he
21 said he was there to pick up a package, period. A
22 package, period. A Delta package, actually. At one
23 point he said a Delta package. But never did Agent Sloan
24 -- he was emphatic about that, to pick up a package.

25 I think it is Investigator McGuire who says that he

1 told him yes, it was a package of marijuana, but
2 Investigator McGuire's incident report sort of belies
3 that fact. It's not in his incident report.

4 I would just say there's not enough here where the
5 State has made really even a reasonable effort to show
6 that my client knowingly did anything. They already
7 submit he was just a courier. That's their position. So
8 did he know what was in the package? We would move that
9 they have not done that. They have not met that burden
10 and we would ask for a directed verdict.

11 THE COURT: All right. Thank you.

12 Mr. Campbell?

13 MR. CAMPBELL: Yes. Your Honor, based upon Rule
14 19, Criminal Rules of Procedure, taking the evidence most
15 favorable to the State, in this case there is evidence
16 that tends to prove guilt, whether it's circumstantial or
17 direct this case really comes down to a fact for the jury
18 to determine.

19 Her whole case rests upon whether he knew it or
20 not. There's testimony that's been presented by Agent
21 Betsill who testified that he specifically told him it
22 was marijuana. There's several officers' testimony
23 regarding his own actions which tend to show his
24 culpability and he knew exactly what was going on, in
25 that he knew what was in this package.

1 And the officers testified to the fact his
2 demeanor, how he acted, how he wanted to do a reversal to
3 kind of basically go back up the chain to get the person
4 that was paying him, the fact that he'd get paid \$500.
5 He'd done it before. He was going to do it again. He
6 just got caught this time.

7 You know, it all goes to show that in this case he
8 attempted to possess this package. And one of the
9 elements of trafficking in marijuana is -- it doesn't
10 have to actually be actual or constructive possession but
11 can be attempted to become in actual or constructive
12 possession of this item, in this case marijuana.

13 And as agents have testified, several of them have
14 testified to the fact that the only reason why he did not
15 come into possession is because they prohibited him from
16 it, they stopped him prior to actually putting his hands
17 physically upon the package.

18 But based upon his actions and what he told the
19 officers, he knew it was marijuana, and his actions tend
20 to show his guilt towards that. And it all goes
21 basically down to a jury issue of whether or not he
22 knowingly knew there was marijuana, and that's an
23 argument for the jury to decide. In fact, they should be
24 able to decide. And as a result we feel that we have met
25 our burden to get past directed verdict, Your Honor.

1 THE COURT: All right. At this stage my analysis
2 is whether or not -- is not to weigh the evidence. It's
3 to determine whether or not there's an existence of any
4 facts which tend to prove your case.

5 In looking at the trafficking charge I'd point out
6 the language speaks in terms of or otherwise aided,
7 abetted, or attempted or conspired, etcetera, etcetera,
8 or attempted to become in actual or constructive
9 possession, and certainly the facts were certainly
10 capable if the jury believes them that the defendant
11 engaged in those activities. The stipulation is that
12 it's marijuana and it's over the weight, it meets the
13 weight, so I think it's a question of fact for the jury.
14 I'm going to deny your motion, but I still at this
15 stage --

16 MS. DRAWDY: Thank you.

17 THE COURT: I will still let you -- reserve the
18 right for you to continue your request for a mistrial if
19 you establish the basis for it, okay?

20 All right. Nine o'clock in the morning? Do we
21 have anything else we need do?

22 MS. DRAWDY: Yes, Your Honor. Did you want to go
23 over my client's right to testify?

24 THE COURT: Yes, I did. Thank you. You reminded
25 me of that and I forgot. Thank you. Would you bring the

1 defendant around, please.

2 (The defendant came forward.)

3 THE COURT: Would you swear him in, please, ma'am.

4 JOSE OLIVARES, after having been duly sworn,
5 testified as follows:

6 THE COURT: Mr. Romero, I know you've been referred
7 to as Olivares but the indictment says Jose Manuel
8 Olivares Romero, so I'm going to refer to you as
9 Mr. Romero, okay?

10 THE INTERPRETER: Okay.

11 THE COURT: At this time I'm going to explain to
12 you certain of your rights. If you do not understand
13 what I tell you please let me know through your
14 interpreter, through your attorney, or any basis that you
15 can, okay?

16 THE INTERPRETER: Yes.

17 THE COURT: Do you understand?

18 THE INTERPRETER: Yes.

19 THE COURT: Now, we've now reached that stage in
20 the trial where the State has presented all of its
21 evidence against you and it comes a time for you to put
22 up a defense, if you desire to do so.

23 You have the right to claim the protections that
24 are afforded to you by the Fifth Amendment to the United
25 States Constitution, which reads in part is this, that no

1 persons shall be compelled in any criminal case to be a
2 witness against himself. Do you understand what I've
3 gone over with you thus far?

4 THE INTERPRETER: Yes.

5 THE COURT: Mr. Romero, what that means is you
6 cannot be required or compelled to testify in this case.

7 THE INTERPRETER: Okay.

8 THE COURT: With that being said, you have the
9 right to testify on your own behalf if you desire to do
10 so.

11 THE INTERPRETER: Okay.

12 THE COURT: The fact is though no one can force you
13 to testify.

14 THE INTERPRETER: Okay.

15 THE COURT: Your decision to testify is a personal
16 right that you, and you alone have a right to waive or
17 you have a right to testify; do you understand that?

18 THE INTERPRETER: Yes.

19 THE COURT: In other words, you don't have to
20 testify or you may testify. It's solely your decision.

21 THE INTERPRETER: Okay.

22 THE COURT: All right. But if you do decide to
23 testify you'll be subject just like any other witness in
24 the courtroom to cross-examination by the State.

25 THE INTERPRETER: Okay.

1 THE COURT: If you have any convictions on your
2 record that involved dishonesty or false statement, or a
3 crime that's punishable by imprisonment of more than one
4 year and I determine that the probative value of that
5 crime outweighs the prejudicial impact on you that might
6 be brought out in front of the jury the State would be
7 allowed to bring that evidence up if you choose to
8 testify to impeach your credibility. Do you understand
9 what I've gone over with you thus far?

10 THE INTERPRETER: Yes.

11 THE COURT: Do you have any questions for me or
12 your attorney?

13 THE INTERPRETER: No.

14 THE COURT: Now, Mr. Romero, if you decide to
15 testify that decision which is personal to you must be
16 made freely and voluntarily and intelligently with the
17 knowledge of the consequences of you taking the stand.

18 THE INTERPRETER: Okay.

19 THE COURT: If you decide on the other hand that
20 you do not want to testify when I instruct the jury on
21 the law in this matter I will instruct the jury that they
22 are not allowed to consider your failure to testify in
23 any form or fashion.

24 THE INTERPRETER: Okay.

25 THE COURT: Do you understand what I've gone over

1 with you?

2 THE INTERPRETER: Yes.

3 THE COURT: Now, I'm going to give you until
4 tomorrow morning to make your decision as to whether or
5 not you want to testify.

6 THE INTERPRETER: Okay.

7 THE COURT: You may speak with your family, you may
8 speak with your attorney or anyone you think would be
9 appropriate, but ultimately the decision of whether to
10 testify is yours and yours alone to make; do you
11 understand?

12 THE INTERPRETER: Yes.

13 THE COURT: At this stage do you have any questions
14 of me or your attorney?

15 THE INTERPRETER: No.

16 THE COURT: Okay. In the morning I'll ask you to
17 let me know what your answer is, okay?

18 THE INTERPRETER: Okay.

19 THE COURT: Okay. Very good. Thank you.

20 MS. DRAWDY: Thank you, Your Honor.

21 THE COURT: Anything further from the State?

22 MR. CAMPBELL: No, Your Honor.

23 THE COURT: From the defense?

24 MS. DRAWDY: No, Your Honor. Thank you.

25 THE COURT: Thank you for reminding me of that. I

1 appreciate it.

2 All right. We'll recess until nine o'clock in the
3 morning.

4 (WHEREUPON, the trial of this case was recessed for
5 the day.)

6 Wednesday, August 24, 2011

7 THE COURT: First, Mr. Romero, would you please
8 stand. Yesterday afternoon I explained to you your
9 rights under the Fifth Amendment to the Constitution.

10 THE INTERPRETER: Okay.

11 THE COURT: As to whether or not you chose to
12 testify in this matter, and I left you last evening to
13 think about it over the night and speak with anybody you
14 wanted to concerning whether or not you want to testify.
15 At this point it's time for you to make a decision as to
16 whether or not you do want to testify. Have you made
17 that decision, sir?

18 THE INTERPRETER: Okay. No, I will not testify.

19 THE COURT: He does not want to testify?

20 THE INTERPRETER: No.

21 THE COURT: And have you had sufficient time to
22 speak with anyone you would like to concerning whether or
23 not you do?

24 THE INTERPRETER: Yes.

25 THE COURT: Very good. Thank you. You may be

1 seated.

2 Now, Ms. Drawdy, does the defense intend to call
3 any witnesses in this matter?

4 MS. DRAWDY: No, Your Honor, but we do have a
5 couple motions to take up with the Court.

6 THE COURT: Okay. I'll be glad to hear them.

7 MS. DRAWDY: Thank you, Your Honor. At this time I
8 would like to review my motion for a mistrial for the
9 record and just based upon the State's inability to turn
10 over all the evidence including the audio, pursuant to my
11 request for discovery and Brady.

12 I also renew my request for a directed verdict on
13 the grounds that I don't think there's sufficient
14 evidence that my client knew.

15 But I have an additional ground this morning, Your
16 Honor, and it's our position our client has been charged
17 with trafficking in marijuana more than 10 pounds but
18 less than 100 pounds. There's absolutely no evidence in
19 the record, not one scintilla of evidence that Jose
20 Olivares knowingly aided, abetted or attempted in any way
21 to become in actual or constructive possession of more
22 than 10 pounds or 100 pounds.

23 Taking the evidence in the light most favorable to
24 the State is just that the defendant knew there was
25 marijuana in the package but never is there anything that

1 the defendant knew there was more than 10, and that is an
2 element in the trafficking statute that they must prove,
3 and the testimony we heard was that he knew there may
4 have been some marijuana.

5 THE COURT: Very good. Thank you, ma'am. I am
6 going to deny your motion.

7 MS. DRAWDY: Your Honor, I had a case I'd like to
8 present.

9 THE COURT: Sure.

10 MS. DRAWDY: Thank you.

11 THE COURT: All right. This is, for the record,
12 State vs. Hernandez, 677 S.E. 2d 603. If you'd point out
13 to me...

14 MS. DRAWDY: I will, Your Honor. On page three,
15 and I think you have the highlighted section, in relevant
16 part South Carolina's definition of trafficking marijuana
17 includes any person who is knowingly in actual or
18 constructive possession or who knowingly attempts to
19 become in actual constructive possession of 10 pounds or
20 more of marijuana, and then on the next paragraph I think
21 it's highlighted there at the second they talk about the
22 evidence that was presented in this case and they said
23 that was not substantial, and this case was completely
24 overturned.

25 There's no evidence that he was in possession of or

1 knowingly in possession of 10 to 100 pounds of marijuana.
2 The holding in the case is that the suspects occupying a
3 rented moving truck which arrived at the place designated
4 for a controlled drug exchange closely behind a car
5 driven by others implicated in a transaction knew
6 occupants of the car and thus had guilty knowledge in the
7 tractor trailer being driven by undercover agents was
8 pure speculation.

9 They produced no evidence that they knew there was
10 10 to a hundred pounds. They may say, you know, it's
11 prima facie but you have to possess it. He never
12 possessed the package. He never possessed it. Agent
13 Sloan went out of his way to testify and tell this Court
14 I made sure he didn't get that package. At best they
15 have he was there to pick up a package of marijuana.

16 Agent Sloan never let my client touch the package.
17 He never had possession, actual or constructive. We
18 would move for a directed verdict on the fact that they
19 have failed to prove that element that he knew how much
20 was in there.

21 THE COURT: All right. I tell you what, what I'll
22 do, and I'll be glad to hear from you, Mr. Campbell, but
23 I'm going to read that case. For your other previously
24 stated grounds I'm denying the motion.

25 MS. DRAWDY: Yes, Your Honor.

1 THE COURT: Under the case of State vs. Hernandez I
2 will look at it, read it, make a decision. So I'm taking
3 that one under advisement.

4 But for the record, Mr. Campbell, do you have any
5 arguments you'd like to make?

6 MR. CAMPBELL: Yes, sir, Your Honor. Your Honor,
7 this case, basically as you well heard the last couple of
8 days, all comes down to knowingly whether he knew what he
9 was getting. Based upon his own statements to officers
10 he knew he was picking up marijuana, he knew he was
11 picking up a package of it.

12 His own actions, which goes to the question of the
13 fact whether he knew what he was getting or not shows his
14 counter surveillance, his length of bringing other people
15 to help put a buffer between him and the package, the
16 fact that he wanted to do a reversal, the fact that he
17 had done this before and planned on doing it many times
18 after this until he got caught. That he had the
19 knowledge, he had the wherewithal to know what time this
20 package was going to show up, the time it was going to be
21 delivered, who it was being delivered to, what address it
22 was being delivered to, the fact he went through the
23 whole effort of doing counter surveillance and mirroring
24 Agent Sloan's activities all go to knowledge, which is
25 basically a jury question of whether or not he knew what

1 he was picking up.

2 And, you know, this case is -- you know, it goes to
3 the fact that if he'd of picked up less than a pound we
4 would be doing a PWID case on marijuana, and the fact
5 that the weight -- you know, we will never be able to put
6 him -- until he takes the stand be able to show that he
7 knew he was picking up more than 10 pounds or less than a
8 hundred. That's a jury question because there's no
9 evidence that we can actually get out of these officers.
10 They are not going to know that. The only person that
11 knows is him, and what this comes down to is the elements
12 he attempted to come into possession.

13 He was stopped. There's plenty of testimony
14 regarding the reason why they stopped, basically for
15 officers' safety, for the not getting this product back
16 into the market place, for any type of civilian safety.

17 And it's the State's position that we have proven
18 every element in this case and that this case should go
19 to the jury and be denied on directed verdict taking the
20 light of the evidence most favorable to the State. All
21 this comes down to a jury question of whether or not he
22 had knowledge of what he was picking up, and she can
23 argue the weight.

24 THE COURT: All right. Ms. Drawdy, let me ask you,
25 your position is with the State vs. Hernandez case is

1 that part of the State's case is they have to prove
2 knowledge of the weight of the marijuana as part of their
3 case; is that correct?

4 MS. DRAWDY: They had to prove that the petitioners
5 in that case, yes, knew about the weight, had knowledge
6 about everything. This suspicious activity that the
7 solicitor just described to the Court just said wasn't
8 enough. That suspicious activity is just that,
9 suspicion. It is not enough for a conviction.

10 They absolutely reversed in this case and he's
11 exactly right when he says my client could be charged
12 with possession with intent to distribute. The amount is
13 terribly critical in this case. That's what makes it a
14 trafficking charge. He could be charged with something
15 less. He needed to possess it and they can prove it if
16 he'd actually or constructively possessed it. He never
17 had this package, didn't get near it.

18 They have not made any connection that he knew the
19 amount. At best he was there to pick up a package, which
20 could be a PWID, and that includes all their other
21 suspicious stuff. But there's no connection, none, zero,
22 zilla that he knew there was ten to a hundred, and they
23 needed to produce that.

24 THE COURT: Okay. Go ahead.

25 MR. CAMPBELL: Just reading this case, and I have

1 not had an opportunity to fully review this case, but in
2 it the Supreme Court basically stated these people who
3 are driving this tractor trailer had no knowledge or no
4 connection to the people they were going to. Occupants
5 did not know petitioners prior to this transaction.

6 In this case, he had a lot of knowledge of where he
7 was going, what he was supposed to do and what he was
8 supposed to pick up. So these cases are two totally
9 different deals. And at this point I think that it
10 should be denied, we should go forward. Your Honor have
11 a chance to review it but the State's position is this
12 case is not on point based on my brief review of it and
13 we'd ask to go forward.

14 THE COURT: What's the State's position of
15 Ms. Drawdy's argument that part of your case in chief or
16 the State's case in chief, rather, is that you have to
17 prove knowledge of the weight?

18 MR. CAMPBELL: Your Honor, I don't think that's an
19 element. I think it's just like if you're doing a
20 trafficking case of whether it's powder, or meth, or
21 cocaine. The weight itself automatically invokes what
22 statute we go under. And in this case because it's more
23 than 10 pounds it invoked the trafficking in marijuana
24 statute.

25 If the weight he had picked up or attempted to pick

1 up had been less, it even invoked such as a PWID or even
2 a simple possession of marijuana if it was less than an
3 ounce, so the elements doesn't say we have to prove his
4 knowledge of what exact amount he was to pick up. That's
5 not an element. The element is the weight of it
6 automatically invokes what section, code section or
7 statute that the State goes forward.

8 THE COURT: What is the exact weight of this
9 marijuana?

10 MS. DRAWDY: Your Honor, it's 30 point --

11 MR. CAMPBELL: Point 34 pounds.

12 MS. DRAWDY: But he's exactly wrong. The statute
13 reads or was knowingly in actual or constructive
14 possession or knowingly attempted to become in actual or
15 constructive possession of more than 10 pounds. He had
16 to know. And I would respectfully remind this Court that
17 criminal statutes are to be strictly construed against
18 the State because they are penal in nature.

19 Yes, they have to prove he knowingly tried to
20 become in possession, constructive or actual, of over 10
21 pounds. They haven't done that. They have not done
22 that. Had he gotten the package, then they've got
23 something. He never got near this package, at best.

24 THE COURT: I got it. I don't need to hear
25 anymore. Let me do this. I'm going to look at it again.

1 I'm going to look at it further. So I'm reserving my
2 ruling on that aspect only of your motion for directed
3 verdict. For the record, in case it's not clear, I
4 denied your motion as to the rest of your grounds stated.

5 Also, I'm denying your motion for a mistrial based
6 on the State vs. Breeze case that we went over yesterday
7 here in court and --

8 MS. DRAWDY: Thank you, Your Honor.

9 THE COURT: -- you didn't establish a due process
10 violation. That being stated, logistically I feel
11 probably that we can bring the jury in now. You know,
12 I'm going to call your case, let you say that, you know,
13 we rest or whatever you want to say. I'm going to
14 explain to the jury that we're going to have a charge
15 conference that will probably take about 30 minutes, and
16 then bring them back in for closing arguments and charge
17 on the law.

18 With that being said, this is food for thought. I
19 give people a chance to make a decision, as long as it's
20 both agreed, to either argue either after I charge on the
21 law or before, like everybody has traditionally done.
22 Some lawyers like to charge after I charge, some like to
23 argue after I charge the law, some like to do it before
24 because that's their comfort zone. Do you have a feeling
25 one way or the other the way you want to go?

1 MS. DRAWDY: I prefer to do it before so you have
2 the final say on the law.

3 THE COURT: All right. If that's the way it is, if
4 everybody is not in agreement to do it otherwise that's
5 what we'll do.

6 MS. DRAWDY: Thank you, Your Honor.

7 THE COURT: Now, that being said, is there anything
8 further from the State before I bring the jury out?

9 MR. CAMPBELL: No, Your Honor.

10 THE COURT: From the defense?

11 MS. DRAWDY: No, Your Honor. Thank you.

12 THE COURT: Very good. Bring the jury in.

13 (WHEREUPON, the jury enters the courtroom at
14 approximately 9:20 a.m.)

15 THE FOREMAN: Morning, Your Honor.

16 THE COURT: Good morning. How are you?

17 All right. Ladies and gentlemen of the jury, I
18 hope you didn't get shaken around too much yesterday when
19 we had that earthquake. I was sitting in my office and
20 my chair started rocking back and forth and I didn't have
21 a clue what was going on. Interesting.

22 But we're about to begin the defense's side of the
23 case, if they choose to present a defense.

24 Ms. Drawdy, I'm going to call on the defense at
25 this time. You ready to proceed?

1 MS. DRAWDY: Thank you, Your Honor. We are, and
2 the defense rests.

3 THE COURT: Okay. Very good.

4 What that means, ladies and gentlemen, is that at
5 this point of the trial we've closed all the presentation
6 of the evidence. I need to go over what is called a
7 charge conference with these attorneys to go over and
8 make sure everybody is in agreement on the law that I'm
9 going to charge you in this matter.

10 Typically, those conferences take about 15 to 30
11 minutes, and then we'll bring you back out here. The
12 lawyers will then give you their closing arguments, I
13 will give you the law in this case, and then after that
14 you will be given all the exhibits and evidence and be
15 told that you can begin your deliberations.

16 But at this time, Mr. Burns, would you take your
17 jury back to the jury room and we'll get you back out
18 here as soon as we can to begin closing arguments.

19 THE FOREMAN: Yes, Your Honor.

20 (WHEREUPON, the jury leaves the courtroom at
21 approximately 9:22 a.m.)

22 THE COURT: All right, guys. Here are the charges
23 I intend to do. I don't know -- I know I've done several
24 cases with Mr. Campbell. I don't know if I've tried any
25 with you.

1 MS. DRAWDY: We haven't, Your Honor.

2 THE COURT: But I basically plagiarize Judge Hill's
3 standard charge, and if you've been with Judge Hill from
4 Greenville it pretty much tracks his. What I do, I give
5 the charge in three segments and I typically let them
6 break if they need to in between.

7 The first part will be the general rules that
8 define and control the jury's duties in their
9 deliberation. The next will be the actual law in the
10 case, the substantive law, and then the third part will
11 be some rules that govern their deliberations.

12 That being said, from the general rules I normally
13 -- I just tell them that they have to make their decision
14 only from the evidence that has been presented here in
15 the courtroom and from no other, and that they are not to
16 be influenced by any personal likes, or dislikes,
17 opinions, prejudice or sympathy they may have for one
18 side or the other. I'll remind them that's what their
19 oath requires them to do.

20 Now, I point out that they have to follow all my
21 instructions. They can't just pick out some they like,
22 disregard the ones they don't like.

23 Also, that if I've done anything to suggest to them
24 how they are supposed to find facts in this matter they
25 are to disregard that because I have no opinion and the

1 law doesn't allow me to have one and they, and they alone
2 are the judges of the facts and they determine those by
3 weighing and evaluating the evidence they heard during
4 this trial, and that I can't give them a set of scales
5 literally to weigh the evidence. They have to use their
6 good sense and sound judgment in deciding what the facts
7 are.

8 Evidence, I go over what is evidence and what is
9 not evidence. In this case, normally is the testimony
10 and the exhibits received, and also there's a
11 stipulation, and the stipulation in this case was that
12 the substance contained in State's Exhibit Number 18, I
13 believe, is in fact marijuana and that the marijuana
14 weighed 30.34 pounds. Is that a correct statement of the
15 stipulation?

16 MR. CAMPBELL: Yes, Your Honor.

17 MS. DRAWDY: Yes, Your Honor.

18 THE COURT: Then I go through your arguments are
19 designed to help educate them, understand the facts and
20 the issues involved but it's not sworn testimony, it's
21 not evidence and if their memory differs from what you
22 guys tell them they are supposed to go on their memory
23 and not what you say.

24 Any questions or objections by you guys is not
25 evidence and that you're required to object any time you

1 feel like there is improper evidence or something that
2 violates rules of evidence and they are not to be
3 influenced by the fact that there was an objection, nor
4 my ruling on that.

5 Also, anything that they may have heard when court
6 was not in session is not evidence. Then I go through
7 and I describe for them what is direct and circumstantial
8 evidence and provide that there is no distinction or
9 greater degree of certainty required of either.

10 Then I go through the description of credibility of
11 witnesses, what they have to undergo in order to reach
12 their findings of fact, and I give them a litany of what
13 they can consider but are not required to consider in
14 making that determination and also tell them that they
15 don't check their common sense at the door and that they
16 are to use those things in their day-to-day they find
17 indicative of truthfulness or lack of truthfulness in
18 their decision.

19 I explain to them that there was expert testimony
20 and that experts are allowed to give their opinion but
21 they can judge expert opinion just like any other
22 evidence in this case. They can accept it, or reject it,
23 or give it as much weight as they think it deserves based
24 on the facts given, the evidence, their education and
25 their experience and the reasons given for the opinion.

1 I go over and I remind them again that the
2 indictment does not raise an inference or presumption of
3 guilt. The fact that the defendant was charged, arrested
4 and indicted creates no presumption whatsoever and that
5 is simply the formal charging mechanism that the State
6 uses to bring the defendant to court for a determination
7 of whether he's guilty or not, then I go over and I
8 explain to them the presumption of innocence.

9 I describe for them what is and what is not
10 reasonable doubt. Also, in this case intent would be a
11 part of the underlying charge, so I describe for them
12 what intent is. I will comment on the failure of the
13 defendant to testify and tell the jury they can't use
14 that in any form or fashion, can't even discuss it in
15 their deliberations, then I give them the Jackson Denno
16 charge about the statement of the defendant. And that
17 would be the first part of my charge.

18 Now, I have only pulled out the charge of
19 trafficking in marijuana between 10 but less than 100
20 pounds. Does anybody feel like there is a lesser
21 included involved in this at all?

22 MR. CAMPBELL: The State doesn't, Your Honor.

23 MS. DRAWDY: Nor do we, Your Honor.

24 THE COURT: Well, that's good. We're all on the
25 same page then. All right.

1 After I charge on trafficking then I will then go
2 to a few points about their deliberations and just go
3 through a description that they are to take their time,
4 this is an important case for everybody and I go through
5 a litany of that, then I describe the verdict form.

6 Now, in this case I have created two different
7 verdict forms. One is just a simple not guilty of
8 trafficking in marijuana 10 pounds or more but less than
9 100 pounds, or guilty of trafficking marijuana 10 pounds
10 or more but less than a hundred pounds, or I have a set
11 of special interrogatories designed around the
12 defendant's alleged statement and those are these: The
13 special interrogatories would be did the State prove that
14 Miranda warnings were probably given to the defendant
15 beyond a reasonable doubt, and I'll name his name. Next,
16 did the State prove that the defendant made a statement
17 beyond a reasonable doubt and did the State prove that
18 the defendant's statement was voluntary beyond a
19 reasonable doubt.

20 I've never charged that and I just created those
21 for everybody's comment to look at and see. My thoughts,
22 quite frankly, are that I charge them on the Jackson
23 Denno but you don't make it a special interrogatory, but
24 I wanted to hear from everybody on that and just see.

25 MR. CAMPBELL: I think it just should go back in a

1 verdict form of guilty or not guilty.

2 THE COURT: What's your thoughts, Ms. Drawdy?

3 MS. DRAWDY: One moment to talk with my client.

4 THE COURT: Yeah, please take them and look at it.

5 Why don't you take these and look at them and let

6 Mr. Campbell look at them as well.

7 (PAUSE)

8 MS. DRAWDY: Your Honor, we would concur with the

9 State, just the verdict form needs to go back.

10 THE COURT: I tend to agree. I tend to agree. I
11 do agree. I wanted to hear your thoughts. So what we'll
12 do is simply use a guilty or not guilty verdict form.

13 MS. DRAWDY: Yes, Your Honor.

14 THE COURT: Very good. Counsel, our new and
15 aggressive clerk of court has brought up an issue that I
16 need to raise with you guys, and that is this. With
17 regard to Plaintiff's Exhibit Number 18, once this case
18 is disposed of the clerk's office, number one, it was so
19 pungent my court reporter was choking on it yesterday,
20 apparently had to have it moved. Does anybody have an
21 objection once this case is finished, even though it may
22 go up on appeal, that we turn the evidence back over to
23 law enforcement?

24 MR. CAMPBELL: Your Honor, I don't because Special
25 Agent Sloan will take possession of it. We could either

1 one -- there's two options that can be done, return it to
2 SLED pending if he's found guilty, the appeal process, or
3 two, they can go ahead and destroy it after they take
4 photographs and document what they did.

5 THE COURT: Well, let's cross that bridge as far as
6 disposition of it, but can everybody be in agreement that
7 once this case at this level is completed that the
8 possession of the marijuana can go back to law
9 enforcement?

10 MS. DRAWDY: I think as long as SLED keeps an
11 accurate chain, you know, and there's some documents
12 release from the clerk of court, too, I don't see there's
13 any problem with that. And you're right, disposition of
14 it could be resolved later. But as long as there's a
15 chain I think we're all fine.

16 THE COURT: Okay. Good to go.

17 Now, you want a minute before you do your closings?

18 MS. DRAWDY: One more question I just had, Your
19 Honor, if I may. Are the members of the jury going to be
20 able -- are you going to allow them to take back their
21 notes --

22 THE COURT: Yes.

23 MS. DRAWDY: -- that they've taken through the
24 trial?

25 THE COURT: Absolutely. There's no reason letting

1 them have notes if they can't take them back. If you
2 object to it then you might want to state it on the
3 record, but I think that's my option and my discretion,
4 and I think they should.

5 MS. DRAWDY: My only concern with the note taking,
6 you know, clearly I understand and I'm someone too that
7 likes to write while listening to think but the concern
8 and the objection I would put on the record on behalf of
9 my client is that if someone wrote something wrong and
10 they take it back there in that jury room and then rely
11 on that to sway the others. So I would like to put that
12 objection on the record about those notes going back to
13 that jury room.

14 THE COURT: It's noted. You know, that is always a
15 concern, that people get so involved with their note
16 taking that they either miss evidence or they write it
17 down wrong. And normally in the past I have not allowed
18 juries to have notepads but I was in Chester or somewhere
19 and I had a jury complain that they felt like they needed
20 to have them, and so I give them the option. And since
21 I've done that they always choose to have them.

22 So I think it's probably a risk that, you know,
23 anybody -- attorneys risk, either they have a faulty
24 memory or faulty notes. I don't know if there's one
25 distinction of the other, but I note your objection for

1 the record.

2 MS. DRAWDY: Thank you, Your Honor.

3 MR. CAMPBELL: I do have one thing to go back on,
4 on what you had under advisement regarding whether or not
5 he knew he was supposed to be in possession of 10 pounds
6 or more. It has come to my attention that basically
7 knowledge in this case applies only to the underlying
8 act. It doesn't apply to the weight.

9 THE COURT: Are you talking about the Lane case?

10 MR. CAMPBELL: Yes, sir. That case is State vs.
11 Hernandez she just handed up.

12 THE COURT: Right.

13 MR. CAMPBELL: There's a State V. Taylor, Court of
14 Appeals South Carolina, is 323 S. C. 162, it's a '96
15 case. And then the Court of Appeals stated, The
16 defendant could be convicted of trafficking in crank even
17 if she did not know the amounts involved. The
18 transaction was over 10 grams, which is the amount
19 required for conviction under trafficking statute.

20 So what we're saying here is knowledge basically
21 means he knew he was picking up marijuana. The amount
22 itself triggers which statute it goes on and we don't
23 have to prove he knew he was picking up that amount. And
24 I'll hand this case up, for the record.

25 MS. DRAWDY: And just a brief reply, Your Honor. I

1 would note that the State Supreme Court does indeed trump
2 Court of Appeals, and this is a 1997 case referred to by
3 the solicitor and mine is 2009.

4 THE COURT: I'll read that, and my gut without
5 making a ruling is that the State doesn't have to prove
6 knowledge of the actual intent to possess the weight. I
7 think that would be an impossible burden for the State to
8 prove, but that being said I'm not making that ruling
9 until I look it up further, okay. So I would ask both
10 attorneys -- all three attorneys, rather, to remind me
11 that I need to make a ruling on that at some point during
12 this case.

13 That being said, let's take about a five-minute
14 break, let you get your heads together and come back out.
15 Now, let me ask you this, as far as order of closing, did
16 you present any evidence on behalf of the defendant?

17 MS. DRAWDY: No, Your Honor.

18 MR. CAMPBELL: We need to go first. She gets the
19 last argument.

20 THE COURT: Okay. I thought that was the case.
21 Everybody is in agreement. Very good. Good attorneys.
22 We'll be back in five minutes.

23 (WHEREUPON, a brief recess was taken.)

24 THE COURT: Mr. Campbell, you ready?

25 MR. CAMPBELL: Yes, Your Honor.

1 THE COURT: Ms. Drawdy?

2 MS. DRAWDY: Yes, Your Honor.

3 THE COURT: I'm going to ask that nobody who's here
4 attempt to leave the courtroom during the closing
5 arguments or the charge on the law and that nobody be
6 allowed to leave or enter the courtroom during that
7 period.

8 Would you bring the jury in, please.

9 (WHEREUPON, the jury enters the courtroom at
10 approximately 9:50 a.m.)

11 THE COURT: Mr. Campbell, the State ready to
12 proceed with closing arguments?

13 MR. CAMPBELL: The State is ready, Your Honor.

14 THE COURT: You may proceed.

15 MR. CAMPBELL: Please the Court.

16 Ms. Drawdy.

17 Ladies and gentlemen of the jury. Ladies and
18 gentlemen, this case brings to the realization that
19 Anderson is not immune to the growing drug problem that's
20 currently plaguing our country. You got to see in this
21 case just a little bit how illegal drugs are brought into
22 communities such as Anderson, Greenville and across the
23 southeastern United States, and that these drugs is sent
24 in by cartels through boarder towns like McAllen, Texas
25 and then distributed throughout the country. And as the

1 officer testified, McAllen, Texas, the southeast, South
2 Carolina, this is their territory.

3 As you have heard and you have seen and smelled,
4 you know, we're dealing with a big business here. We're
5 dealing with big profits all tax free.

6 The defendant in this case, Jose Olivares Romero,
7 he has a double name, last name, played a part in this.
8 In this case he was attempting to play a part in bringing
9 illegal drugs into the Upstate of South Carolina. And
10 while you may think his role is small his role is very
11 important because he's the one that gets it from the
12 wholesaler, for a lack of better term, the manufacturer,
13 the growers to the end consumer because he was attempting
14 to get this product.

15 And he didn't do this out of the act of kindness or
16 for a friend. As the testimony was, hey, I met this
17 Hispanic male, he asked me to go pick up a box. This
18 isn't an act of kindness we're dealing with. He did it
19 for money. That's what this whole drug industry is
20 about, is money.

21 And it comes to the fact that he's done this
22 before, as he told the officers. You heard the testimony
23 of several, a week or two prior to this he already picked
24 up another package. He planned on picking up more
25 packages because more was coming in, but the only problem

1 in this case if law enforcement intervened, they stopped.

2 If you think about it we're talking about big money
3 here, profit, what's being made. The testimony is that
4 he told the officer he's being paid \$500 just to pick up
5 this one box, and that he had picked up one a week or two
6 prior to that and planned on picking up more.

7 For sake of argument you can even break it down 26
8 weeks and he's getting \$500 a package. That's \$13,000
9 he's receiving tax free. If you go on the high end, 52
10 weeks in a year at \$500 is 26,000. But it's not only him
11 that's making money.

12 As the testimony came from this stand, Officer
13 Scogins, I think Agent Sloan testified to it, we're
14 talking about street value of a thousand dollars a pound.
15 And you just even look at the numbers, and we'll just for
16 argument sake say 30 pounds is coming in every week. If
17 you just did twice a week -- or twice every two weeks
18 that's a total of 780 pounds a year. A street value of a
19 thousand dollars, \$780,000 that's hitting this community.
20 On the high end if you look at it at 52 weeks, 1560
21 pounds, \$1,560,000 just on marijuana alone. And that's
22 what this package, this box here represents. And I'm not
23 going to open this because frankly I'm tired of smelling
24 it. But think about it.

25 And then there's testimony regarding this, is

1 whether was he paid \$500 or was he paid \$300, and that he
2 was paying these other two individuals \$200, one to ride
3 with him and another hundred for a guy to pick up a
4 package.

5 You know, and I was thinking about this. A little
6 food for thought here. Well, let's just suppose he's the
7 one that's paying them. That makes him a little bit more
8 involved than being just a courier because therefore if
9 he's the one that's paying these two people, creating a
10 buffer between him and law enforcement by two different
11 people, a person to pick up the package and a person to
12 deliver the package to. He had to arrange it. He had to
13 set it up. He had to know where this package was going
14 and what time it was to be delivered.

15 And this reversal to Greenville, who gave the
16 information where to go and who it was supposed to be
17 delivered to? Mr. Olivares. He could just as well be
18 Hudio Garfio. We don't know.

19 Now, the defendant has been charged in this case
20 with trafficking in marijuana between 10 and a hundred
21 pounds. And as the Court will read to you what the
22 statute states and what we have to prove, the State, is
23 that the defendant, Jose Manuel Olivares Romero, on or
24 about June 5th, 2009 did knowingly, and the part we're
25 really concentrating on, only attempted to become in

1 actual constructive possession of 10 pounds but less than
2 100 pounds of marijuana.

3 And there's a lot of language in here that's
4 through the statute; sell, manufacture, deliver, purchase
5 or bring into this State. You know, he's part of
6 bringing into this State. Attempting to conspire to
7 bring into the State.

8 What we have to prove in this case is one, this is
9 marijuana. That is not a question in this case. We have
10 stipulated to it, that this is 30 pounds, 30.34 pounds of
11 marijuana. We have proved between the 10 and 100 pounds.
12 We've proved the date that it's come in on.

13 The question that comes in, we have proved that he
14 attempted to come in possession, actual constructive
15 possession. Actual is like I'm holding this highlighter.
16 I'm in actual possession. He would have done that if not
17 for Agent Sloan's actions.

18 The part and what this whole case comes down to is
19 this right here, knowingly. Now, we don't have to prove
20 he knew he was to get 30 pounds but just that the weight
21 of this package is more than 10 pounds. This goes to
22 knowing, and the State has the burden of proving it to
23 you, and we welcome that because one, you know, we don't
24 want to see an innocent man convicted. But likewise, we
25 don't want to see a guilty man go free.

1 The defense team in this case has done an excellent
2 job protecting his rights, making sure he receives a fair
3 trial. They have done their best to attempt to cloud the
4 issues, try to get you to focus off of the big picture.

5 And, you know, I give them credit. That's what
6 Ms. Drawdy's job is, as well as her assistant. But in
7 anything, and you heard it, there's always things you
8 wish you could go back and do better. You know,
9 hindsight is 20/20. I wish I had done this and I wish I
10 had done that.

11 Yeah, I agree with her. I wish the officers had
12 done better writing the reports. You know, she made up a
13 big to-do about where is this audio regarding him
14 actually making a phone call or him actually walking up
15 to the Greenville, but what did the officers tell you?
16 Nobody answered the phone call, so we didn't record it.
17 And when he went up to Greenville all he did was walk up,
18 knock on the door and walk back. There was no response.

19 Now, you know, in a perfect world, especially
20 dealing with drugs, I wish the drug dealers would
21 cooperate with law enforcement. It'd make our jobs a
22 whole lot easier. But Agent Sloan and the rest of these
23 officers you heard from on that stand don't operate on a
24 drug dealer's time schedule. They operate on their
25 schedule, and this, as the officers told you, time was of

1 the essence.

2 Yes, it would have been great if we had it in
3 writing that he was Mirandized and everything, but I
4 think we went through it ad nauseam here with three
5 officers, two that speak Spanish and one that speaks
6 English that he was given his rights over and over again,
7 four times as a matter of fact by three different
8 officers.

9 And what this comes down to is there's facts that
10 they can't dispute or get around, and facts that go
11 directly to prove that he knew what was in this package
12 and what he was picking up. And let's talk about a
13 little bit about what proves that element of knowing.

14 Now, first of all this man lives in Greenville, [REDACTED]
15 [REDACTED], Greenville, South Carolina. Officer Sloan
16 told you when he MapQuest that to [REDACTED]
17 it was 30 miles. You know, begs the difference, an
18 argument here is that you are paid \$500 to drive 30
19 miles. That's \$16.67 per mile. That's pretty good per
20 diem, just to come pick up a box for a Hispanic male that
21 asked you to pick it up. And he's paid \$500. Who in
22 their right mind would -- you know, I wish somebody would
23 pay me \$500 to go pick up a box 30 miles away.

24 Does it ring true, you know, because \$500 to pick
25 up a box and yet you're coming from Greenville and you

1 take another person with you from Greenville and you're
2 paying him a hundred dollars, and then you got another
3 individual that has the box -- waiting on the package to
4 be delivered to his house. That's a hundred dollars.
5 You know, if this is a friend that he's taking with him
6 to come to Anderson, I mean, what kind of friend is this?
7 Are they there for a legitimate legal reason? Are they
8 coming to Anderson for a legitimate legal reason?

9 Officer Sloan told you he wasn't here to install a
10 satellite. He was here to pick up a box, and if he's
11 coming from Greenville why bring a friend with you if
12 this is legal? He could just easily himself drove up to
13 the apartment, went up to the door, knocked on it and got
14 it himself, or he could have had it shipped to his
15 address, [REDACTED] in Greenville, if this was a
16 legitimate deal. Because if this was his buddy,
17 Concepcion Ramirez, Hey. Say, hey pal, will you ride
18 with me? I'd like some company. I'll buy you a beer
19 when we get down. This isn't about buddy buddies here.

20 And he had the smarts to know to bring someone with
21 him. Hey, I'll send him to go get the box. I'll drive
22 to the gas station, once he gets it done and clear I'll
23 just drive around and pick him up and he'll jump in the
24 truck, throw it in the back and we're gone. Get this
25 dope back, and once we get it back we're getting paid,

1 then that dope goes back into the community.

2 And he went through a lot of trouble for not
3 knowing, as the defense has been alleging, what was in
4 this box. Bring someone with you, drive from Greenville.
5 You know what time the package is to be picked up, you
6 know where it's supposed to be delivered, you know the
7 address it's to be delivered, you know who is supposed to
8 be delivering it. And the fact that you sit on a one way
9 road right off Clemson Boulevard watching traffic come in
10 and out doing counter surveillance for a 12 and a half
11 inch portable planner, Delta Shop Master.

12 Now, this isn't here -- you know, this is home use,
13 not industrial. As the officer testified, he thinks it
14 may be worth about \$200. Well, just say for argument's
15 sake it's \$300 or \$400 for this. Why would you spend
16 five to \$700 to come pick it up in Anderson when you
17 could have easily have got one in Greenville?

18 I mean, if that's the case, why do surveillance on
19 this box right here if this is what you're picking up? I
20 mean, he could have easily gone to Sears and did
21 surveillance right there on planers. Sears is right
22 across the street at the mall, or he could have Home
23 Depot or Lowe's, or he could have gone to one in
24 Greenville, but instead he has to come to Anderson to get
25 a Delta Shop Master portable planer, a box that's being

1 shipped to a person who is fictitious who doesn't live at
2 this address.

3 In this case, as you saw, as you heard from the
4 testimony these officers stated spoke to him in English.
5 He was eager and willing to participate. He wanted to
6 cooperate. You know, they didn't need an interpreter on
7 June 5th, 2009 to tell them what to do.

8 He is the one that told them where to go, who he
9 was supposed to deliver it to. This all goes to
10 knowledge that he knew what it was. And the fact that he
11 had done this before and had planned on doing it again
12 and again. It just so happened he got caught.

13 And there came a question and part of this argument
14 of the defense was well, he says it was a package, there
15 was a package of marijuana or it was just marijuana.

16 What Agent Betsill stated, as he stated on the
17 stand, I wrote my report along with Agent Sloan. I sat
18 there and talked to him and he typed it out. It was on
19 June 5th, 2009 when his memory was fresh. And what did
20 he state? He was there to pick up a package of
21 marijuana. He knew what he was doing here, ladies and
22 gentlemen, and what he was to get.

23 And I agree, in Ms. Drawdy's opening she stated
24 that this case is important, it's our system, our
25 country, our state, our community. It's important to the

1 defendant, and I agree with that one hundred percent, but
2 I also agree that it is important to the State. It is
3 important to the State for this, is that those who are
4 going to deal in illegal drugs, illegal narcotics,
5 marijuana or any other one should be held accountable and
6 responsible for their actions.

7 You know, it's important for the State to get this
8 item. As Agent Sloan says, We want this removed. This
9 is why we didn't let him actually get his hands on it,
10 because we didn't want the lose this. You're looking at
11 30,000 dollars worth. This is more than most people
12 make. We aren't going to take the chance of letting him
13 get his hands on it and getting out on Clemson Boulevard,
14 or the interstate anywhere. As he stated, a high speed
15 chase or what because you know they are going to do
16 anything to get away from this, get away from law
17 enforcement. So it is important to the State that we get
18 this removed because it's going into Greenville, Anderson
19 and communities that surround us in the Upstate.

20 And the fact that this plays just a small part
21 which is probably a tip of the iceberg here but at least
22 on one day we did harass some dope dealer and cut into
23 his profits and cause him some trouble. So it is
24 important to the State that we remove the people who are
25 dealing with this because it's not legitimate. They

1 don't pay tax on this. They don't help to support the
2 schools, or the roads, or anything else. All they are
3 concerned about is getting money in their pockets.

4 Ms. Drawdy stated, you know, who knew what, when.
5 And I think through the course of this trial we have
6 answered those questions. Who knew? The defendant, Jose
7 Olivares Romero. Who knew what? He knew he was picking
8 up a package of marijuana at [REDACTED]
9 [REDACTED]. Who knew when? June 5th, 2009 it was to be
10 delivered by United Parcel Service. He knew
11 approximately what time it was. In fact, when it didn't
12 arrive he went out of his way to flag down a UPS driver
13 and inquired about this specific package himself.

14 But who also knew? Whether he is the actual person
15 that this dope was intended for or the other person that
16 he was supposed to deliver it to, we don't know, but that
17 other person, whether it's him or not, knew. And that
18 person is out 30,000 dollars worth of marijuana.
19 Otherwise, if it's true that the person he was delivering
20 it to knew or he was working for, because he heard this
21 time of the essence, he knew when he didn't get the
22 package he's bolting, live to do illegal activities for
23 another day.

24 Ladies and gentlemen, this case comes down to this.
25 If you think the State has proved, met its burden and

1 proved that he knowingly attempted to come in actual
2 constructive possession of more than 10 pounds of
3 marijuana, that's the cold question you have to answer
4 and return a verdict on and decide.

5 And in this case it goes either way. You can say
6 yes or no. If you feel law enforcement didn't do their
7 job in removing this dope from the community and that he
8 didn't know what was in this box or this package find him
9 not guilty. That's the beauty of our system and that's
10 why you all are picked. Nobody will be upset if you
11 return that verdict.

12 I mean, you can hang your hat on, you know, hey,
13 they could have done this better or that better. But all
14 that doesn't -- has no bearing on his knowledge of what
15 was in that package, whether they wrote what date on what
16 report or what they put in the report. You heard the
17 officers' testimony. You had a right to sit there and
18 you have the right to judge their credibility and decide
19 whether you think they are truthful or not. You may or
20 may not like it. That's your complete decision.

21 But likewise, ladies and gentlemen, if you feel
22 that he was involved in this, that he was playing a part
23 in bringing this illegal narcotic drug into Anderson and
24 into Greenville then you have a duty to return a verdict
25 that speaks the truth and that justice demands. In that

1 case we feel that that verdict should be guilty of
2 trafficking in marijuana between 10 and 100 pounds. And
3 I thank you for your time and attention in this case.

4 THE COURT: Ms. Drawdy?

5 MS. DRAWDY: Thank you, Your Honor. May it please
6 the Court.

7 Opposing counsel.

8 What is going on here? It's not what you feel.
9 It's what have these people proven beyond a reasonable
10 doubt. It's not if you feel, you know, he's guilty bring
11 back a verdict of guilty. What have they proven beyond a
12 reasonable doubt?

13 My goodness. Opening here, when the assistant
14 solicitor opened he said, Look at what this money could
15 do. Look at where it could go.

16 I submit they would convict him for things that
17 weren't even brought into this courtroom. You took an
18 oath when you were sworn in that you would listen to the
19 evidence presented, testimony admitted. That's what
20 you've got.

21 Now, have they proven this? I heard in the
22 solicitor's closings a lot of ifs, whats. Jose Olivares,
23 he could be somebody else. So what. What have they
24 proven? That's their job. And they don't get to dump
25 that on you. They don't get to dump that on anyone else.

1 That's what they are being paid for with taxpayer
2 dollars. That's their responsibility. Do that job.
3 What have they proven?

4 In my opening I asked you to listen. It was that
5 simple. Please listen to the evidence. What we agree
6 on, and this I'm going to put up the same thing
7 Mr. Campbell did. Mine is a little crooked. Let's talk
8 about who Jose Olivares, this man, and I'll remind you,
9 Jose Olivares is as important as anyone else in this
10 room, in this entire courtroom. This is his trial. You
11 are his peers. You are his jury.

12 He is charged with trafficking in marijuana more
13 than 10 pounds, less than 100, and this is what the
14 solicitor is right about. And remember, he didn't even
15 mention it in opening and they've been glossing through
16 it throughout this trial. Knowingly. Who knew what?
17 Knowingly. And let's really talk about knowingly.

18 Maybe I overdid it. I don't know. But we talk
19 about that statement, the statement. What did my client
20 Jose Olivares say? It's important. That goes to
21 knowledge. What did he know? Do you still beat your
22 wife? It doesn't matter how you answer, you're guilty.
23 Because either you quit and you did do it or you're still
24 doing it. That's the kind of question that was put
25 towards my client.

1 Let's talk about this. We've heard all these
2 different things. In fact, if you were listening to
3 Mr. Campbell's closing he too referred to it as the box.
4 I think maybe only once he called it the box of
5 marijuana. The box. The package. They shortened it.

6 Law enforcement knew what was in it. We heard
7 testimony over, and over, and over again. You had to
8 open that thing up, get that detergent out of there, get
9 in it and then you got that big whiff, but until then you
10 didn't know. No one knew. And they referred to it as
11 the package. In closing, the box.

12 Agent Sloan two times had wrote it down. He said,
13 No, Jose Olivares told me he was there to get a package.
14 He was going to be paid \$500 for a package. Somewhere
15 it's in his report now a package of marijuana.

16 What did they say to Jose Olivares to get this
17 so-called statement? What did they say? You are here to
18 pick up a package of marijuana? Well, I mean, he's
19 damned if he says yes, dammed if he says no. I mean,
20 yes, there's a package he was here to pick up, and that
21 is not a crime.

22 Why is the statement so important? I've played
23 this game. Maybe you have. Clearly they have not. You
24 have five people in a row, four or five. Someone says,
25 Mary had a little lamb, whispers it to the next person,

1 who whispers that to the next person, who whispers it to
2 the next person and it ends up Barry killed a man.

3 The first statement is not a crime but the last one
4 is, and that is hearsay. It's one statement, to another
5 individual, to another individual. Suddenly it's a
6 crime. I mean, here we are at the solicitor's closing
7 and he could have sold tomorrow, he could have sold
8 before. They have him selling every day, getting
9 packages. It's crazy.

10 What have they proven? That statement is critical.
11 You have a young SLED agent took the stand, said I
12 decided not to write it down. He also testified he was
13 with him for about an hour, hour and a half. What is so
14 difficult about picking up a scrap piece of paper, having
15 him write down a statement and signing it? How much time
16 does that take? Do you really buy that time was of the
17 essence all day long?

18 Deputy Velez, he sat there and shot the breeze with
19 Jose Olivares, that's who he is, he is Jose Olivares, for
20 about two hours. What is wrong with getting a napkin
21 saying write down your statement? That matters. That is
22 it. Did he know, was he there to pick up a package and
23 get \$500 for it? Hey, this guy, the solicitor said I'd
24 do that. I'd love someone to offer me \$500 to go pick up
25 a package. Go get it. That's not a crime.

1 What did he know? That statement means a lot.
2 They don't have it. Witness after witness, after
3 witness, not my job, not my case. Where did they cart
4 off my client after he cooperated? To the jail. Go over
5 there, write something down. This case is really
6 important. Look at all the agents involved in it. Take
7 a statement.

8 Instead you've got Detective McGuire, his incident
9 report. He just says a package. And again, his incident
10 report, we went through that. I'm not going to go
11 through every officer's -- first of all, every officer
12 didn't do an incident report, right? Secondly, the ones
13 who did they were all replete with errors, multiple
14 mistakes.

15 Now, they said, Oh, it's a typo. They are not
16 writing eighth grade essays. These are incident reports.
17 These are mistakes on the date. We've heard June 5th,
18 2009, we've heard June 6th, 2009, and we've heard June
19 2009. When did it happen? They don't have it right.

20 What else? Oh, the incident reports read package.
21 One says Deputy Velez was there, one says Captain Marsee
22 was there. Someone is taking 20 bucks and no one will
23 own up to hit. I mean, come on. Those reports are
24 worthless, and you need to let law enforcement know they
25 are unacceptable.

1 This is Jose Olivares' trial for trafficking. No
2 one is grading these incident reports. They are the
3 basis of whether or not he's going to be convicted.
4 Demand more. Demand the basics. Get the date right.
5 What did he say? Get a statement. Not only do they have
6 to prove it they have to prove it beyond a reasonable
7 doubt.

8 Now, the Judge is going to charge you with the law.
9 But they don't have to, you don't feel is it a little
10 more likely that he did it, a little less likely that he
11 knew. You know, which is it? It's up here. Okay. They
12 have to prove it and they have to prove each and every
13 element beyond a reasonable doubt.

14 We stipulated there were 30 some pounds of
15 marijuana in that package. Never stipulated Jose
16 Olivares knew about it. We're not wasting your time.
17 There was marijuana in that package. Who knew about it?

18 Let's take a look at this trafficking statute. The
19 defendant, Jose Olivares Romero, knowingly did something.
20 And what they are talking about is what did he knowingly
21 do. And I think he highlighted or knowingly was in
22 actual or constructive possession or knowingly -- there's
23 that word again, knowingly, attempt to become in actual
24 or constructive possession of more than 10 pounds but
25 less than a hundred. Let's talk about that.

1 Knowingly. Well, first of all he never got the
2 package, right? We heard Agent Sloan, who didn't have
3 time to take a statement, but he did get that marijuana
4 and he held onto that box and he delivered it to someone
5 else who signed for it. Jose Santos Delorez, okay.

6 So Jose Olivares, my client on trial today, he
7 never got actual possession. Okay. And he never got
8 constructive possession. Constructive possession, if
9 it's in my house but I'm not there. I control my house,
10 okay. He never had constructive possession. He never
11 had this thing.

12 But I want to go back to the physical condition,
13 because understand that. Bear with me for one moment and
14 close your eyes. Think a package. I'm thinking a shoe
15 box. What are you thinking? UPS, post office, anything
16 over the size of a letter is a package. Someone pays you
17 \$500 to go pick up a package. I'm looking for a package.
18 There's no evidence. None presented he knew it was this
19 box.

20 They have to prove all of this, that he knowingly
21 attempted to become in actual or constructive possession
22 of more than 10 pounds, less than a hundred. Well, heck,
23 he never saw the box. He didn't know what was in this
24 package. He didn't know the size of this package.

25 The only testimony is that he was there to get a

1 package. They say there was a package of marijuana. My
2 client never saw this package. They got to prove he knew
3 it was more than 10 pounds. They haven't done that. I
4 think Agent Sloan even said he had to use an -- oh, what
5 are those things called? A little hand truck to move the
6 box. No evidence my client came with a hand truck.

7 They keep talking about this counter surveillance,
8 okay, and that's somehow proving knowledge, counter
9 surveillance. Well, we asked the expert that the State
10 provided, Did you get any cell phones from the apartment,
11 Apartment ■?

12 No.

13 Did you recover any cell phones from my client,
14 Jose Olivares?

15 No.

16 What are these people doing? I mean, is it some
17 kind of mental telepathy or something, I see Agent Sloan,
18 they are doing to one another. There was no counter
19 surveillance. The expert told you, Hey, you know, we
20 heard from them. The expert says this is -- this box is
21 worth \$30,000, the contents anyway.

22 Let's think about that because I think I did ask
23 the expert. I know I did. No honor among thieves.
24 Okay. Jose Olivares is going to pick up a package. Did
25 someone really tell him hey, Jose, I got \$30,000 worth of

1 stuff coming in, pick it up for me.

2 Isn't it more likely that someone said, Hey, I'll
3 pay you \$500 to pick up a package, and not tell him what
4 was in it? You heard from their expert.

5 I'm going back to that statement one last time, and
6 this is why it's so important. At the outset of this
7 case, okay, when they already knew their stuff they tell
8 you my guy is the courier.

9 At the end of the case they insinuated my guy might
10 be someone else. You can't insinuate. You can't go on
11 ifs, you can't go on whats, you can't go on maybes and if
12 you keep selling all year long you're guilty of all this
13 stuff. What did they show here today? Knowledge and
14 statements are important, otherwise the UPS guy who
15 brought this stuff into Anderson, South Carolina would be
16 sitting right next to my client, Jose Olivares.

17 And one last thing. They keep saying Jose Olivares
18 cooperated and immediately told them everything. Isn't
19 that indeed what an innocent person would do?

20 I want to thank each of you for your time. I
21 represent Jose Olivares, and on behalf of my client, Jose
22 Olivares, I want to ask you to consider the evidence that
23 the State presented within this room and come back with
24 the only verdict you can, and that is a verdict of not
25 guilty. Thank you very much.

1 THE COURT: Mr. Burns, ladies and gentlemen of the
2 jury, I'm about to charge you on the law; however, I
3 anticipate my charge will be in the neighborhood of about
4 30 minutes. I'm going to ask that you go back to your
5 jury room and take a quick break. I'm going to do the
6 same. And I'll get you back here once you notify the
7 bailiff that you've had ample time to have a break and
8 then we'll come back on the charge of the law. Okay,
9 sir?

10 THE FOREMAN: Yes, Your Honor.

11 THE COURT: If you would take them back right now.

12 (WHEREUPON, the jury leaves the courtroom at
13 approximately 10:28 a.m.)

14 THE COURT: All right. Before we go on break I
15 want to thank both the attorneys -- or all three of the
16 attorneys. I keep excluding everybody over here, for
17 being very prepared and doing a very professional job for
18 your clients. It always makes my job a lot easier to
19 have people who are experienced and who understand the
20 issues and ready to try a case without all the bickering
21 that sometimes goes along with it.

22 So regardless of the outcome in this case I want to
23 thank both attorneys or all the attorneys in this matter.
24 With that being said we'll be in recess until the jury
25 says they are ready to come back.

1 MS. DRAWDY: Thank you, Your Honor.

2 (WHEREUPON, a brief recess was taken.)

3 THE COURT: Let me ask, in our charge conference I
4 did not go over the charge of possession, constructive
5 possession but based on both of your arguments today I
6 think I need to add that to my charge.

7 MR. CAMPBELL: I agree with that.

8 THE COURT: And if not we are going to get a
9 question about it before it's over with, so we might as
10 well go ahead and hit it off.

11 MR. CAMPBELL: I'm not going to object to that.

12 MS. DRAWDY: No objection.

13 THE COURT: Well, I have Mr. Sam is downloading
14 that right now. When he gets that we'll be ready to
15 roll.

16 Would you bring the jury in, please, Buck.

17 (WHEREUPON, the jury enters the courtroom at
18 approximately 10:50 a.m.)

19 THE COURT: Mr. Burns, ladies and gentlemen of the
20 jury, thank you for your patience. I am now going to
21 charge you on the law that's applicable to this case.
22 Before I do, let me tell you I think I have this sound
23 system such that you can hear me. Can you hear me now
24 okay?

25 If at any time you cannot -- actually, did not get

1 it fixed last night but we think we got it under control.
2 If you don't hear me raise your hand and I'll stop and
3 rephrase what I just stated to you so that you hear what
4 I have to tell you. But before we do, thank you for
5 being patient and attentive throughout the course of this
6 trial. I've been watching you variously throughout this
7 case, and we thank you for being patient and attentive.

8 But now all the evidence in this case has been
9 presented, you've heard the arguments of the attorneys.
10 It's my duty to charge you on the law that applies in
11 this case and my instructions are going to be in three
12 parts. Unfortunately, I'm not as articulate as either
13 one of these attorneys and I may be reading and will be
14 reading some parts of it to you. I apologize to you in
15 advance for that. It is important, however, that I not
16 mistake the law, so it will be read in some part.

17 But the three parts to this charge will be this.
18 First I'm going to describe for you your role and your
19 duties as jurors. Next, I'm going to charge you on the
20 substantive law that is the charge in this case, and that
21 is the law of trafficking in marijuana more than 10
22 pounds but less than 100 pounds. Next, and lastly, I
23 will charge you on some rules that govern and define your
24 deliberations in this matter.

25 But as I told you from the beginning of this case,

1 you've taken an oath to make your decision based solely.
2 from the evidence that's been presented in this case and
3 from no other place. That means that you must find facts
4 based on the testimony and exhibits that were produced
5 here in this courtroom and from no other place, and you
6 must apply the law as I charge it to you to the facts as
7 you find them to be.

8 You shall not be concerned with what the law should
9 be. You shall not engage in discussions about what you
10 think the law ought to be. It is your sworn duty to
11 apply the law as I give it to you, and if it's not
12 correct then there is a remedy for that by an appellate
13 court.

14 You are not to be influenced in this case and in
15 your deliberations by any personal likes or dislikes, any
16 opinion you may have, any prejudice or undue sympathy you
17 may have from one side or the other. Again, that means
18 that you are to decide this case solely and only from the
19 evidence presented here in this courtroom and according
20 to the law that I gave to you, that I've given to you.

21 And in following my instructions it is not
22 allowable for you to pick out the instructions that you
23 like and apply those but to disregard the instructions
24 that you may dislike. Quite frankly, these instructions
25 are all equally important and you must apply all of them

1 as I give them to you.

2 And you must not read into my instructions or
3 anything that I may have done during this trial that I
4 have a feeling about how you should find facts in this
5 matter. As I told you at the beginning of this case you,
6 and you alone, are the judges of the facts. I cannot
7 tell you how to find facts and you cannot tell me how to
8 charge you on the law. That is our separate and distinct
9 roles in this matter.

10 Now, in this case you decide what the facts are by
11 evaluating and weighing the evidence that you heard in
12 this courtroom during this trial. Now, there's no way
13 for me or anyone to give you a set of scales where you
14 can weigh the evidence. It is entirely a mental process
15 that you should go through in your deliberations using
16 your good common sense, your sound judgment and applying
17 the law that I gave to you at this point.

18 Now, I'm going to tell you what is evidence and
19 what is not evidence. In this case we have three
20 categories of what is evidence. The first one is the
21 sworn testimony of the witnesses in this matter. Whether
22 it be on direct examination, on cross-examination, or a
23 combination of that, that is one category of evidence.
24 The other category of evidence is the actual exhibits
25 that were received into evidence in this matter and

1 marked as such.

2 And finally, if you recall, there was a stipulation
3 entered into between the State and the defense in this
4 matter that is also evidence in this case. That
5 stipulation is this: That the substance contained in the
6 box, what I believe is marked as Exhibit Number 18, which
7 is sitting right over there, it has blue and it has Delta
8 written on it, contains marijuana. You have no right in
9 your deliberations to debate whether or not it is
10 marijuana. That's been stipulated to so that is a fact
11 that you must apply in this case.

12 Next, it has been stipulated that the weight of
13 that marijuana is 30.34 pounds. So when you get into
14 your deliberations you shall not deliberate whether or
15 not the substance is marijuana nor shall you deliberate
16 the weight of the marijuana because that's been
17 stipulated to and that is a fact that has been found for
18 you. But the testimony, the exhibits and those
19 stipulations are the only evidence -- or is the only
20 evidence that you shall consider.

21 Now, let me tell you what is not evidence.
22 Arguments and the statements of these fine attorneys is
23 not evidence. These lawyers have not been sworn. They
24 are not witnesses. What they've said in their opening
25 statements, in their closings statements and in any other

1 time during this trial is in fact intended to help you
2 interpret the evidence and in fact helpful; however, if
3 you in your collective judgment remember the evidence
4 different from the way these attorney have stated to you
5 in this trial then your memory of those facts will
6 control.

7 Also, the questions and the objections of the
8 lawyers during the trial is not evidence. You are not to
9 even discuss the fact that there was an objection raised
10 nor consider my ruling on that.

11 As I told you at the beginning of the case, these
12 attorneys have an ethical obligation to zealously
13 represent their clients, and if they perceive that there
14 is some kind of evidence that is improper it is their
15 duty as attorneys to raise an objection. So the fact
16 that an attorney raised an objection, or my ruling on
17 that objection is not evidence and shall not be
18 considered by you.

19 And finally, ladies and gentlemen, what is not
20 evidence is anything that you may have seen or that you
21 may have heard when court was not in session, outside of
22 this courtroom. Again, you are to make your findings of
23 fact solely based on the evidence that's presented in
24 this courtroom, and that is the evidence categories I've
25 just given to you.

1 Now, in South Carolina we recognize two types of
2 evidence. We have direct evidence and we have
3 circumstantial evidence. And direct evidence is
4 basically what it sounds like. It is this. It is
5 testimony of a person who asserts or claims to have
6 actual or direct knowledge of a fact, such as an
7 eyewitness.

8 The other type of evidence is circumstantial
9 evidence. It is indirect evidence, or put another way
10 circumstantial evidence is proof of a chain of facts and
11 circumstances from which you can find that another fact
12 exists although that fact has not been proven directly.

13 Let me give you an example of that. If you went to
14 bed during winter and at night and you had snow in your
15 front yard when you went to bed, you wake up in the
16 morning and you see tracks in the snow. You may infer
17 from the fact of the tracks that someone or something
18 walked through your yard. That is circumstantial
19 evidence.

20 Now, the law makes absolutely no distinction
21 between the weight nor the value to be given to either
22 direct or circumstantial evidence. You are entitled to
23 consider both types of evidence. I will tell you that
24 there is not a greater degree of certainty or proof
25 required of circumstantial evidence.

1 But I will tell you this. If after weighing all
2 the evidence in this case, whether direct or
3 circumstantial, if you are not convinced of the guilt of
4 the defendant beyond a reasonable doubt, and I'm going to
5 define that for you, it is your job to find the defendant
6 not guilty.

7 Now, an important part of making your findings of
8 fact is determining the credibility of witnesses. In
9 doing so you consider all the evidence, and I will say
10 that to you over and over but you must consider all the
11 evidence in this case.

12 Now, in considering all the evidence you are to
13 consider which testimony that you want to believe and
14 which testimony you do not want to believe. You have a
15 right to disbelieve all or part of any witness's
16 testimony that's been presented to you. You have a right
17 to believe all the witnesses's testimony.

18 In making that decision of credibility of the
19 witnesses you may but are not required to take into
20 consideration the below factors, and these factors are
21 this. Was the witness able to see or hear or know the
22 things about which that witness testified? How well was
23 the witness able to recall and describe those things?
24 What was the witness's manner while testifying, what we
25 commonly refer to as what was their demeanor? Also you

1 may consider is there some reason that a witness would
2 want to give testimony that would help or hurt one side
3 or the other? Did the witness have an interest in the
4 outcome of this case or any bias or prejudice concerning
5 any party or concerning any issue or matter involving
6 this case?

7 You may consider how reasonable was the witness's
8 testimony considered in light of all the evidence
9 received. And you may also discuss and consider was the
10 witness's testimony contradicted by what the witness had
11 said or done at another time or by the testimony of other
12 witnesses or by other evidence that is presented in this
13 case.

14 Now, ladies and gentlemen, those are just some but
15 certainly not all the factors that you may consider in
16 making your determination of the credibility of the
17 witnesses and, of course, when you become a juror you do
18 not check your common sense at the door and you shouldn't
19 in this case. You should in making your determination of
20 credibility use those things that you and each of you use
21 in your day-to-day lives as indicative of truthfulness or
22 lack of truthfulness when you make your decision of
23 credibility of the witnesses.

24 One thing that you are not to do. You are not to
25 add up all the witnesses that testified on behalf of one

1 party or the other in making that decision. You are to
2 make your determination based on the testimony and
3 evidence presented in this case and it doesn't matter
4 whether it comes from direct examination, from
5 cross-examination or from some other aspect of the
6 testimony in this matter.

7 Also, ladies and gentlemen, you have heard the
8 testimony of persons who have been described as experts.
9 If you recall I told you that normally witnesses are
10 limited to what we consider our five senses; seeing,
11 smelling, feeling, hearing, touching. However, if a
12 person because of their education or their experience or
13 a combination of both has developed a particular
14 expertise in an area that is not of common knowledge to
15 each of us then they may be allowed to give their
16 opinion.

17 But I'll tell you, expert testimony should be
18 judged just like any other testimony and evidence in this
19 case. You have a right to accept it, you have a right to
20 reject it. You have a right to give it as much weight as
21 it deserves considering the witness's education, their
22 experience, their reasons given for the opinion, as well
23 as all the other evidence that's been presented in this
24 matter.

25 As I pointed out to you at the beginning of this

1 trial the defendant has been indicted, and this is the
2 indictment for the charge of trafficking in marijuana
3 more than 10 pounds but less than 100 pounds.

4 I'll remind you that the fact that the defendant
5 was arrested, that he was charged and indicted is not
6 evidence and shall not and cannot be considered by you as
7 evidence of guilt. Nor does the fact that he was
8 arrested, charged and indicted raise any type of
9 inference or presumption of guilt.

10 I'll remind you that the indictment is solely the
11 charging mechanism by which the State of South Carolina
12 brings defendants charged of a crime or crimes before a
13 jury such as yourselves for a determination of guilt or
14 innocence.

15 Now, the defendant in this matter has pled not
16 guilty to the indictment, and that puts the burden on the
17 State of South Carolina to prove the defendant guilty.
18 I'll tell you that a person charged with committing a
19 criminal offense in this State is never required to prove
20 himself innocent.

21 I charge you that it is an important rule of law
22 that the defendant in a criminal trial no matter what the
23 seriousness of the charge may be will always be presumed
24 innocent of the crime for which the indictment was issued
25 unless guilt has been proven by evidence satisfying you

1 of guilt beyond a reasonable doubt.

2 And I'll tell you also that the presumption of
3 innocence does not end when you begin your deliberations
4 but it accompanies the defendant throughout the trial
5 until you reach a verdict of guilt based on evidence that
6 satisfies you of guilt beyond a reasonable doubt.

7 It has been said in the vernacular of the law that
8 the presumption of innocence is like a robe of
9 righteousness that is placed about the shoulders of the
10 defendant which remains across his shoulders until it has
11 been stripped from him by evidence satisfying you, the
12 jury, of his guilt beyond a reasonable doubt.

13 Further, the presumption of innocence is not a mere
14 theory. It's not just a legal phrase but it is a
15 substantial right which every defendant is entitled
16 unless you, the jury, are satisfied from the evidence of
17 the defendant's guilt beyond a reasonable doubt.

18 So that leads us to the question, what is a
19 reasonable doubt? A reasonable doubt is the kind of
20 doubt that would cause a reasonable, sincere, honest and
21 conscientious person to hesitate to act in an important
22 matter in their own affairs. Proof beyond a reasonable
23 doubt is proof that leaves you, the jury, firmly
24 convinced of the defendant's guilt.

25 Now, there are very few things in this world that

1 we know with absolute certainty and in criminal cases the
2 law does not require proof that overcomes every possible
3 doubt. If based on your consideration of the evidence
4 you are firmly convinced that the defendant is guilty of
5 the crime you must find the defendant guilty. On the
6 other hand, if you think that there is a real possibility
7 that the defendant is not guilty you must give the
8 defendant the benefit of the doubt and find him not
9 guilty. A reasonable doubt may arise from the evidence
10 or from the lack of the evidence.

11 I further instruct you that a defendant is entitled
12 to every reasonable doubt that may arise in a case. What
13 that simply means is this. If upon any issue of fact
14 essential to a conviction and a verdict of guilty of the
15 offense charged if you have any reasonable doubt as to
16 how that issue shall be resolved it is your duty to
17 resolve that doubt in favor of the defendant.

18 Now, in order to establish criminal liability in
19 this matter criminal intent is required. For example,
20 the mental state required to be proven by the State for a
21 particular crime might be purpose, it might be intent, it
22 might be knowledge, recklessness or criminal negligence.
23 Criminal intent must be proven by the State beyond a
24 reasonable doubt. Criminal intent is always a matter
25 that must be determined by the jury from the

1 circumstances surrounding the situation.

2 Now, there is no mathematical way to prove intent
3 to a mathematical certainty. There is no way that
4 medical science can dissect a person's brain to determine
5 what that person had in mind. So the law says that
6 criminal intent may be inferred from the circumstances
7 shown to have existed and that how you make the
8 determination of whether or not the element requiring
9 intent is present.

10 It is not necessary to establish intent by direct
11 or positive evidence but intent may be established by
12 inference in the same way as any other fact by taking
13 into consideration the acts of the parties and all of the
14 facts and the circumstances of the case.

15 Criminal intent is a mental state. It is a
16 conscious wrongdoing. Now, it is up to you, ladies and
17 gentlemen of the jury, to determine what the defendant
18 intended to do based on the facts and the circumstances
19 shown to have existed this trial.

20 Criminal intent can arise from action or a failure
21 to act. It may arise from negligence, recklessness or an
22 indifference to duty or to the consequences that is
23 considered by law to be equivalent to criminal intent.

24 Now, ladies and gentlemen, in this matter the
25 defendant did not testify, which he has a right not to do

1 under the Fifth Amendment to the United States
2 Constitution, and I instruct you and emphasize to you
3 that the fact that the defendant did not testify shall
4 not and cannot be considered by you, the jury, in making
5 your determination of guilt or innocence. It shall not
6 even be a part of your deliberations.

7 Now, there was -- the State contends that there was
8 a statement made by the defendant in this matter. A
9 statement alleged to have been made by the defendant has
10 been admitted into evidence in this case. While the
11 Court has determined that the statement is admissible I
12 instruct you that you will make the ultimate decision of
13 whether or not the defendant made the statement.

14 If the defendant made the statement you must
15 consider whether the statement was made by the defendant
16 voluntarily and of his own free will. This means that
17 the statement was not caused by pressure, force, fear,
18 threats, coercion or intimidation, or by hope or a
19 promise of a leniency or a reward of any kind.

20 In determining whether the statement was voluntary
21 you should consider both the characteristics of the
22 defendant and the details of the questioning. Some of
23 the factors that you must consider are, to the extent
24 they have been presented in evidence, the age of the
25 defendant, the defendant's education or lack of

1 education, the defendant's mental ability or capacity,
2 the defendant's I. Q. or intelligence, the defendant's
3 background and environment, the place and length of
4 detention, the nature of the questioning, and the advice
5 or the lack thereof to the defendant of his or her
6 constitutional rights including but not limited to the
7 right to remain silent, that any statement could be used
8 against him in a court of law, the right to have a lawyer
9 present, that if he could not afford a lawyer a lawyer
10 would be appointed to represent him without any cost, and
11 that he could stop making a statement at any time. You
12 must carefully consider all of the surrounding
13 circumstances before you give any weight to an alleged
14 statement.

15 Now, the State has the burden of proving beyond a
16 reasonable doubt that the alleged statement was
17 voluntary. If you determine that it was you may give the
18 statement any further consideration that you would deem
19 proper. You must decide what weight if any should be
20 given to the alleged statement.

21 If you determine that the alleged statement was not
22 the free and voluntary statement of the defendant I
23 charge you, instruct you that you shall not consider the
24 statement at all.

25 Now, Mr. Burns, ladies and gentlemen of the jury,

1 that concludes the first phase of my instructions to you.
2 The second part is the law applicable to the charges in
3 this case. If you'd like to take a minute and stand up
4 I'll be glad to give it to you. If you'd like to go
5 forward, if you just pole your jury and see what
6 everybody would like to do.

7 THE FOREMAN: We'll continue, Your Honor.

8 THE COURT: Thank you, Mr. Burns. All right.

9 Ladies and gentlemen of the jury, as you've been
10 instructed, the defendant is charged with trafficking in
11 marijuana between more than 10 pounds but less than 100
12 pounds. The State must prove beyond a reasonable doubt
13 that the defendant knowingly sold, manufactured,
14 cultivated, delivered, purchased, brought into this
15 State, provided financial assistance or otherwise aided,
16 abetted, attempted or conspired to sell, manufacture,
17 cultivate, deliver, purchase, or bring into this State,
18 was normally in actual or constructive possession
19 normally or attempted to become in actual constructive
20 possession of marijuana.

21 The State must also prove beyond a reasonable doubt
22 that the amount of marijuana was 10 pounds or more but
23 less than 100 pounds. As I told you earlier, that has
24 been stipulated to.

25 Now, there's been some issue -- or statements as to

1 possession. Let me give you the law that is applicable
2 to actual possession and constructive possession. To
3 prove possession the State must prove beyond a reasonable
4 doubt that the defendant had both the power and the
5 intent to control the disposition or use of the
6 marijuana. Possession may be actual or constructive.

7 Actual possession means that the marijuana was in
8 the actual physical custody of the defendant.

9 Constructive possession on the other hand means that the
10 defendant had dominion and control or the right to
11 exercise dominion or control over either of the marijuana
12 itself or the property on which the marijuana was found.

13 The mere presence at the scene where the drugs were
14 found is not enough to prove possession. Actual
15 knowledge of the presence of the marijuana is strong
16 evidence of the defendant's intent to control its
17 disposition or use.

18 The defendant's knowledge and possession may be
19 inferred when a substance is found on the property under
20 the defendant's control; however, this inference is
21 simply an evidentiary fact to be taken into consideration
22 by you along with the other evidence in this case and to
23 be given the weight you decide it should have. Finally,
24 I'll charge you that two or more persons may have joint
25 possession of a drug.

1 Ladies and gentlemen, that is the law that is
2 applicable to this case, and that leaves me to my final
3 part of my charge and that is some considerations about
4 your deliberations.

5 I want to point out to you that you don't become
6 jurors to be partisans or advocates for either side in
7 this matter. You were chosen by both the State and the
8 defendant because both sides believe that you can be fair
9 and impartial and decide this case solely on the evidence
10 that's presented here in this courtroom and without bias
11 or prejudice towards the State or towards the defendant.

12 What that simply means is when you go back and you
13 debate and make your deliberations on what the facts in
14 this case are you are to use your experiences in life,
15 you are to use your good common sense and your sense of
16 logic and reason in your deliberations in reaching your
17 verdict. But in preparing my charges in my charge book I
18 looked up the definition of deliberation and I want to
19 share this with you because I think it's important.
20 Deliberation is defined as this. It's a careful
21 consideration weighing up with a view to a decision.

22 Now, I'll tell you that regardless of what many or
23 most people may think the genius of our jury system is
24 that it allows 12 good men and women from 12 different
25 backgrounds, from 12 different experiences and

1 prospectives to consider the evidence, to talk about the
2 evidence and ultimately to reach a verdict, and we call
3 them deliberations for a reason.

4 You are to consider the evidence carefully and
5 deliberately and discuss it in a calm thorough and a
6 courteous manner, and again remember you are not
7 partisans or advocates for one side or the other. You
8 are the judges of the facts, and your sole interest in
9 this case is to find the truth from the evidence that has
10 been presented here in this courtroom.

11 I will ask you and also instruct you that you are
12 to listen to the views of your fellow jurors, you are to
13 consider other people's points of view. You are to talk
14 through and discuss the evidence thoroughly, calmly and
15 courteously. And remember, you are doing something
16 deliberately. You are not in a big hurry and you
17 shouldn't be today. I point out to you that this is a
18 very important case to both the State and to the
19 defendant and this is their only day in court.

20 Now, when you retire to the jury room you should
21 discuss the case and reach an agreement with your jurors
22 if you can do so; however, in order for your verdict to
23 stand valid there must be a unanimous verdict reached by
24 all 12 of you.

25 Now, with that being said, each of you must decide

1 the case by yourself, meaning that you should do so only
2 after you have impartially considered all the evidence,
3 you have discussed it with your fellow jurors, you've
4 listened to the views of all the jurors in this matter
5 and you've come to a decision.

6 Do not be afraid to change your mind if the
7 discussion persuades you that you should do so but do not
8 come to a decision simply because the other jurors think
9 it's the right thing to do. It is important for your
10 verdict to be valid, that you reach a unanimous verdict
11 but of course you can only do that after you have made up
12 your own decision. Do not change a honest belief about
13 the weight and the effect of the evidence simply to reach
14 a verdict. In other words, do not change your opinion
15 solely for the sake of reaching a unanimous verdict.

16 Now, Mr. Burns, once the jury reaches a verdict I'm
17 going to ask that you knock on the door as you've done,
18 that you advise the bailiff that you have reached a
19 verdict and we will receive your decision back in
20 evidence.

21 Now, in the meantime during your deliberations if
22 at any time you need to have any communications with the
23 Court for any reason I'm going to ask that you continue
24 to follow the process that you've used thus far. Write
25 down your question or information you need to be

1 responded to, sign it and knock on the door and we will
2 receive that in evidence as well.

3 Now, in just a minute I'm going to send you back to
4 your jury room. You are not to begin your deliberations
5 at this point. You are not to begin your deliberations
6 at this point. You will be given clear and unequivocal
7 instructions when it's okay to do so. But before I send
8 you back I want to go over the verdict form with you.

9 And, Mr. Burns, as the foreperson it will be your
10 responsibility for filling out the verdict form. Okay,
11 sir. And you will have two options. First it says we,
12 the jury, unanimously find that the defendant, Jose
13 Manuel Olivares Romero, is, the first choice is not
14 guilty of trafficking in marijuana 10 pounds or more but
15 less than 100 pounds; or guilty of trafficking in
16 marijuana 10 pounds or more but less than 100 pounds.

17 Before we go any further the order in which these
18 appear is of no consequence. You have to put them in one
19 order or the other, but whatever choice that you arrive
20 at you are to check that and then below that sign your
21 name, and you will see a place for you to sign your name
22 and also put today's date, which I believe is the -- is
23 it the 24th?

24 THE CLERK: Yes, sir.

25 THE COURT: And then knock on the door and we'll

1 receive your verdict back into evidence once that is
2 done.

3 Now, before you begin your deliberations I need to
4 go over with both these counsel whether or not I have
5 misstated the law or I have neglected to charge you on
6 something that I should have.

7 So, Mr. Burns, would you take your jury back to the
8 jury room at this point and if I need to bring you back
9 out I will. If not, we will send word back to you, with
10 the exhibits in this case, that you can begin your
11 deliberations.

12 THE FOREMAN: Yes, Your Honor.

13 (WHEREUPON, the jury leaves the courtroom at
14 approximately 11:25 a.m.)

15 THE COURT: All right. Mr. Campbell, any additions
16 or exceptions from the State?

17 MR. CAMPBELL: No, Your Honor.

18 THE COURT: Ms. Drawdy, any additions or exemptions
19 from the defense?

20 MS. DRAWDY: Yes, Your Honor.

21 THE COURT: I'm surprised. No, go ahead.

22 MS. DRAWDY: Pleasantly, I hope. We would object
23 to the way you relayed the law as it regards trafficking
24 to the jury. Your Honor separated -- the statute reads
25 knowingly attempted to become in actual or constructive

1 possession of more than 10 pounds or less than 100. It
2 doesn't stop at -- as you directed it to the jury, you
3 said knowingly attempted to become in actual or
4 constructive possession of marijuana, period. And then
5 you said, and the other thing is there has to be more
6 than 10. But as the statute provides it's one sentence
7 and so knowingly would come before all of it, and that is
8 our argument, that they have to knowingly do all that.
9 So we would object with that. I do think that's a major
10 problem.

11 THE COURT: Major? You say major?

12 MS. DRAWDY: That's my major objection.

13 THE COURT: Okay. Let me say this first, and I
14 think this ties in with your directed verdict motion.
15 I've looked at the case of State vs. Taylor and we've
16 Sheppardized it. It appears although it's a Court of
17 Appeals case to still be good law in this matter. So I'm
18 going to deny your motion and I'm also going to deny your
19 -- overrule your objection to my charge. I think it's
20 proper. I read it right from the book.

21 I may not have been very artful in the way I did it
22 but read it verbatim from the charge book. So I'm going
23 to deny your motion and overrule your objection to the
24 charge. Anything further?

25 MS. DRAWDY: No. Thank you, Your Honor.

1 THE COURT: Thank you very much. All right.

2 Again, thank you both attorneys, all the attorneys
3 in the matter. You've done a fine job representing your
4 interest in this case, and we'll be in recess until the
5 verdict is rendered.

6 Mr. Campbell, do you have something for the record?

7 MR. CAMPBELL: Yes, sir. On dealing with the
8 evidence when it goes back to the jury room I didn't know
9 if you actually wanted to send State's Exhibit 18, which
10 is the marijuana.

11 THE COURT: Let me ask Ms. Drawdy and Mr. Campbell.
12 Do either one of you have an objection to the bailiff
13 asking the jury whether or not they want that Exhibit 18
14 brought back there? If not, I'm going to send
15 everything back.

16 MS. DRAWDY: I think it's fine if they ask. I
17 mean, it's made, I know a few people in here sick --

18 THE COURT: I mean, it's been stipulated to the
19 substance and the amount and so I don't know that it
20 would be beneficial but if they decide they want it
21 certainly we'll send it back.

22 But, if you would, ask the jury whether or not they
23 want to have the Exhibit 18, the box of marijuana,
24 brought back there. Do you mind doing that?

25 And then otherwise, let me say a couple things.

1 I'm going to order that the defendant be taken into
2 custody while we're awaiting deliberations because his
3 bond is off and I want him to be under custody. Other
4 than that, we're in recess.

5 (WHEREUPON, the jury began deliberations at
6 approximately 11:28 a.m., and court was in recess while
7 awaiting a verdict from the jury.)

8 THE COURT: All right, guys. I understand we have
9 a verdict. I also understand that the jury has a
10 statement. I'm going to look at the statement to see if
11 it's appropriate, and if I do find it appropriate I'll
12 read it, otherwise I won't. I just want to make sure
13 first it doesn't equivocate from the verdict, either.

14 But would you ask the jury to come in, please.

15 (WHEREUPON, the jury enters the courtroom at
16 approximately 1:06 p.m.)

17 THE COURT: Mr. Burns, my understanding is that the
18 jury has two things, one it has verdict; is that correct?

19 THE FOREMAN: Yes, Your Honor.

20 THE COURT: Is it unanimous?

21 THE FOREMAN: Yes, sir, it is unanimous.

22 THE COURT: And my understanding also from the
23 clerk the jury has a statement that they would like to
24 have read; is that correct, or is that not correct?

25 THE FOREMAN: That's not correct.

1 THE COURT: Very good. Would you pass your verdict
2 forward to the bailiff and I'll receive it.

3 (WHEREUPON, the verdict form was given to the
4 Court.)

5 THE COURT: Would you publish the verdict please,
6 sir.

7 THE CLERK OF COURT: Be glad to.

8 State of South Carolina, County of Anderson in the
9 Court of General Sessions. This is the case of the State
10 of South Carolina vs. Jose Manuel Olivares Romero, the
11 defendant. Verdict, under indictment number
12 2009-GS-04-2441 we, the jury, unanimously find the
13 defendant, Jose Manuel Olivares Romero, is guilty of
14 trafficking in marijuana 10 pounds or more or less than
15 100 pounds. It is signed by the foreperson, John B.
16 Burns, dated today, Anderson, South Carolina.

17 THE COURT: All right. Ladies and gentlemen of the
18 jury, is that your verdict -- was that your verdict in
19 the jury room and is that your verdict now?

20 THE FOREMAN: Yes, Your Honor.

21 THE COURT: And is it unanimous?

22 THE FOREMAN: Yes, Your Honor, it is.

23 THE COURT: To all who says it is unanimous would
24 you raise your right hand.

25 (WHEREUPON, all hands were raised.)

1 THE COURT: Very good. Let the record reflect that
2 all 12 jurors said that the verdict is unanimous.

3 Mr. Burns, ladies and gentlemen of the jury, I want
4 to thank you for your service. You paid attention. The
5 Court from this perspective is never interested in what
6 the verdict is. It's not my concern. I just want to
7 make sure the process was followed, and the jury did as
8 they were instructed, then you followed the trial very
9 carefully and you listened to my instructions. So thank
10 you for that.

11 I'm going to ask that you go back to your jury room
12 for just a few minutes and I'm going to come in there for
13 a quick minute and speak with you, then I'm probably
14 going to let you go.

15 Okay, sir, if you would take your jury back now.

16 (WHEREUPON, the jury leaves the courtroom at
17 approximately 1:10 p.m.)

18 THE COURT: All right. I'm going to step back
19 there. I'll be right back in just a few minutes.

20 (WHEREUPON, a brief recess was taken.)

21 THE COURT: Ms. Drawdy, would you bring Mr. Romero
22 around, please, ma'am.

23 (The defendant came forward.)

24 THE COURT: Mr. Romero, I want to make clear on the
25 record that you understand that you have 10 days

1 excluding today to appeal this conviction and sentence
2 I'm about to impose; do you understand?

3 THE INTERPRETER: Yes.

4 THE COURT: My understanding of the range for
5 trafficking in marijuana 10 but less than a hundred
6 pounds is up to 10 years, or is it one to 10?

7 MR. CAMPBELL: One to 10, and \$10,000. Yes, sir.

8 THE COURT: That's the mandatory minimum?

9 MR. CAMPBELL: That's what the book says. Yes,
10 sir.

11 THE COURT: And/or, or and a fine 10,000?

12 MR. CAMPBELL: And 10,000.

13 THE COURT: That's a mandatory fine?

14 MR. CAMPBELL: Yes, Your Honor.

15 THE COURT: Okay. We're going to stand down for
16 one second. The jury wants to come around and watch the
17 sentencing.

18 (PAUSE)

19 THE COURT: Ms. Drawdy, would you bring Mr. Romero
20 around, please, ma'am.

21 (The defendant came forward.)

22 THE COURT: Is everybody here from the jury panel?

23 Okay. Got you.

24 Mr. Romero, as I was going over with you before I
25 stood you down, you have 10 days excluding today to

1 appeal your conviction and sentence. The range I'm going
2 to go over with Ms. Drawdy is a mandatory minimum of one
3 year and a 10,000 dollar fine, up to 10 years
4 incarceration. Do you agree with that?

5 MS. DRAWDY: I do, Your Honor.

6 THE COURT: Also, this is considered a violent
7 crime and a serious crime; is that correct?

8 MS. DRAWDY: It is, Your Honor.

9 THE COURT: And do you have anything you'd like to
10 tell me about Mr. Romero before I pass sentence?

11 MS. DRAWDY: Your Honor, may it please the Court.
12 My client served, I believe it was 138 days in the jail
13 before bonding out on this charge. Whatever Your Honor
14 sentences him to we would ask for credit for that time
15 served.

16 My client comes before you with a clean record, no
17 prior convictions. He has five children whom he
18 supports. He works as a satellite dish network
19 installer. He has his wife, who has been here throughout
20 the trial, and we would just ask with all due respect,
21 Your Honor, that -- I know Your Honor has to fashion a
22 sentence commensurate with the crime of which he's been
23 convicted. We would ask that he not be additionally
24 punished for exercising his right to trial, a trial he
25 was entitled to. Again, we understand he's been found

1 guilty but he comes before you with no prior convictions
2 and he's 39 years old.

3 THE COURT: Would you ask Mr. Romero if he would
4 like to make a statement to the Court.

5 THE INTERPRETER: In reality, I didn't know what
6 was happening that day. I asked for forgiveness for what
7 happened. I have five kids. It never was never my
8 intention to bring that. I only -- all I'm asking for is
9 mercy because of my kids. Thank you.

10 THE COURT: Thank you.

11 Ms. Drawdy, my understanding is that there is a
12 hold on Mr. Romero from ICE and that regardless of
13 whatever sentence I give to him he's likely to be
14 deported; is that correct?

15 MS. DRAWDY: That is correct.

16 THE COURT: The State have anything they want to
17 add more than what they've presented so far?

18 MR. CAMPBELL: No, Your Honor. You heard it.
19 We're in agreement on the amount of time that he is to
20 receive credit for. And you spoke right. To our
21 knowledge he does have a hold.

22 THE COURT: Mr. Romero, the jury having spoken and
23 found you guilty I'm going to sentence you to 10 years.
24 I'm going to suspend that on the service of 36 months.
25 I'm going to fine you \$10,000 and I'm going to put you on

1 probation to the extent there is any probation for 36
2 months. I am going to require as a condition of your
3 probation if in fact you are here in the states that you
4 shall actively take steps to become a United States
5 citizen and/or to obtain a work visa, a green card or
6 other appropriate documentation. I am going to give you
7 credit for 138 days that you've already spent in jail.
8 Good luck to you.

9 MS. DRAWDY: Thank you, Your Honor.

10 THE COURT: Yes, ma'am.

11 THE COURT: Good luck.

12 (PAUSE)

13 THE COURT: There is one matter we didn't go over,
14 the disposition of that marijuana. Since there is
15 potential for appealing that I wanted to order that it go
16 back to law enforcement and that it be held upon baring
17 the expiration of appeal time or remitter from the
18 appellate court, okay.

19 (WHEREUPON, the trial was concluded.)

20

21

22

23

24

25

1 C E R T I F I C A T E

2

3 I, Sharon L. Vizer-Hanks, Official Court Reporter for
4 the 10th Judicial Circuit of the State of South Carolina,
5 do hereby certify that the foregoing is a true, accurate
6 and complete transcript of record of all the proceedings
7 had and the evidence introduced in the trial of the
8 captioned case in Circuit Court on the 22nd, 23rd and
9 24th day of August 2011.

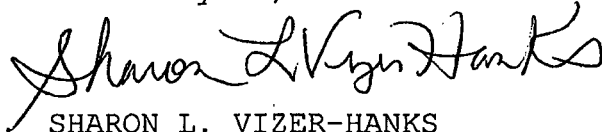
10 I do further certify that I am neither of kin, counsel
11 nor have an interest to any party hereto.

12

13

February 29, 2012

14



15

SHARON L. VIZER-HANKS

16

CIRCUIT COURT REPORTER

17

18

19

20

21

22

23

24

25

WITNESSES

M Sloan, SLED

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

SEP 29 2009

Term

ARREST WARRANT NUMBER

J897066

THE STATE

VS.

Jose Manuel Olivares Romero

ACTION OF GRAND JURY

TRUE BILL

SEP 29 2009

Foreperson of Grand Jury
Date:

VERDICT

X John Byron Burns
August 24th 2011

Foreperson of Petit Jury
Date:

RLC

Indictment for

Drugs / Trafficking in marijuana, more than 10
lbs but less than 100 lbs

SC Code: 44-53-0370(e)(1)(a)1
CDR Code: 2360

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on SEP 10 2009, the Grand Jurors of Anderson County present upon their oath:

Drugs / Trafficking in marijuana, more than 10 lbs but less than 100 lbs

That the Defendant, Jose Manuel Olivares Romero, on or about June 5, 2009, in Anderson County, South Carolina, did knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of more than ten (10) pounds but less than one hundred (100) pounds of Marijuana, a schedule I controlled substance, as defined and otherwise limited in Sections 44-53-110, 44-53-210(b)(4), 44-53-210(d)(1), or 44-53-210(d)(2), all in violation of Section 44-53-370, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Rame L. Campbell
ASSISTANT SOLICITOR

COUNTY OF Anderson
 STATE VS.
Jose Manuel Olivares Romero

INDICTMENT/CASE#: 2009GS0402447A/W#: J897066Date of Offense: 6/5/2009S.C. Code § : 44-53-0370(e)(1)(a)1CDR Code #: 2360

AKA:

Race: Hispanic Sex: M Age: 39

DOB:

SS#:

Address:

City, State, Zip: Greenville, SC 29617DL#: SC01487090*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Trafficking in marijuana, 10 lbs or more, but less than 100 lbs - 1st offense

SENTENCE SHEET

in violation of § 44-53-0370(e)(1)(a)1 of the S.C. Code of Laws, bearing CDR Code # 2360
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Campbell, Rame Lambert

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed 36 years
 and/or to pay a fine of \$ 10,000; provided that upon the service of 21 days/months/years and/or payment
 of \$ 10,000; plus costs and assessments as applicable*; the balance is suspended with probation for 36
months years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. (138 Days)☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$ 10,000.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 10,750.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforcement Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 100.00
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA-Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 629.40
TOTAL		\$ 21,609.40

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: Defendant shall actively take steps to
become a US citizen and/or to obtain a
work visa given based on appropriate
documentation
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: S. Vize

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2155Sentence Date: 8-24-11

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 24, 2012



Susan B. Hackett
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